

BEFORE THE ARBITRATOR

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In the Matter of a Dispute Between

CITY OF GREEN BAY FIRE FIGHTERS, LOCAL 141,  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

and

CITY OF GREEN BAY

Case 483  
No. 72159  
MA-15244

AWARD NO. 7903

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**Appearances:**

Chad Bronkhorst, President, and Ryan Gibbons, Vice President, IAFF Local 141, 1570 Elizabeth Street, Green Bay, Wisconsin, appeared on behalf of the Union.

Anthony S. Wachewicz, III, City Attorney, City of Green Bay, 100 N. Jefferson Street, Suite 200, Green Bay, Wisconsin, appeared on behalf of the City.

**ARBITRATION AWARD**

On August 16, 2013, the City of Green Bay and the City of Green Bay Fire Fighters, Local 141, International Association of Fire Fighters selected William C. Houlihan from a panel of staff arbitrators provided by the Wisconsin Employment Relations Commission to hear and decide a matter pending between the parties. A hearing was conducted on June 4, 2014, in Green Bay, Wisconsin. A transcript of the proceedings was taken and distributed on June 20, 2014. Post hearing briefs and reply briefs were filed and exchanged by August 25, 2014.

This Award addresses whether the Hook and Ladder Pilot program, as implemented, violates Article 8.4 of the collective bargaining agreement.

**BACKGROUND AND FACTS**

The Hook and Ladder Pilot program is an initiative whereby certain bargaining unit members, certified as EMT/paramedics, are sent to do follow-up visits to patients who have been discharged from the hospital. The firefighter teams are sent during the workday, review a patient's MyChart, do a safety check of the dwelling, and do an after visit summary.

The Hook and Ladder Pilot program arose as a pilot study between the City of Green Bay and Bellin Hospital. It was prompted by certain aspects of the Affordable Care Act (“ACA”) which denies reimbursement for the readmission of certain patients within 30 days of their hospital discharge. This aspect of the ACA caused the hospital to look for ways to reduce the readmission rate. The Hook and Ladder Pilot program exists in certain areas of the country, though it is in its infancy in Wisconsin.

Representatives of Bellin Hospital met with City officials to discuss the possibility of such a program. They determined to run a pilot program and then measure the results. Hospital officials identified firefighters as good candidates for the follow-up visits because:

But the thought, the thought was along with those resources what if the same people that brought the patients to us who know the patients were able to check on the patients back in their home and make sure that they were safe, that they were taking their medications, that the environment that they were in was conducive to them staying home. (Testimony of George Kerwin, CEO of Bellin Hospital, Tr.17.)

The pilot began on March 27, 2013. Patients who were at high risk for readmission were identified. Characteristics of such patients included individuals taking a lot of medications, those with multiple chronic diseases, and individuals who are isolated without much family support. The individuals in question do not qualify for skilled nursing or home health care, so home health care visits are not reimbursable. The pilot was to consist of 25 visits. A number of home visits did take place. However, the visits were discontinued before the 25 visits occurred. It appears that the visits were discontinued because of the pendency of this grievance/uncertainty surrounding the program.

A grievance was filed on March 26, 2013. It was denied at all steps, including the City Personnel Committee, which acted on June 17, 2013. The appeal to arbitration occurred on July 3, 2013.

Prior to the initiation of a grievance, the parties met and attempted to resolve their underlying dispute. The following memo from then Fire Chief Nieft summarizes the state of affairs, from the management perspective:

IAFF Local 141

On March 12, 2013 I had a conversation with Local 141 representatives Ryan Gibbons and Rich Gee regarding the Hook & Ladder Pilot program. I was told that the Local had voted to grieve the program and asked if there was a compromise that could be reached. The following is my response to that request;

- This is a Pilot program. Each call that occurs will be analyzed to determine if the experience falls in line with the goals of the program.
- The Pilot calls are intended to answer the many “what ifs” that the crews have presented. Such issues as call duration, ability to make scheduled appointments, overlapping calls for service, etc., will all be considered as the program moves forward.
- Both Fire Department Management and Bellin Hospital representatives are aware of the many demands on your time and will monitor and manage the increased workload that results from the program.
- The program is intended to involve all personnel at any given Fire Station and is not intended to fall solely upon Ambulance crews.

