BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE CITY OF STEVENS POINT

and

LOCAL 484, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

Case 154
No. 69829
MA-14755

Appearances:

Attorney John B. Kiel, P.O. Box 147, 3300 - 252nd Avenue, Salem, Wisconsin 53168-0147, appearing on behalf of the Association.

Attorney Christopher M. Toner, Attorney at Law, 500 First Street, Suite 8000, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the City.

ARBITRATION AWARD

On May 4, 2010, Local 484, International Association of Firefighters, AFL-CIO filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint an Arbitrator from its staff to hear and decide a matter pending between the Association and the City of Stevens Point, Wisconsin. Following jurisdictional concurrence from the employer, the Commission appointed the undersigned to hear and decide the matter. A hearing was conducted on November 15, 2010, in Stevens Point, Wisconsin. No formal record of the proceedings was taken. Post-hearing briefs were filed and exchanged, the last of which the Commission received on January 24, 2011.

This dispute involves the pay status of Grievants JB Moody and Art Dahms, two firefighters who attended Certified Fire Officer I training.

BACKGROUND AND FACTS

On or about February 25, 2009, Assistant Fire Chief Robert J. Finn distributed the following announcement of training:

> 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 schedule 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.

That announcement was followed up on March 4 by a general e-mail to firefighting staff, which provided the following:

> I need to add one clarification to the email below Assistant Chief Finn sent: Time that can be cancelled according to the contract, no matter when it was posted, will be cancelled to provide this needed mandatory training.

Also on March 4, Assistant Chief Finn sent the following:

> All personnel are enrolled in the (Mandatory) Certified Fire Officer 1 class starting March 20th. Hopefully, all study materials will be here by March 15th. Classes will be attended on duty and each student will be responsible for missed materials. The class schedule is posted in the control room of each station. If you have any questions, please contact one of the Asst. Chiefs or Chief Zinda. Thanks, Bob

Off-duty firefighters have attended mandatory training programs in the past. They have been paid at time and one half for their attendance, even if they were on vacation or receiving workers compensation benefits. The parties dispute whether those employees were directed or permitted to attend the training.

JB Moody signed up to attend the Certified Fire Officer 1 class. He attended the scheduled sessions. On May 3, 2009, Moody was injured at work. As a result, he subsequently missed work and received workers compensation. In the Stevens Point Fire Department, workers compensation payments are supplemented so that the recipient receives full pay.

Following the injury, Moody and Zinda spoke about Moody continuing to attend the training while on workers compensation. The conversation concluded with the two men agreeing that Moody should continue the training, and with Zinda acknowledging that overtime would be paid. Moody attended two classes while on Workers Compensation, and he was paid at overtime rates for those classes.

Deciding that he had given Moody the wrong impression, Chief Zinda telephoned Moody on May 30th. Zinda indicated that the City would no longer pay for Moody's class

attendance. Zinda expressed his understanding that missed or non-attended classes could be made up through self study. Zinda's understanding in this regard was based upon a conversation he had had with the instructor of the training program. In his testimony, Moody disagreed that the classes he attended could be made up through self study. He believed that it was possible to make up two of the classes but not the third.

Notwithstanding the May 30th conversation, Moody attended classes on June 6th, 12th, and 19th. He requested overtime for attendance at those classes, and his request was denied. A grievance was filed on July 7, 2009, which included the following claim:

> In the Stevens Point Fire department memorandum you issued on March 6, 2009, you stated that attendance for this training was mandatory. By requiring mandatory attendance of a Member not scheduled for duty, the City has disregarded the Agreement between the City of Stevens Point and the International Association of Fire Fighters Local 484 and has violated the following stated articles.
>
> Article 2 . . .
> Article 8 . . .
> Article 21 . . .

. . .

The grievance was denied.

On August 13, 2009, Chief Zinda sent Moody the following memo, which sums up Zinda's view of the matter:

> JB,
>
> I have just received your requests for overtime payments for three Fire Officer 1 classes you apparently attended on your normal duty days, while you were on workers compensation. I have denied payment for these three days.
>
> As I informed you on the telephone conversation and meeting we had, just after the May 30th class you attended, I could not continue to pay you to attend the classes you were missing while on workers compensation. There was a misunderstanding and I misspoke when you told me you wanted to complete the class on workers compensation. This caused me to pay overtime, errantly, for two classes you attended. You were told you would have to make up the remaining class work on your own like all other department employees that missed a class. I said I would pay overtime for you to take the final state exams. The overtime for exams was the only overtime authorized for any employees.

The second grievant in this matter, Art Dahms, is the Union president. Dahms was attending the Certified Fire Officer I class. He and others had missed sessions that he did not make up. He was scheduled to take a vacation day on June 20th, a day the course was being taught. He attended the training on June 20th while in vacation status. His request for overtime for the day was denied. The grievance progression for his claim mirrored that of Moody.

ISSUE

The Union believes the issue to be:

> Did the City violate the collective bargaining agreement in 2009 when it refused to pay overtime to Local 484 members Dahms and Moody for attending mandatory fire officer 1 training while they were off duty?
>
> If so, what is the appropriate remedy?

The City views the issue presented as:

> Did the City violate the collective bargaining agreement when it denied overtime compensation to Firefighter/Lead Paramedic Moody and Dahms for attending the Fire Officer 1 Course without prior authorization?
>
> If so, what is the appropriate remedy?

I frame the issue as follows:

> Did the City violate the collective bargaining agreement when it denied overtime to firefighters Moody and Dahms for their attendance at the Fire Officer 1 course? If so, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

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 applicable law.

. . .

ARTICLE 7 – HOURS OF WORK

The work week for all employees who perform firefighting duties shall be an average of not more than fifty-six (56) hours, computed over a period of one (1) calendar year. Each platoon shall work its fifty-six (56) hour week as follows: work one twenty-four (24) hour period, have one twenty-four (24) hour period off, work one twenty-four (24) hour period, have one twenty-four (24) hour period off, work one twenty-four (24) hour period, have four (4) consecutive twenty-four (24) hour periods off. A working day shall begin at 7:30 o'clock A.M. and shall end at 7:30 o'clock A.M. the following day.

. . .

ARTICLE 8 – OVERTIME

All time worked, other than the normal duty day which is defined in Article 7 of this Agreement, shall be considered overtime. All compensation for overtime shall accrue at the double time rate, except as provided below. Employees shall have the option of payment (based on the 2912 hours/year rate) or compensatory time off for all hours on the books up to seventy-two (72). For all hours worked beyond seventy-two (72) the employee must take the payment.

. . .

C. Training: Pay based on annual salary and 2080 hours/year.
Voluntary training paid at straight time.
Mandatory training paid at time and one-half.

. . .

ARTICLE 21 – EXISTING RIGHTS

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.

POSITIONS OF THE PARTIES

Union

A summary of the Union's argument is as follows. There was testimony that firefighters who have attended mandatory training have been paid at time and one half. The history of doing so is pursuant to the contract and constitutes an interpretive practice. The plain language of Article 8 supports its position in this dispute. Both Moody and Dahms were allowed to attend the mandatory training programs, and such attendance at mandatory training programs is always paid at time and one half.

The City exercised its managerial discretion by scheduling the training sessions, identifying them as mandatory, and allowing the grievants to attend. The City cannot now walk away from its contractual commitment to pay for the attendance.

City

A summary of the City's position is as follows. There was no prior approval for either man to attend the training sessions in dispute. The City has the right to approve or disapprove overtime, as well as the right to determine whether officers attend a training session.

The City argues:

> The City did not instruct Moody or Dahms to attend the course on non-duty day. They made that decision on their own. It is the City, and not the individual employees, that decides when mandatory training is required. In this case, the City determined that it wanted officers to attend the training, but that in some instances, attendance was not necessary. Under certain circumstances, such as predetermined vacation, illness, or worker's compensation leave, the City made the management decision to have officers simply read the materials and make up the work to the satisfaction of the instructor . . .

The City contends that there was no past practice requiring the payment of overtime here. Historically, permission to attend training has been given.

The City further argues:

> The act of scheduling a training opportunity and offering it to a firefighter on a non-duty day is the act of giving permission. The city is not required to contact an officer and notify them to attend a one day training opportunity and then call again to tell them that they had approval to attend. The Union could provide no other examples of a situation where it permitted officers to determine, without management involvement, whether they will attend a training session.

The City points out that Moody attended the training session in spite of the Chief's direction not to attend.

DISCUSSION

I presided over another matter between these parties, one decided after the submission of briefs in the instant dispute, regarding whether training voluntarily undertaken during a lunch period on a day of authorized training was compensable. *See* CITY OF STEVENS POINT, WERC Case 153, No. 69828, MA-14754, 3/8/11. More specifically, in the other matter, the parties disagreed over whether a lunch period, which fell in the middle of a training day, was compensable where "[t]here was no formal presentation or training during the lunch break, and no obligation for attendees to discuss anything from the conference or even remain in the building." Testimony indicated that the three grievants remained in the building, ate with other attendees, and engaged in a voluntary discussion of conference-related material. I concluded that under the circumstances of that case, the employees' discussion constituted a "working lunch" and thus "time worked" within the meaning of Article 8.

I believe that Award is relevant to this dispute. The fact that the employees had engaged in a training activity under the circumstances of that case was sufficient to identify the time as "time worked". In this dispute, the City identified the training to be given, scheduled the instructional times, and designated the course as mandatory. The employer also authorized the attendance of those firefighters who were to take part in the training. It is in that context that the Fire Chief subsequently directed the two grievants not to attend certain classes. The City maintained that the class work could be made up through self study. Thus, the City effectively did not maintain that the employees were not to take part in the training. Rather, this dispute arises from a disagreement over *how* the training was to be undertaken.

The City asserts that Moody and Dahms could have made up the training through self study, a contention that Moody and Dahms dispute in part. But the City's assertion could only be true if the two men actually completed the self study. The employees were told to take the materials and study them apart from the formal classroom setting. What changed is that instead of training in the classroom, the employees were to "make up the remaining class work on [their] own . . ." The employees were still obligated to do the work to complete the training; however, the self study became the format for the training. As such, it is compensable as "time worked" under Article 8.

I do not believe that the City's concerns over the loss of managerial authority are as significant as were argued. The City identified the training to be given. The City designated the training as mandatory. The City scheduled the training. The City authorized attendance. This Award is issued in the context of those facts and holds only that where the City directs an employee enrolled in an approved course of training to engage in self study instead of class attendance, the self study is to be treated as training time, and, as such, is "time worked" within the meaning of Article 8.

The record does not suggest whether self study would involve more or less time than participation in the classroom.

AWARD

For the foregoing reasons, the grievance is sustained.

REMEDY

The City is directed to pay JB Moody for the three training days and to pay Art Dahms for the one training day pursuant to Article 8, Section C, of the collective bargaining agreement.

Dated at Madison, Wisconsin, this 24th day of February, 2012.

John C. Carlson, Jr. /s/

John C. Carlson, Jr., Arbitrator

JCC/gjc
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