BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 484, AFL-CIO

and

CITY OF STEVENS POINT

Case 152
No. 69827
MA-14753

Appearances:

Law Offices of John B. Kiel, LLC, by **Attorney John B. Kiel**, 3300 252nd Avenue, Salem, Wisconsin 53168, on behalf of the Union.

Ruder Ware, L.L.S.C., by **Attorney Christopher M. Toner**, 500 First Street, Suite 8000, P.O. Box 8050, Wausau , Wisconsin 54402-8050, on behalf of the City.

ARBITRATION AWARD

The International Association of Fire Fighters, Local 484, AFL-CIO (herein the Union) and the City of Stevens Point (herein the City) have been parties to a collective bargaining relationship for many years. At the time of the events pertinent hereto, the parties' 2007-2008 agreement had expired and the parties were in negotiations over a successor agreement. On May 4, 2010, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration regarding a decision by the Fire Chief to prohibit the practice of time trades by Fire Fighters during training occurring between March 20, 2009 and June 29, 2009. The undersigned was assigned to arbitrate the matter and a hearing was conducted on July 28, 2010. The proceedings were not transcribed. The parties filed initial briefs on September 14, 2010 and reply briefs on November 2, 2010, whereupon the record was closed.

ISSUES

The parties stipulated to the following framing of the issues:

Did the City violate the collective bargaining agreement on March 6, 2009 when it "blocked" and refused to allow new time trades during Certified Fire Officer 1 scheduled class hours?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 2 – MANAGEMENT RIGHTS

It is agreed that the right to operate and manage the Fire Department rests solely and exclusively with the City. The City shall not establish new work rules that are primarily related to wages, hours and/or conditions of employment unless such work rules are negotiated with and agreed to by the Union. The City agrees that it will not use these management rights to interfere with the rights established under this Agreement.

These management rights will not be used to discriminate against any rights of the Union in this Agreement. These management rights shall not displace those rights stated elsewhere in the Agreement, including rights arising under Article 21 or under applicable law. Provided, however, that other than the obligation to negotiate the impact of permissive subjects of bargaining, nothing in this Agreement will be construed as imposing an obligation upon the City to negotiate over new work rules concerning the above areas of discretion and policy which are not mandatory subjects of bargaining.

Inclusion of this section will not abrogate any of the existing authority of the City, Fire Chief of Police and Fire Commission under state or federal law, except as otherwise limited by other terms of the Agreement.

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ARTICLE 9 – SCHEDULED TIME OFF

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B. Definitions

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* Earned time: Vacation swing(s), Single vacation day(s), Holiday(s), Bonus Sick Day(s), and Compensatory Time.

. . .

Blocking Time Off of the Available Calendar

The Fire Chief shall distribute an unencumbered vacation calendar prior to February 1st or the extended vacation selection deadline; whichever is later. After February 1st, or the extended vacation selection deadline, whichever is later, the Fire Chief may block time in order to send selecting members to school or conduct training.

. . .

ARTICLE 21 – EXISTING RIGHTS

The rights of all members of the Union and the City existing at the time if the execution of this contract shall in no way be modified or abrogated and all the privileges, benefits and rights enjoyed by the Union and the City which are not specifically mentioned or abridged in this agreement, are automatically a part of this agreement.

BACKGROUND

The City of Stevens Point and Local 484, IAFF, have maintained a collective bargaining relationship for many years. According to the parties' collective bargaining agreement, the fire fighters work according to a "California" schedule, which means that they work a schedule of 24 hours on, 24 hours off, 24 hours on, 96 hours off. Fire fighters are also entitled to time off in a variety of forms. According to Article 9, there are varieties of earned time off, including vacation swings, single vacation days, holidays, bonus sick days and compensatory time. For at least 35 years, the fire fighters have also been able to arrange for time trades, which are not considered earned time off. Time trades arise when one fire fighter arranges to trade shifts with another fighter in order to be able to take off work on a particular day. Time trades are not referred to in the contract, but are part of a practice that has a long history.

On March 22, 2004, Fire Chief Mark Barnes circulated a draft of a Standard Operating Procedure concerning time trades. The Union had some concerns about the draft and revisions were made. On May 4, 2004, the City instituted a mutually agreed upon Standard Operating Procedure relating to time trades, which stated as follows:

PURPOSE:

To provide a consistent policy for time trades.

