

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

CHIPPEWA FALLS INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1816

and

CITY OF CHIPPEWA FALLS

Case 137
No. 73209
MA-15303

AWARD NO. 7901

Appearances:

Attorney John B. Kiel, for the Chippewa Falls International Association of Fire Fighters, Local 1816.

Attorney Stephen L. Weld, for the City of Chippewa Falls.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission assigned me to serve as an arbitrator of a promotion grievance filed under a 2012 – 2014 contract between the Chippewa Falls International Association of Fire Fighters, Local 1816, and the City of Chippewa Falls. A hearing was held in Chippewa Falls, Wisconsin, on September 29, 2014, and the proceedings were stenographically transcribed. The parties thereafter filed written argument, the last of which was received on November 24, 2014.

ISSUE

The parties were not able to reach an agreement on a statement of the issue to be resolved by this Award but did agree that I could frame the issue after considering their respective positions. Having done so, I conclude the issue is best stated as:

Did the Employer violate Article XVIII of the 2012 – 2014 contract when it did not promote the grievant?¹

DISCUSSION

¹ Because the grievant was subsequently promoted, no remedial issue is present.

Article XVIII states:

Applicants for higher classification within the bargaining unit shall be subject to Wisconsin Statute 62.13 wherein the Police and Fire Commission shall evaluate the qualifications of each applicant as provided by law and shall submit an eligibility list to the Chief of the Fire Department. The most senior qualified applicant from the list shall be appointed to the position.

I conclude that this contract language establishes a clear two-step promotional process. The first sentence confirms the Employer's right to determine who is qualified to be promoted. The second sentence obligates the Employer to promote the qualified applicant who has the most seniority.

In reaching this conclusion, I have considered the Employer's contention that the contract language allows it to promote any qualified applicant. In support of that contention, the Employer presented evidence that it has not always promoted the qualified applicant with the most seniority and that the Union has generally not taken issue with such actions. The Union responded with explanations as to why it did not contest / or it is not in its internal interest to contest such actions and also with evidence of other instances in which the most senior applicant was promoted. Suffice it to say that where, as here, the contract language is clear, a practice can only amend the contract language where the past practice is clear, consistent, long-standing, and demonstrates a mutual intent to amend. Here, the evidence presented establishes a mixed practice that lacks the clarity, consistency and mutual intent to amend that is necessary for the Employer to prevail.

Therefore, I conclude that the Employer did violate Article XVIII of the 2012 – 2014 contract when it did not promote the grievant.

Dated at Madison, Wisconsin, this 5th day of December 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator