

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 1697
and
CITY OF MENOMONIE

Case #104
No. 68589
MA-14279

Appearances:

John B. Kiel, The Law Office of John B. Kiel, LLC. 3300-252nd Avenue, Salem, Wisconsin 53168, appearing on behalf of International Association of Firefighters Local 1697.

Anders B. Helquist, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the City of Menomonie.

ARBITRATION AWARD

The City of Menomonie, hereinafter City, or Employer, and the International Association of Firefighters Local 1697, hereinafter IAFF Local 1697 or Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to provide a panel of seven WERC Commissioners or staff members from which they could jointly select an arbitrator to hear and resolve a dispute between them regarding the instant grievance. Commissioner Susan J.M. Bauman was so selected. A hearing was held on May 6, 2009, in Menomonie, Wisconsin. The hearing was not transcribed. The record was closed on June 12, 2009, upon receipt of all post-hearing written argument.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

ISSUE

The parties were unable to agree on a statement of the issue and agreed that the arbitrator could frame the issue based on the evidence and arguments presented. The Union proposed the following statement of the issue:

Did the City of Menomonie violate the collective bargaining agreement when it involuntarily cancelled the November 22, 2008 vacation of Local 1697 bargaining unit member Matthew Simpson?

If so, what is the appropriate remedy?

The Employer proposed the following statement of the issue:

Did the City violate Article 11, Section 3, of the collective bargaining agreement when it denied, rather than cancelled, the Grievant's vacation request for November 22, 2008?

If so, what is the appropriate remedy?

The undersigned adopts the following statement of the issue:

Did the City violate the collective bargaining agreement between the parties when it required the Grievant to work on November 22, 2008?

If so, what is the appropriate remedy?

BACKGROUND and FACTS

The City of Menomonie provides the full panoply of city services, including fire protection and emergency medical services. The Union represents employees in the City's Fire Department holding the ranks of firefighter, EMT-Basic, EMT-IV Technician, EMT-Intermediate and Lieutenant.¹ The City employs 28 firefighters, 20 paid on-call personnel, three Battalion Chiefs (formerly called Captains), and a Fire Chief. Services are provided 24 hours a day, seven days a week. Employees are divided into three platoons, working a "Coon Rapids"² schedule. The City maintains

¹ Lieutenants can also be at the level of EMT-Basic, EMT-IV Technician, or EMT-Intermediate.

² The "Coon Rapids Plan" consists of twenty-four (24) hour shifts scheduled as follows: first day – on duty, second and third days – off duty, fourth day – on duty, fifth day – off duty, sixth day – on duty, seventh, eighth and ninth days – off duty, tenth day – on duty, eleventh day – off duty, twelfth day – on duty, thirteenth day – off duty, fourteenth day – on duty, fifteenth day – off duty, sixteenth day – on duty, seventeenth, eighteenth, nineteenth, twentieth and twenty-first days – off duty, and repeating in this manner for a period of twenty-one days.

two fire stations, and a daily minimum staffing of eight firefighters on duty, at least one of whom must be an officer – Lieutenant, Battalion Chief or Chief.

At issue herein is whether Matthew Simpson, the Grievant, was prevented from taking vacation on November 22, 2008 in violation of the collective bargaining agreement between the City and the Union.

Matthew Simpson has been an employee of the City of Menomonie Fire Department since January 1, 1997. He has served as a Lieutenant in the Department since August 26, 2004. On October 21, 2008 he submitted a Menomonie Fire Department Request or Report of Absence³ form in which he indicated 24 hours of vacation for November 22, 2008. The Grievant is an avid deer hunter and November 22⁴ was opening day of deer hunting, in addition to being his birthday. He anticipated that he would not work on that day.

In addition to Lt. Simpson, three other members of the Fire Department submitted Request or Report of Absence forms for November 22: On October 17, Battalion Commander John Entorf submitted a request for 24 hours on November 22; Firefighter Larry Zais submitted his form on November 3, seeking to be off for 24 hours on November 22, 24 hours on November 28, and 12 hours on November 30; on October 23, Firefighter Peter Terry submitted his request for 24 hours on November 22, 24 hours on November 24, 24 hours on November 28, and 24 hours on November 30.