PROCEDURE:

In accordance with Federal FLSA regulations, all agreements between individuals to trade work time must be approved by the employer. This requires the employer to be aware of the trade prior to the trade taking place.

Trades are a privilege, designed to allow employees time off when other means are unavailable. An employee's trade privilege may be suspended or revoked if Departmental procedures are violated.

- A trade is defined as that time when one member voluntarily decides to work in place of another member by their mutual consent.

- The Department assumes NO responsibility for compensating a member who voluntarily agrees to work for another. According to FLSA regulations, the extra hours worked during a trade shall not be used to determine payments for overtime or any other benefit.

- The Shift Commander must be made aware of an agreed upon trade as soon as possible so that it may be noted in the work schedule.

- No trades shall negatively impact the mission of the Fire Department.

- Trades of time shall not incur overtime anywhere within the Department.

- Since management accepts no authority to approve or deny trades of time, they are not responsible for the trading individual to report for duty. Therefore, even when trade time has been posted, the member originally scheduled remains responsible for the duty. If no one reports for duty, the original member will be considered AWOL.

- Any exchanges that result in an employee working out of his/her class shall be in accordance with Article 4E of the Collective Bargaining Agreement.

- Example: FF John, who is originally scheduled to work, makes a trade with FF Jane. FF John was to be in an acting assignment on this day and FF Jane assumes this role. FF John shall continue to

> receive the acting pay. FF Jane cannot benefit financially from the trade with FF John.

The parties have operated under this SOP since 2004.

In the parties' 2005-06 contract a new Article 9 was added, entitled Scheduled Time Off. This provision contained a section entitled "Blocking Time Off of the Available Calendar," which states:

> The Fire Chief shall distribute an unencumbered vacation calendar prior to February 1st or the extended vacation selection deadline; whichever is later. After February 1st, or the extended vacation selection deadline, whichever is later, the Fire Chief may block time in order to send selecting members to school or conduct training.

This provision has remained in the contract unaltered.

The effect of the Blocking Time provision has been that each year the Fire Fighters have a window from December 1 until February 1, or until a mutually agreed extended deadline, to make their vacation picks. They are each permitted to schedule two weeks of vacation according to seniority, and then may schedule individual days off, again according to seniority. After February 1, or the extended deadline, the Fire Chief can block periods of time on the calendar for training purposes. During these periods of blocked time, Fire Fighters may not use earned time off unless it is previously scheduled. Prior to 2009, the Blocking Time provision was applied to the scheduling of earned time, but did not affect the scheduling of time trades.

On February 28, 2009, after the open vacation selection period had lapsed, Assistant Fire Chief Robert Finn issued a memorandum to all members of the fire department concerning the scheduling of an upcoming Certified Fire Officer 1 class, which is necessary to obtain Firefighter certification. The notice stated as follows:

> There is a Certified Fire Officer 1 class scheduled for various dates from March 20th until June 29th, during this time please do NOT schedule any Public Education Activities during the hours of classroom training. Also, there will not be any time off allowed during the scheduled schedule [sic] classroom training that is not already posted on the calendar as of February 26, 2009. If you have any questions, please see one of the Assistant Chiefs or Chief Zinda. Additional information pertaining to who will be attending and the classroom contents will be available in the next couple of weeks and all will be kept informed. Thank you for your cooperation in this matter.

This was followed up by a memorandum from Fire Chief John Zinda on March 6, 2009, as follows:

> The dates and class times have been posted for the Certified Fire Officer 1 class. Attendance is mandatory for all Department line personnel. The time has been blocked on the calendar as per the labor agreement.
>
> Time trades that have already been posted will be allowed. No new time trades will be allowed during scheduled class hours.

The Certified Fire Officer 1 course was the first mandatory training scheduled by the Department since the adoption of the SOP on time trades and the blocking language in Article 9.

In response to the March 6 memo, the Union filed a grievance on April 28, 2009, alleging that the block on time trades was a violation of the contract and past practice. The grievance was denied and advanced to arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that the unilateral restriction on time trades violates the plain language of the contract. Article 2 – Management Rights states that the City shall not establish new work rules primarily related to wages, hours and conditions of employment without negotiating them with the Union; will not use its management rights to interfere with other contractual rights or to discriminate against the rights of the Union; and that management rights shall not displace other rights under the Agreement, including those established by Article 21. Article 21 states that;

> The rights of all members of the Union and the City existing at the time execution of this contract shall in no way be modified or abrogated and all privileges, benefits and rights enjoyed by the Union and the City which are not specifically mentioned or abridged in this agreement, are automatically a part of this agreement.

The WERC has previously held that shift trades are benefits primarily related to wages, hours and conditions of employment. CITY OF GREEN BAY (POLICE DEPARTMENT), DEC. NO. 30130-B (WERC, 2/02). Likewise, the payment of overtime for make up training is a mandatory subject of bargaining. Thus, when Chief Zinda adopted a new work rule blocking time trades, he violated Articles 2 and 21 by failing to negotiate with the Union. Further, testimony of Union witnesses establishes that the blocking language in Article 9 was not intended to apply to time trades.

Past practice and bargaining history also support the Union. The language of Article 9 – SCHEDULED TIME OFF, Section B, on which the City relies for its right to block time,

was drafted by the City. This language does not explicitly grant the City the right to block time trades. The rest of Article 9 addresses earned time off, which does not apply to time trades. Stretching the language to cover time trades, therefore, constitutes a new work rule, subject to Article 21.

The Union's interpretation of Article 9 is based on past practice. That is, the blocking language of Article 9 has never been used before to restrict time trades. In fact, bargaining unit members have historically been able to use the practice of time trades to obtain time off when other forms of leave were not available. Bargaining history is also instructive. It was the City that brought forth the issue of blocking time in bargaining, and which drafted the language that was ultimately adopted. Thus, to the extent the language is deemed ambiguous it should be construed against the City. Further, Mark Schoberle, who participated in the negotiations, recalled that the City gave assurances that the blocking language would not be applied to time trades. Thus, the City's action amounted to a unilateral establishment of a new work rule in violation of Article 21.

In effect, the City s trying to obtain a benefit in arbitration that it is unwilling to bargain for. In a meeting with Union members after the grievance was filed, Chief Zinda stated that what he wanted was to get people trained without occurring overtime because of trades. To that end, the Chief offered to allow trades during training if the Union would agree that to the extent an employee missed material or did not complete a course due to time trades, the employee would have to make up the material or the course without the City incurring any added expense. It has been established that any new work rules related to wages, hours, or conditions of employment must be negotiated. Thus, the City imposed a new work rule blocking time trades, a mandatory subject of bargaining, in order to limit overtime, another mandatory subject of bargaining, and only offered to bargain after it had presented the Union with its *fait accompli*. It is understandable that the City would want to control overtime costs, but that does not excuse it from the duty to bargain. The City must bargain for the right to control time trades. It cannot be allowed to obtain such authority in arbitration. The grievance should be sustained.

The City

The City asserts that it complied with the collective bargaining agreement when the Chief issued the memo blocking time trades during mandatory training. It is well established that management retains all rights not expressly prohibited or limited by the labor agreement or applicable law. Here, the contract reserves to the City the right to "operate and manage the Fire Department." In this matter the City's decision to limit trades during mandatory training was a legitimate exercise of its management rights.

Article 9 permits the City to block all time off, including time trades, in order to provide mandatory training for its firefighters to insure they maintain necessary certification, licensure and mandated training. The Blocking Time provision is intended to apply after firefighters have had an opportunity to make their vacation picks. It then allows the City to

block "time" for training, which applies to all time, not just earned time. Thus, the plain language of Article 9 permits the City to restrict trades in order to facilitate training. The Union argues that the Blocking Time provision only applies to earned time, but that is as much as an acknowledgement that the plain meaning of the language is that it applies to all time. The Union relies on the testimony of Firefighter Schoberle to the effect that the City agreed that the blocking language would not apply to trades, but why did not the other witnesses remember this agreement and why didn't the Union insist that it be included in the contract? More credible is the testimony of Human Resources Director Lisa Jakus who maintained that the subject of trades did not come up. It would make no sense for the City to bargain for the right to block time so that it could provide training only to permit firefighters to trade out of the training. To do so would make the blocking language meaningless.

During negotiations over the 2005-06 contract, the parties included a definition of earned time which did not include time trades. When they added the Blocking Time provision, however, there was no reference to "earned time." Absent any evidence to the contrary, therefore, the arbitrator should find that the unambiguous language of Article 9 permits the City to block time trades during periods of training. The Union wishes to have the arbitrator consider a putative oral agreement in order to find that Article 9 doesn't apply to time trades. This, however, would violate the parol evidence rule, which this arbitrator has applied to bar evidence of an oral understanding that purports to add to, subtract from, or modify a written agreement. CITY OF GREEN BAY, MA-13624 (Emery, 7/08).