Finally, Fire Department Management agrees that after 25 Pilot calls have occurred, there will be a review process that will include Local 141 representatives. The program will not advance until this review has taken place, however the Fire Chief will make the final determination as to the continuation of the program. The Fire Chief further agrees that the decision to continue the program will constitute a separate and new event for the purposes of Union action under Article 5 of the Labor Agreement.

Fire Chief Mike Niefert

### ISSUE

The City believes the issue to be:

Whether, under the agreement between the City of Green Bay, Wisconsin, and the City of Green Bay Fire Fighters Local 141, the Hook and Ladder Pilot program as designed by the Fire Chief satisfies the language set forth in Section 8.4 of the agreement.

The Union frames the issue as:

Did the City of Green Bay violate the collective bargaining agreement between the International Association of Fire Fighters Local 141 and the City of Green Bay when it implemented a new program known as the Hook and Ladder Pilot program?

This Award will address both issues as framed.

**RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT**

ARTICLE 8

WORK RULES AND JOB DUTIES

- 8.1 Work Rules. Changes to work rules and standard operating guidelines that affect wages, hours and conditions of employment shall be subject to mutual agreement before becoming effective. Therefore, the parties agree to the following process for recommending, negotiating, approving and implementing S.O.G.'s so identified.
- (1) All drafts of S.O.G.'s shall be submitted to the wage committee.
  - (2) Within 10 working days of receipt, Local 141 shall make a demand to bargain those aspects of the draft which represent mandatory subjects of bargaining.
  - (3) If there is a dispute over bargainability, then the parties shall immediately seek a Declaratory Ruling from the Wisconsin Employment Relations Commission.
  - (4) Within 20 working days of reaching agreement, the Union shall distribute the final draft of the S.O.G. to its members for action by the body at its second scheduled meeting following agreement.
  - (5) If negotiations do not yield agreement, then either party may avail itself of statutory impasse resolution procedures.
- 8.2 Upon approval by Local 141, or an award by an examiner from proceedings outlined in 8.1(5), the Chief may implement the S.O.G. The employer agrees to negotiate changes in existing work rules for the establishment of new work rules with the Union. They shall be posted for a period of 10 calendar days before become effective.
- 8.3 Employees will be notified in writing (email included) of any change in work rules or standard operating guidelines before being subject to discipline. Whenever possible, this notice shall be provided 10 calendar days before the change is effective. The employer and the Union agree that certain Standard Operating Guidelines (S.O.G.'s) involving wages,

hours and working conditions must be collectively bargained prior to implementation.

- 8.4 No employee in the firefighting force shall be assigned to any duty which is unrelated to firefighting, fire prevention, or rescue work or to the care and maintenance of firefighting equipment and apparatus, or to the normal cleaning required to maintain the quarters and the area.

### **DISCUSSION**

This dispute addresses whether or not the Hook and Ladder Pilot program violates Article 8.4 of the contract. There are no claims arising under Articles 8.1 through 8.3 in this dispute.

The Hook and Ladder Pilot program is a new initiative. The process of sending fire fighters to the homes of discharged hospital patients is new to the department. The aspect of the home visit that involves preventative health guidance has not been done previously. There is no emergency involved. There is no dispatch to the home. The visits are scheduled and are subordinate to emergencies that arise.

The record indicates that 76 percent of all fire department calls are EMS calls. Many of the medical conditions that form the basis for the Hook and Ladder Pilot program visits are the same or related to the conditions that sent people to the hospital in the first place. Some of the individuals involved were transported to the hospital by the EMS personnel.

Hook and Ladder Pilot program visits are not home health care. Fire fighters are not asked to provide patient care or treatment, unless an emergency arises during the course of their visit. Under the Hook and Ladder Pilot program, the fire fighter is assigned to report concerns that are medically related. The patients involved do not typically qualify for home health care. There is no basis for the delivery of patient care. Fire fighter EMT's have been identified for these calls, in part, because there is no medical justification or reimbursement for skilled home health care workers.

As noted, there are three components to a Hook and Ladder Pilot program visit. The first is helping to provide access to MyChart. Many health care providers are going to this system of record maintenance. It is the task of the Hook and Ladder Pilot program visit to help the patient gain access to their chart. There are patients who are not familiar with the computer and they are provided guidance. In some instances, there is no computer at the home in which case there is no MyChart element to the visit.