Of the four individuals who requested November 22 as a vacation day, Firefighter Terry is the most senior, Battalion Chief Entorf is the next senior, Lt. Simpson is third, and Firefighter Zais has the least seniority.

In accordance with the general practice for Deer Hunting absences, the Union was provided with a blank document entitled Positions to fill for Deer Hunting (2008), known as the fill sheet. This document was compiled based on the requests for vacations during the period Friday November 21st through Sunday November 30th. In particular, the portion relating to November 22nd indicated:

0700-0700 _____	BC/LT
0700-0700 _____	LT/FF
0700-0700 _____	FF

³ This form is used both to request time off for vacations and to report time off for sick and funeral leave. It is also used to request time trades with other members of the Department.

⁴ All dates are 2008 unless otherwise specified.

This meant that the Battalion Chief (BC), the Lieutenant (LT), and one firefighter (FF) requested vacation on November 22.⁵ The BC position can be filled by a lieutenant and the LT position can be filled by a firefighter, provided, however, that an officer must be on duty during each shift.

On or about November 20, the fill sheet, Positions to fill for Deer Hunting (2008), was filled out in the following manner:

0700-0700	_____	BC/LT
0700-0700	<u>Brantner</u>	LT/FF
0700-0700	<u>Poliak</u>	FF

That day, Lt. Simpson attended a meeting at which Chief Baus advised him that he was to report to work on November 22. On November 21, Simpson's Request or Report of Absence form on which he had requested vacation on November 22 was returned to him signed by BC Terkelsen and indicating that the request for vacation on November 22 was denied.

Lt. Simpson reported for work on November 22, served as acting Battalion Chief and received acting pay of \$60.00 pursuant to the collective bargaining agreement. Others on duty that day were Firefighters Fisher, Brantner, Gamez, Mucks, Spetz, Christian, and Poliak. Among the department personnel listed as not available on that day were BC Entorf and firefighters Terry and Zais.

By letter dated November 24, 2008, Juan Gamez, President of Local 1697, advised the Chief that a grievance was being filed:

This letter is to inform you that local 1697 is filing a step 3 grievance. Your decision to deny Lieutenant Simpson's vacation and force him to fill in as acting Battalion Chief on Saturday 22, 2008 [sic], is a direct violation of our contract, Article 11 Section 3.

In support of our grievance and in addition to the unambiguous language in our contract we have attached the daily fill sheet, which clearly shows that union vacancy positions have been filled as per our contract. As you can clearly see the only unfilled position is that of a non-union position of Battalion Chief.

Local 1697 strongly disagrees with your judgment on this matter, and as remedy to the clear violation of Article 11, Section 3 of our contract Lieutenant Simpson needs to be compensated overtime pay for said date along with acting position pay per Article 11, Section 2 of our contract.

⁵ Actually, four members of the Department requested vacation for that date. Because the collective bargaining agreement only allows that three be on vacation during a particular shift, only three spaces or blanks appear on the fill sheet.

By letter dated November 28, Chief Baus responded:

I have reviewed the grievance dated 11/24/08 regarding your concern with Lt. Simpson's vacation request. As we discussed, Article 11, Section 3 of the Labor Agreement states "Filling the captain's⁶ position will not result in an employee's vacation, scheduled schooling, funeral or family leave, or exchange of time to be involuntarily cancelled." Lieutenant Simpson's vacation was not cancelled, as it was never approved.

Based on this position, I must deny the grievance. Please feel free to meet with me to discuss any alternatives that may exist to most effectively resolve this matter.

The Union appealed the denial to the Mayor by letter dated December 5 in which it stated:

Local 1697 is proceeding with the grievance procedure as indicated by our contract Article 5, Section 4. We disagree with Chief Baus's manipulation and interpretation of our contract.