The Union's past practice argument must fail. The Union asserts that the City altered an existing practice without bargaining over it. If true, such a practice must be unequivocal, clearly enunciated and acted upon, readily ascertainable over a reasonable period of time as a fixed and established practice accepted by the parties. There is little evidence of how often mandatory training has been scheduled in the past, or how often firefighters traded out of such opportunities. Further, while the City admitted that it has permitted trades in the past, there is no evidence that it ever acknowledged any limitation on its management right to restrict trades and arbitral precedent holds that non-use of a management right does not limit the employer's use of the right. In CITY OF WAUSAU, MA-12555 (Baumann, 3/05), the arbitrator found that an ongoing practice of permitting time trades with higher ranking individuals while on the acting roster, subject to the Chief's approval , did not constitute binding practice that could not be altered by management, acknowledging that exercise of discretion by an employer does not constitute a binding practice. Further, even were there such a practice it conflicts with the unambiguous language of Article 9 and it is axiomatic that where there is a conflict between a practice and plain contract language, the contract controls. The grievance must be denied.

Union Reply

The Union contends that the City seeks to expand its management rights beyond the limits contemplated by the contract. The City fails to acknowledge, however, that the Management Rights clause contains limitations against adopting new work rules affecting wages, hours and conditions of employment without bargaining, and against using its

management rights to discriminate against the Union or to displace other rights guaranteed in the contract. It is undisputed that there is a past practice of unregulated time trades between firefighters and further undisputed that the WERC has ruled that a shift trade benefit is primarily related to wages hours and conditions of employment. Thus the City's management rights argument must fail.

Article 9 does not permit the blocking of time trades for training purposes. The City chooses to read the second sentence of the blocking provision in isolation, ignoring the fact that it is immediately preceded by a reference to the distribution of an unencumbered vacation calendar. Further, there is no reference to time trades throughout Article 9, only earned time off, which does not include time trades. The City is attempting to expand the language beyond its intended scope.

The City claims that the Union admits that Article 9 permits the City to block all time, but this is not true. Article 9 does not cover trades. Rather, trades are covered by a separate SOP negotiated between the parties. It cannot be said, therefore, that Article 9 covers trades. Further, the language of the SOP makes it clear that trades are designed to allow employees time off when other forms of leave aren't available. To permit the City to block all time, therefore, would render the SOP meaningless.

Granting of time trades does not prevent the City from sending employees to school or training. In fact, the City acknowledges that it has options for providing training to employees who miss training due to trades, including trading for another day when training is available, attending training on a day off, making up the course through paperwork, obtaining training from an outside provider, or from an inside instructor. The City points to problems with these options, but they have been used for years. While they may involve extra expense for the City, they are available means for the City to accomplish its goals without compromising its mission. To the extent the City wants to address the problems it perceives, this should be done through bargaining, not unilateral action. The City's objective is revealed by the fact that after imposing the restriction the Chief offered to allow trades if the Union would make wage concessions to protect the City from incurring additional costs.

The restriction is an overbroad and unreasonable restriction on the trading benefit. Article 9 and the SOP have coexisted for years. The City asserts that trades would cause additional overtime, and that firefighters would be unlikely to trade out of their shifts and onto another day when the training was being offered, but produces no evidence supporting its claims. Without such evidentiary support, there is no justification for the restriction and the grievance should be sustained.

City Reply

The City asserts that to adopt the Union's argument would guarantee overtime in direct conflict with the SOP of 2004. The 2004 SOP was the result of extensive negotiations between the parties and contained important restrictions on the use of trades, including that trades shall

not negatively affect the mission of the department and that trades shall not result in overtime anywhere in the Department. Further, the responsibility for organizing the trades would fall exclusively on the employees. In short, the City would permit trades so long as there were no negative consequences for the City. To rule for the Union in this case will guarantee overtime. The City was willing to permit trades if the training could still be accomplished and if there would be no overtime or additional cost for the City. The Union rejected the proposal, indicating its determination that the City pay overtime for make-up training.