The second component of the visit is the after visit summary. This is a process by which the EMT reviews the discharge summary with the patient. The review would include the diagnosis, patient allergies, and medications. As to the medications, the patient would be asked if he understands what medications he is on and why he is taking the medication. The start date, end date, and/or continued status of the drug would be addressed. If the patient did not

understand some aspect of the drug regimen, the responsibility of the fire fighter is to contact the hospital to inform the hospital of the uncertainty or confusion. The protocol for the visit includes asking the patient if he has a way of keeping track of his medications and if he knows when his future medical appointments are. The patient is to be asked if he understands when to contact the doctor. If there is a problem identified, the fire fighter is to communicate that problem to the hospital. The fire fighter will perform a blood pressure check if requested by the patient.

The third element to a Hook and Ladder Pilot program visit is a safety check. Smoke detectors and carbon monoxide detectors are to be checked. Trip hazards are to be identified and eliminated. Ambulatory status, as well as nutrition and basic needs status, are to be assessed. The patient is asked to identify emergency contacts.

The question posed in this proceeding is whether the tasks described above fall within the scope of duties identified in Article 8.4 of the collective bargaining agreement. Article 8.4 prohibits the City from assigning duties which are not related to the contractually enumerated job functions. The duties described above are not articulated in the job description of a fire fighter. This Award does not address the job description; rather, it addresses the rights and limitations set forth by the collective bargaining agreement.

There is no contention that the Hook and Ladder Pilot program visits are related to firefighting, or to the care and maintenance of firefighting equipment and apparatus, or to the normal cleaning required to maintain the quarters and the area. The question is whether or not the Hook and Ladder Pilot program visits are unrelated to fire prevention or rescue work.

One aspect of the visits includes a safety check. Fire fighters look for trip hazards and check smoke detectors and carbon monoxide detectors. This is certainly fire prevention or containment. There is no crisis or emergency that prompts the trip. That is the nature of preventative measures.

The fire service has a substantial EMT component. That is reflected by the large proportion of calls that are EMT related. It is also reflected in the fire fighter job description. The contractual reference to "rescue work" must be construed to include the EMT work. It cannot be read to include only the rescue work that is attendant to fire suppression. The medical calls are dispatched and are emergency calls. There is urgency to the calls in that the caller is, or believes himself to be, in a threatened health state. The parties have treated this as rescue work within the meaning of Article 8.4.

The job description recognizes this reality and provides: "Performs emergency medical work as an EMT/Paramedic, including rendering treatment, carrying injured or unconscious patients ...." The parties have operated as if the reference to "rescue work" includes the EMT work. As stated above, 76 percent of the calls are EMT related. If the EMT work is not rescue work within the meaning of Article 8.4, the EMT work cannot be assigned. If this were the case, the article would make no sense given the reality of a modern day fire department.

Article 8.4 does not prohibit the assignment of work which is not rescue work. It bars the assignment of work which is “unrelated” to rescue work.

The language in question has been in the collective bargaining agreement since 1971. The parties have accommodated the changing nature of fire service in their construction of Article 8.4. The record is silent as to the level of EMT work that existed in 1971. It most certainly did not represent the vast majority of fire calls. That work has evidently been assigned for years, and in an increasing amount, under the parties’ view of Article 8.4.

The core of the work assigned in the Hook and Ladder Pilot program visit is the after visit summary. The patient is essentially questioned about his understanding as to his medical status. The review of MyChart, the inquiry as to medications, and the review of how and when to contact the patient’s doctor are all measures geared to assist the patient to recover and stay at home. The purpose and design of the program is to limit hospital readmissions. If successful, the program will reduce the hospital readmission rate and will also reduce the number of EMT calls and hospital transports.

I believe the Hook and Ladder Pilot program visits are related to fire prevention and to rescue work within the meaning of Article 8.4. The safety check is designed to prevent fires and to eliminate trip hazards that might otherwise lead to injury and an emergency call. Similarly, the after visit summary is designed to preempt returns to the hospital. Given the nature of the patients identified for the Hook and Ladder Pilot program visits, the visits also serve to preempt emergency EMT calls from individuals who need to be rescued.

### **AWARD**

The grievance is denied.

Dated at Madison, Wisconsin, this 20th day of January 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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William C. Houlihan, Arbitrator