As you can clearly see [from the attached fill sheet], Lt. Simpson's vacation was filled and had no justification for denial. The only position that was not filled was that of a non-union position. Chief Baus's decision to deny and force Lt. Simpson to work as acting Battalion Chief is a direct violation of our contract Article 11, Section 3.

The Mayor denied the grievance by letter dated December 10 in which he stated that "Lieutenant Simpson's vacation was not cancelled, as it was never approved." The Union timely appealed the matter to arbitration.

Additional facts are included in the Discussion, below.

RELEVANT CONTRACT PROVISIONS

ARTICLE 2 DEFINITIONS

. . .

⁶ A memorandum of agreement between the parties subsequent to negotiation of the '07-'09 collective bargaining agreement resulted in the term "captain" being changed to "battalion chief."

B. "Employees" means all uniformed employees of the Menomonie Fire Department in conformance with the definitions and requirements of Wisconsin Statute Section 111.70.

C. "Service" or "Seniority" shall include all continuous service with the Menomonie Fire Department.

...

F. "Grievance" shall mean a claimed violation, misinterpretation or misapplication of existing rules, wages or regulations covering working conditions, applicable to the employees of the department and shall include all claimed violations, misinterpretations or misapplications of the provisions of this agreement.

...

ARTICLE 4 MANAGEMENT RIGHTS

Section 1. It shall be the right of the City to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not specifically abridged, delegated or modified by other provisions of this agreement are retained by the City. Such powers and authority in general include but are not limited to the following:

A. To determine the mission of the department, set standards of service to be offered to the public, exercise control and discretion over its organization and operations and to utilize personnel in the most appropriate and efficient manner possible.

...

C. To establish or alter the number of shifts, hours of work, work schedule, vacation schedules, methods, processes and means and ends.

D. To schedule replacement duty when required.

...

I. To take whatever actions are necessary in emergencies or in the interest of public safety to assure the proper functioning of the department.

J. To determine the status, tenure and seniority of employees, certify payrolls and review appointments and promotions.

K. To hire, schedule, promote, transfer, assign, train or retrain employees in position within the Fire Department.

ARTICLE 5 GRIEVANCE PROCEDURE

. . .

Section 3. If the grievance is not satisfactorily settled as outlined in Section 2 above, the grievance shall be presented to the Fire Chief within five (5) days, exclusive of holidays and weekends, of receipt of the Shift Captain's decision. The Fire Chief or his/her designee shall meet with the grievant(s) and a union representative(s) within five (5) days, exclusive of holidays and weekends, or receipt of the grievance. The Fire Chief shall issue a written decision to the grievant(s) and union representative(s) within five (5) days, exclusive of holidays and weekends, of the meeting.

In the event the grievance arises out of a direct act of the Fire Chief, Sections 1 and 2 of the grievance procedure shall be bypassed and the parties shall begin processing the grievance in accordance with Section 3 of the grievance procedure by presenting the grievance in writing to the Fire Chief.

. . .

Section 5. If the grievance is not satisfactorily settled as outlined in Section 4 above, the parties to this agreement must select with mutual agreement one of the following steps within fifteen (15) days, . . .

The findings of the arbitrator shall be final and binding on all parties.

ARTICLE 7 HOURS OF WORK

. . .

Section 4. The department shall be staffed with a minimum of 8 on-duty personnel.

ARTICLE 8 REPLACEMENT DUTY AND EMERGENCY DUTY

Section 1. It shall be the policy of the City to insure and maintain a satisfactory level of on-duty staffing through a staffing replacement system whereby off-duty employees voluntarily agree to work replacement duty.

Section 2. Replacement duty will be administered on a department-wide basis so that employees may be placed where needed.

Section 3. A replacement duty status file will be maintained by the union officers, the initial order to be determined by seniority, indicating the status of employees eligible to work replacement duty.