The Union asserts that the City cannot regulate time trades, regardless of whether they result in inconvenience or additional overtime costs to the City. The Union even concedes that its position, if adopted, will result in overtime. The Union cannot have it both ways. It cannot have the benefits of the SOP without the responsibilities. The City attempted to provide for necessary training for the firefighters consistent with the letter and the spirit of the SOP and the Chief's directive accomplished this goal. Since the Union's position would result in overtime, however, the grievance must be denied.

Contrary to the Union's contention, the plain language of Article 9 does give the City the authority to block all time off during training. The Union even acknowledges that if the plain language of Article 9 is applied it cannot prevail. If the parties had intended the Blocking Time provision to apply only to earned time they could have used that phrase, but they did not. Instead they gave the City the authority to block time. Further, the City disputes the recall of Officer Schoberle that the City gave assurances during negotiations that the blocking language would not apply to trades. This testimony is not corroborated by any other Union witness and is contradicted by Lisa Jakusz, who testified that there was no discussion of trades. Indeed it would make no sense for the City to bargain for language permitting it to block time to provide necessary training, and then make a side agreement providing a means to circumvent the purpose of the provision.

The Union has also failed to support its claim that there is a binding past practice of permitting unregulated time trades. The City agrees that it generally permits trades, subject to the SOP, but disputes that it's doing so rises to the level of a binding past practice. There is no evidence that the City has ever permitted trades during mandatory training, so there is no basis for claiming the existence of a binding past practice. In fact, mandatory training was never used before 2009, so there would have been no opportunity to establish such a practice. For this reason, as well, the grievance should be denied.

DISCUSSION

In this case, the parties are at odds as to the correct interpretation of Article 9, Section B of the contract, particularly as it relates to the City's authority to block time for training purposes, and the interplay of that provision with the 2004 Standard Operating Procedure (SOP) regarding time trades. Both parties assert that the "Blocking Time" language is clear and unambiguous. The Union asserts that its placement within a section otherwise dealing with use of "earned time off," which does not include time trades, clearly indicates that time trades

were not intended to be governed by the blocking language. The City, conversely, contends that the reference to blocking "time" in the provision, rather than "earned time," establishes that the language was intended to apply to all forms of time off, not just earned time off, and so time trades are included. Both positions have arguable merit. When two or more persons reading the same language can reasonably arrive at different interpretations of its meaning, however, such language is generally considered to be ambiguous and requires construction to determine its proper meaning and application. Such is the case with the language before me.

In the first instance, it must be noted that there is a long history of time trades within this bargaining unit, going back at least 35 years. For many years, trades had been allowed with virtually no interference from management. In 2000, the Fire Chief issued a directive imposing some limitations on the scheduling and use of time trades, which resulted in a grievance. In the resulting arbitration award, CITY OF STEVENS POINT, MA-11180 (Jones, 2/21/01), Arbitrator Jones found that in issuing the directive the Chief had violated Article 20 – EXISTING RIGHTS, which prohibits the City from imposing any new work rule during the life of the contract that impacts any rights existing at the time the contract was executed without first bargaining it with the Union. Subsequently, in 2004 the Department and Union agreed to the adoption of a Standard Operating Procedure (SOP) regarding time trades, which is set forth above. The language of Article 20 has also been retained in the contract, but has been renumbered as Article 21.

In my view, the 2004 SOP and the continuing EXISTING RIGHTS clause are important keys to properly interpreting the blocking language of Article 9. The SOP specifically recognizes that the purpose of time trades is to provide an opportunity for time off when other forms of leave are not available. Arguably, one of the specific times this language would come in to play would be when "earned time off" was not available due to the implementation of the blocking language. In fact, prior to this incident bargaining unit members did utilize time trades to obtain time off during training when other forms of leave had been blocked. Article 21 specifies that:

> The rights of all members of the Union and the City existing at the time of the execution of this contract shall in no way be modified or abrogated and all privileges, benefits and rights enjoyed by the Union and the City which are not specifically mentioned or abridged in this agreement, are automatically a part of this agreement.

The SOP, as it has been historically applied, allows bargaining unit members to use time trades to obtain time off during training periods. Under Article 21, this right can only be restricted by specific contractual language, otherwise it becomes a part of the agreement. Thus, in order to restrict the right of Union members to trade time during training, there must be specific contract language permitting the City the right to do so. The City asserts that Article 9, Section B does specifically permit the City to block time trades, but that it has heretofore chosen not to exercise it. It maintains that the fact that it has not blocked trades in the past, however, does not constitute a waiver of its right to do so. I disagree.

The operative language of Article 9 was adopted in the 2005-06 contract, which was executed on June 26, 2006, over two years after the implementation of the 2004 SOP. The language of the SOP makes it clear that the purpose of time trades is "to allow employees time off when other means are unavailable." The SOP was in force when the 2005-06 agreement was executed and remains in force today. The blocking language did not exist when the SOP was adopted, so was not contemplated at the time, but it is clear from the blocking language, and its inclusion in Article 9, that its purpose is to permit the Department to prevent the use of scheduled time off during specific periods for training purposes. Time trades are not referenced in Article 9, permitting the inference that they are not considered scheduled time off, as that term is used in the contract. To the extent that the blocking language does prevent the use of scheduled time off, however, time trades, by definition, are available to provide the potential for time off, subject to the conditions listed in the SOP.

The language of Article 9, Section B allows the City to "block time," but makes no mention of time trades. No attempt was made to apply the blocking language to time trades prior to March 2009, by which time the 2007-08 contract had already expired and the parties were negotiating a successor agreement. The fact that time trades are not mentioned in Article 9, combined with the fact that the blocking language was not applied to time trades during the duration of two successive contracts suggests that the language was not specifically intended to include time trades. Since Union members were permitted to exercise time trades during training before and during the 2007-08 contract, I am persuaded that they qualify as "existing rights" of Union members, which under Article 21 cannot be modified or abrogated.

The City draws a distinction with respect to mandatory training and points out that this was the first mandatory training since the blocking language was adopted. There is no evidence in the contract or the record, however, that this distinction was ever raised prior to the Chief's memo in March 2009, putting the Union on notice that the City considered that it had the right, under those circumstances, to block time trades. The City also disputes the recollection of Fire Fighter Mark Schoberle that the City gave assurances during contract negotiations over the 2005-06 agreement that the blocking language would not apply to time trades. Given the language of Article 21, however, the salient point is not whether the City gave assurances that time trades were not included under the blocking language, but whether it gave specific notice that it believed they were. I find no evidence that it did so.

During the contract hiatus after the expiration of the 2007-08 agreement the City was required to maintain the status quo as to wages, benefits and other conditions of employment until the adoption of a successor agreement, including the practice regarding time trades. So, in March of 2009 the SOP was in effect and the City was bound to honor the existing practice regarding time trades which theretofore had been permitted during training. To unilaterally prohibit all time trades during training, therefore, was a violation of the status quo.

It should be noted, however, that the SOP regarding time trades places limitations on their use. Specifically it provides that "(n)o trades shall negatively impact the mission of the Fire Department" and that "(t)rades of time shall not incur overtime anywhere within the

Department." The City asserts that time trades during training will have both effects. They will negatively impact the mission of the Department because it will be more difficult to assure that all officers receive mandatory trainings. They may also result in overtime if officers are required to come in on days off to receive training. The evidence supporting both of these contentions is sparse. Nevertheless, the SOP is clear that time trades are considered a privilege and that they are subject to the conditions listed above. This means that, despite the fact that time trades are available during training, it is the responsibility of any fire fighter intending to make a trade during mandatory training to insure that he or she obtains any missed training without incurring overtime anywhere within the Department. If the fire fighter cannot meet those conditions, a trade may be denied. If a fire fighter makes a trade and subsequently violates those conditions, the privilege may be curtailed or revoked.

The Union requests that, as and for a remedy, I award time off to any fire fighter who had a trade request denied during the training period commensurate with the amount of time requested. The nature of time trades, however, is not that they create additional time off, but rather that they permit trading workdays with other employees to get specifically desired days off. To award additional time off, therefore, would not, in my opinion, be warranted. I find, therefore, that it is appropriate to make the effect of the award prospective only.

For the reasons set forth above, and based upon the record as a whole, I hereby enter the following

AWARD

The City violated the collective bargaining agreement on March 6, 2009 when it "blocked" and refused to allow new time trades during Certified Fire Officer 1 scheduled class hours. In the future, the City will cease and desist from denying time trades between fire fighters during training so long as the fire fighters comply with the conditions set forth in any Standard Operating Procedure in effect regarding time trades.

Dated at Fond du Lac, Wisconsin, this 7th day of January, 2011.

John R. Emery /s/

John R. Emery, Arbitrator

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