Section 4. Following request for vacation by the employee according to Article 17, Section 5, the Fire Chief will provide notice of replacement duty needs to a union officer within the number of days or hours shown below, and the union officers shall report the name of the replacement employee within the corresponding number of days or hours following notice from the Fire Chief:

Vacation Request	Request Time Limit	Notice by Chief	Notice by Union
Over 24 hours	96 hours	72 hours	72 hours
24 hours	12 hours	12 hours	12 hours
12 hours	12 hours	12 hours	12 hours

It shall be the responsibility of the union officers to secure replacement personnel for approved vacation leave only.

...

ARTICLE 9 SENIORITY

Section 1. Seniority shall be defined for departmental purposes as the length of continuous service within the department.

...

ARTICLE 11 ACTING POSITION

Section 1. The commanding officer shall have the right to make temporary assignments to positions which are temporarily vacant.

Section 2. Any temporary assignment on a daily basis to a promoted position above an employee's rank shall be compensated \$30.00 for any shift of 12 hours or less and \$60.00 for any shift between 12 and 24 hours.

Section 3. Filling the captains [sic] position will not result in an employee's vacation, scheduled schooling, funeral or family leave, or exchange of time to be involuntarily cancelled.

Section 4. A newly promoted probationary employee will not be obligated to fill the captain's position.

ARTICLE 17 VACATION LEAVE

An employee shall be granted vacation with pay from the date of his/her anniversary subject to the following terms and conditions:

. . .

Section 4. Employees may take vacation leave not in excess of the amount accumulated at any given time. Accumulation shall be recorded at the end of each anniversary year.

Section 5. Vacation leave shall be applied for in accordance with seniority ranking of employees within each shift under the following limitations:

1. Vacation time in excess of 1 working day shall require 4 calendar days notice.

2. Vacation time may be taken at the rate of twelve (12) hours from 0700 to 1900 hours or 1900 or 0700 hours or (1) working day at a time, upon 12 hours notice, providing it in no way impairs the efficiency of the department.

Section 6. A maximum of three employees will be permitted vacation leave from the same shift on the same day. The vacation policy will be reviewed and extended only by mutual agreement of the parties. Exchange of time off will be permitted provided it in no way impairs the efficiency of the department.

. . .

ARTICLE 21 WORK RULES

Section 1. Existing work rules of the department are made a part of this agreement.

Section 2. Existing work rules shall be modified to reflect current positions and working conditions.

Section 3. Establishments of new work rules affecting wages, hours of work or conditions of employment shall be subject to negotiations and mutual agreement prior to their effective date.

DISCUSSION

The Issue

I have not adopted either party's statement of the issue inasmuch as each statement is predicated upon the presenting party's view of the situation. That is, the Union asks whether the vacation was improperly cancelled, having already concluded that the vacation was cancelled. The Employer asks whether the vacation was denied, rather than cancelled, based on its premise that the vacation in question had never been approved. I have chosen to state the issue in terms of the requirement that the Grievant work on the day in question, so as to better be able to discuss what took place and whether a contract violation occurred in forcing the Grievant to work on a day for which he had requested vacation.

The Dispute

The parties are in agreement as to the essential facts in this case. The Grievant, Lt. Matthew Simpson, submitted a request to take a vacation day on the first day of deer hunting, November 22. Three other members of the Menomonie Fire Department, including Battalion Commander John Entorf, also requested the same day off. Ultimately, Entorf and the other two members of the Department were on vacation on the day in question while Simpson was required to work, filling in as the acting officer, and receiving acting pay for this service.

The Union contends that by submitting his request for vacation on the Request or Report of Absence form, having it signed by Battalion Chief Entorf, and having the Positions to fill for Deer Hunting 2008 form include a space for the Union to find someone to fill the position designated a LT/FF for 0700-0700, the Grievant's request for vacation was granted and the subsequent requirement for him to report to work in an acting capacity on November 22 constituted a cancellation of an approved vacation

in violation of the collective bargaining agreement, Article 11, Section 3. The Employer contends that the vacation request was never granted; that Simpson was told on November 20 that the request might be denied; and that the request was formally denied on November 21 by Battalion Chief Terkelson. Since the vacation request was never granted, the City argues, it could not be cancelled and no contract violation occurred. The City, correctly, distinguishes “involuntarily cancelled” and “involuntarily denied.” However the facts in this case lead to the conclusion that the Grievant’s vacation was cancelled, not denied.

At hearing, the Union also argued that a contract violation had occurred because Firefighter Zais was granted vacation while Lt. Simpson was not. Firefighter Zais has less seniority than does Lt. Simpson, resulting in a violation of Article 17, Section 5 that requires the seniority ranking of firefighters, by shift, to be considered in granting vacation. At hearing and in its written argument, the Employer contends that such a contractual violation, if it did occur, cannot be considered by the undersigned because it was not raised on a timely basis. Neither in the grievance nor in any of the steps of the grievance procedure leading to the arbitration did the Union contend that Article 17, Section 5 had been violated. In its written argument, the Union seems to have abandoned its contention that Article 17, Section 5 had been violated. Accordingly, that claim will not be addressed herein, nor will the question of whether it was grieved in a timely manner.

The gist of the dispute centers on whether the vacation request was granted and subsequently cancelled in violation of Article 11, Section 3 of the collective bargaining agreement. The City argues that a vacation cannot be cancelled until it has been approved and the employee is on vacation. The Union, on the other hand, contends that the Grievant’s vacation had been approved, as evidenced by the signature of Battalion Chief Entorf on October 21; by a review of the “Availability Status – Full Time Personnel” which has a “V” meaning vacation next to Simpson’s name in the November 22 column; the Local 1697 Replacement Form which indicates Simpson’s name as a person gone on November 22; and the “Positions to fill for Deer Hunting (2008) form that bears the entry “0700-0700 _____LT/FF”, Simpson’s position for “Saturday 22nd.”

The collective bargaining agreement contains a scheme for filling vacancies caused by vacations that requires the Union to find appropriate personnel to fill in for absent firefighters. Despite the City’s argument that vacation is never approved until it is actually taken or at least very late in the process, the Union points out that the collective bargaining agreement is very clear that the Union’s responsibility to secure replacement personnel is “for approved vacation leave only.”

The City’s argument that vacation is not granted until the departmental employee is on vacation flies in the face of the contract language in Article 8, Section 4 and, in fact, defies common sense. How can someone make plans for a vacation day if

the ability to take vacation is subject to denial up until the actual time of the vacation?⁷ The City points to the fact that the Request or Report of Absence form is rarely signed as approved until after the time the employee has actually taken his or her vacation as evidence that approval does not occur until vacation is taken. While the administrative act of signing the form to indicate that the time off was approved may occur after the time off has actually been taken, no employee would risk not reporting for duty unless the time off has been approved, for doing so could result in a finding that he or she is off duty without permission. Accordingly, there is no question that vacation approvals occur at some point prior to the taking of the vacation.

One of the bases on which the Union contends that Simpson's vacation was approved was that Battalion Chief Entorf signed the Grievant's Request or Report of Absence form on October 21 within hours of Simpson having submitted it. At hearing, the testimony of both Union and Employer witnesses was clear that Entorf's signature on this form merely reflects the fact that the request for time off had been received. It does not reflect approval or denial of the request.

The Union also cites as evidence of approval of the vacation the fact that the Local 1697 Replacement form lists Simpson as a "Person Gone" on November 22 with the notation "24V" (24 hours of vacation) as the reason for the need for replacement, a "V" for vacation is indicated on the Availability Status form for Lt. Simpson for November 22, as well as the above noted entry on the Positions to fill for Deer Hunting (2008) form. Not all of these documents demonstrate that the requested vacation has been approved.

According to the uncontroverted testimony of Chief Baus, the "V" on the Availability status form simply indicates that Lt. Simpson had requested November 22 as a vacation day, which in accordance with the collective bargaining agreement must be requested at least 12 hours prior to the commencement of that vacation. The Employer points to the "X" on the form for Firefighter Zais, meaning that he would be on duty on that date but he later requested vacation for that date. In other words, the notations on the Availability form indicate an employee's intentions or desires with respect to a particular date at some point in time, but do not indicate the approval of a requested day off.

The Local 1697 Replacement form and the Positions to Fill for Deer Hunting (2008) forms are another matter. The Replacement sheet is given to the Union by the Officer in Charge in order for the Union to fill vacancies in accordance with the terms of the collective bargaining agreement. The Positions to Fill for Deer Hunting is a special document prepared annually and given to the Union to fill the positions because

⁷ The contract does allow a more senior firefighter on the same shift to "bump" an approved vacation if done within the time limits expressed in the collective bargaining agreement.

of all the requests for time off during deer hunting. Battalion Chief Entorf testified that vacations have been denied after being placed on the Replacement sheet. The only case he was able to point to was that of Firefighter Wood who had his vacation cancelled when the Union was unable to cover his shift. Entorf's testimony confirmed that of Union witnesses to the effect that vacation is approved if on the Replacement sheet and the Union is able to find a replacement.

The answer to the conundrum facing the City and the Union lies not in the question of whether Lt. Simpson's vacation was granted and then cancelled, or whether it was denied. The answer lies in Article 8, Section 4 of the collective bargaining agreement between the parties, and the definitions contained in Article 2, Definitions. The language of Article 8, Section 4 provides:

Section 4. Following request for vacation by the employee according to Article 17, Section 5, the Fire Chief will provide notice of replacement duty needs to a union officer within the number of days or hours shown below, and the union officers shall report the name of the replacement employee within the corresponding number of days or hours following notice from the Fire Chief:

Vacation Request	Request Time Limit	Notice by Chief	Notice by Union
Over 24 hours	96 hours	72 hours	72 hours
24 hours	12 hours	12 hours	12 hours
12 hours	12 hours	12 hours	12 hours

It shall be the responsibility of the union officers to secure replacement personnel for approved vacation leave only.
(emphasis added)

Article 2 Section B of the collective bargaining agreement provides that the word "employee" encompasses all uniformed employees of the Department in conformance with the definitions and requirements of Sec. 111.70, Wis. Stats. That is, the word "employee" in the collective bargaining agreement refers only to members of the bargaining unit, not to other personnel, including Battalion Chiefs.

Accordingly, the Union was not obligated to find a replacement for Battalion Chief Entorf for November 22. Lt. Simpson's vacation was approved when his name appeared on the Replacement form and the Deer Hunting fill sheet and the Union succeeded in identifying Firefighter Brantner to substitute for him on November 22.

Although Lt. Simpson's vacation was approved, he was required to work that day.

Article 11, Section 3 provides that “Filling the captains [sic] position will not result in an employee’s vacation, scheduled schooling, funeral or family leave, or exchange of time to be involuntarily cancelled.” Inasmuch as the Grievant’s vacation was approved and he was subsequently required to work on the day in question, I can only conclude that his vacation was involuntarily cancelled, in violation of this provision. Both parties introduced the bargaining history associated with the creation of this subsection of the collective bargaining agreement. While interesting to review, and to note the differences in the parties’ interpretation of that history, I do not find the language of the bargaining agreement to be ambiguous and, therefore, will not go outside the four corners of the contract and determine whether it was the intent of the parties, or of the Employer, that the language referred to when an employee was actually on vacation, rather than scheduled to be on vacation. Indeed, the concept of “on vacation” appears to be part of the notes of the City’s attorney, and is not reflected in the Union’s proposal. Additionally, the language that is in the collective bargaining agreement was written by the City, does not reflect the concept that the City is now arguing, and in accordance with standard rules of construction should be construed against the City. Lt. Simpson was required to work on November 22 in violation of this section of the collective bargaining agreement.

The City, correctly, points out that vacation requests for 24 hours or less require only 12 hours notice prior to the commencement of the vacation, the same time period for the Chief to notify the Union of the need for a replacement and for the Union to notify the Chief of the name of the replacement employee. The collective bargaining agreement also provides that a more senior member of the bargaining unit can “bump” a vacation request of a less senior employee within a shift, Article 17, Section 5, above. It is, therefore, possible that an employee with an approved vacation could have that vacation cancelled by a later request of a more senior member of the bargaining unit. That is not the situation in the instant grievance.

Battalion Chief Entorf is not a member of the bargaining unit. The Union, in accordance with the provisions of the collective bargaining agreement, is not required to find a replacement for the Battalion Chiefs. Although Battalion Chief Entorf has more seniority than the Grievant (and his request for vacation on November 22 preceded Simpson’s request), Entorf could not “bump” Simpson’s ability to take his requested and approved vacation on November 22.

The Employer argues that sustaining the Union’s grievance will have a negative impact on the City in that fewer individuals would desire to become a Battalion Chief for fear of not being able to take their vacations when they want. As an example, the City contends that a less senior employee will always get vacation over a Battalion Chief. This need not be the outcome, should the City devise a different system for Battalion Chiefs to determine when they wish to take vacation or find individuals to replace them. In the instant case, Battalion Chief Entorf received the vacation request

from Lt. Simpson. He could have told Lt. Simpson at that time that his request for vacation was denied because he, Battalion Chief Entorf, was taking that time off. In the event that Entorf then found another Battalion Chief to substitute for him, Simpson could have been advised that the day was available for him to take vacation and, based on his seniority on the shift, he would have had the time off.

While the City is concerned that fewer people would be interested in promoting to Battalion Chief if the grievance is sustained, denial of the grievance could easily result in fewer people being interested in promoting to lieutenant. As occurred in this instance, the lieutenant's vacation was cancelled because the Battalion Chief on the same shift did not replace himself. Although there is no question that the duties of Battalion Shift and lieutenant are not identical, they are both officers and someone of one rank or the other must work each shift. The record in this case does not include other cases similar to the instant one, other than arguably the matter which resulted in the Union bringing the issue to the bargaining table, resulting in agreement to the language of Article 11, Section 3 in 2006. The instant grievance appears to be one instance in a period of more than two years where a Battalion Chief was unable to find another Battalion Chief to replace him, leading to cancellation of a vacation day for Lt. Simpson, in violation of this provision of the collective bargaining agreement.

Remedy

As a remedy for the violation of the collective bargaining agreement, the Union seeks a cease and desist order and an award of overtime to Grievant Matt Simpson for the day he was required to work. This is not a prohibited practice case in which a cease and desist order, as well as a requirement to post notices, is a usual remedy. A finding that there was a violation should be sufficient to put the City on notice that the manner in which it proceeded was not in conformance with the terms of the collective bargaining agreement. Although Simpson did not lose any pay or vacation time as a result of being forced to work on November 22, he is entitled to some relief for not being permitted to utilize his vacation when he wanted to, as provided by the labor agreement. Simpson was paid for the day in question, and he received \$60 as acting pay for performing the work of Battalion Chief, to which he was entitled under the agreement.

In seeking an appropriate remedy, I find the requirement to work on a vacation day to be analogous to having to work on a paid holiday. Thus, I sought to determine what the Union and the City had determined to be appropriate holiday pay. Unfortunately, I find no guidance in the collective bargaining agreement inasmuch as Appendix A Wages at Article 3 Holidays provides that the paid holidays were incorporated into the base pay, commencing with the 1988 agreement. Many police

and fire contracts provide that employees are to be paid time and one-half or double time for working on a paid holiday. Here the Union has requested overtime, the equivalent of time and one-half. Accordingly, I find that the appropriate remedy is that Lt. Simpson be paid overtime for his work on November 22.

Accordingly, based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

The grievance is sustained. The Employer violated the collective bargaining agreement by requiring Lt. Matt Simpson to work on November 22, 2008. As a remedy, he is to be paid overtime at the rate in effect at the time, November 22, 2008, for the hours that he worked that day. The undersigned will retain jurisdiction for a period of 30 days so as to address any questions regarding the remedy ordered.

Dated at Madison, Wisconsin, this 27th day of July 2009.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator