

STATE OF WISCONSIN  
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL UNION  
NO. 2939, SOUTH SHORE FIRE FIGHTERS, AFL-CIO

vs.

VILLAGE OF MOUNT PLEASANT

Case 12  
No. 73173  
MA-15297

AWARD NO. 7919

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**Appearances:**

Attorney John B. Kiel, The Law Office of John B. Kiel, LLC., P.O. Box 147, 3300 - 252nd Avenue, Salem, Wisconsin, appearing on behalf of the International Association of Fire Fighters, Local Union No. 2939, South Shore Fire Fighters, AFL-CIO.

Attorney James R. Korom, von Briesen & Roper, S.C., 411 East Wisconsin Avenue, Suite 1000, Milwaukee, Wisconsin, appearing on behalf of the Village of Mount Pleasant.

**ARBITRATION AWARD**

The International Association of Fire Fighters, Local Union No. 2939, South Shore Fire Fighters, AFL-CIO (hereinafter referred to as "IAFF" or "Union"), and the Village of Mount Pleasant (hereinafter referred to as "Village" or "Employer") are parties to a collective bargaining agreement that provides for final and binding arbitration of unresolved grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission provided a panel of arbitrators from which the undersigned was selected to decide the instant grievance. A hearing on that grievance was held in Manitowoc, Wisconsin, on May 5, 2015. The hearing was transcribed. The parties filed briefs whereupon the record was closed on July 20, 2015. Having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following.

**ISSUE**

The parties agreed there were no procedural issues in dispute, but were unable to agree as to the substantive issues.

The Union frames the issues as:

Did the Village of Mount Pleasant violate the collective bargaining agreement on January 23 and January 29, 2014, when it failed to pay Christopher Heinz step-up pay for the time he was temporarily assigned to act as the driver of a South Shore Fire Department advanced life support rescue squad? If so, what is the appropriate remedy?

The Village frames the issue as:

Did the Village of Mount Pleasant violate the collective bargaining agreement as alleged in the grievance, and, if so, what is the appropriate remedy?

The grievance challenged the Employer's "refusal to pay its acting drivers, being those members considered to be working out of grade, specifically firefighters to MPO driving dedicated ALS rescue squads, is in violation of the collective bargaining agreement" asserting a violation of Section 14.5 of the collective bargaining agreement.

Having considered the evidence and arguments of the parties, the Arbitrator frames the issues as:

Whether the Village of Mount Pleasant violated Section 14.5 of the collective bargaining agreement when it failed to pay fire fighters with less than five years seniority step-up pay when assigned to act as the driver of a dedicated advanced life support rescue squad? If so, what is the appropriate remedy?

**RELEVANT CONTRACT LANGUAGE**

**ARTICLE XIV - WAGES**

**14.1 Personnel.** The following wage scales are in effect as of January 1, 2014.

<u>January 1, 2014</u> <u>2.5%</u>	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u> (MPO)
Firefighter (hourly)	\$16.03	\$17.04	\$18.02	\$19.52	\$21.02	\$21.60
Lieutenant / Lieutenant Fire Inspector (hourly)						\$23.42
Paramedic Premium = 5% of MPO Rate						

<u>January 1, 2015</u> <u>2.5%</u>	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u> (MPO)
Firefighter (hourly)	\$16.43	\$17.47	\$18.47	\$20.01	\$21.55	\$22.14
Lieutenant / Lieutenant Fire Inspector (hourly)						\$24.01
Paramedic Premium = 5% of MPO Rate						

<u>January 1, 2016</u> <u>1.5%</u>	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u> (MPO)
Firefighter (hourly)	\$16.68	\$17.73	\$18.75	\$20.31	\$21.87	\$22.47
Lieutenant / Lieutenant Fire Inspector (hourly)						\$24.37
Paramedic Premium = 5% of MPO Rate						

<u>July 1, 2016 1.5%</u>	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>	<u>5 Years</u> (MPO)
Firefighter (hourly)	\$16.93	\$18.00	\$19.03	\$20.61	\$22.20	\$22.81
Lieutenant / Lieutenant Fire Inspector (hourly)						\$24.74
Paramedic Premium = 5% of MPO Rate						

All paramedics receive 6% paramedic pay at 7 year anniversary.

Effective January 1, 2007 a Firefighter who is not certified on all equipment will not progress past the 4 year step.

\* \* \*

**14.4 Motor Pump Operation.** Assignment to motor pump operation will normally be based upon seniority and certification to operate equipment.

**14.5 Work Out of Grade.** Whenever an employee shall perform full-time work out of his / her grade for one (8) hour work period, he / she shall be paid for the entire time so engaged at either his / her own rate or the rate of the job; whichever is higher. These are as follows: Firefighter to M.P.O.;

Firefighter / M.P.O. to Lieutenant. Such assignment must be made by the Chief, Battalion Chief or Duty Officer and is at his / her discretion. Lieutenants assuming the duties of Battalion Chief shall be paid \$3.00 per hour above their normal rate for 2009 and thereafter. Acting drivers (MPOs) and those temporarily assuming the Lieutenant's duties on dedicated A.L.S. rescue squads shall receive step-up pay.

\* \* \*

**ARTICLE XXXV - PARAMEDICS**

\* \* \*

**35.11.** Paramedics shall receive premium pay according to the following schedule:

<u>Years of Licensure as a Mount Pleasant Fire Department Paramedic</u>	<u>Premium Pay (expressed as a % of Top step Firefighter/MPO Base wage</u>
Completion of State license examination	5%
As of the Firefighters 7th anniversary with the Village Fire Department	6%

Premium pay shall be paid on a bi-weekly basis.

In addition to the above, paramedics who act as preceptor for non-bargaining unit members shall receive an additional two percent (2%) above their base wage during the period of time they are assigned to act as preceptors.

\* \* \*

**35.13.** Advanced Life Support units shall be commanded by a Lieutenant, Motor Pump Operator or Senior Fire Fighter. Motor Pump Operator or Senior Fire Fighters assigned to Command ALS units shall receive step-up pay. The Village agrees to fill fire suppression unit vacancies that are created when a Lieutenant or Motor Pump Operator is temporarily transferred

from a fire suppression unit to the command of an ALS unit. Employees who step-up on a fire suppression unit shall receive step-up pay according to Article 14.4 of the collective bargaining agreement.

### **BACKGROUND**

The Village of Mount Pleasant (hereinafter referred to as “Village” or “Employer”) provides fire suppression and advanced life support (ALS) services to the public residing in the Village and the Village of Sturtevant. The South Shore Fire Department (hereinafter referred to as “Department”) is the blending of fire departments from the Village of Mount Pleasant and the Village of Sturtevant by agreement in 2009. Firefighters from Sturtevant became employees of the Village and the name of the bargaining unit was changed from the Fire Fighters of Mount Pleasant to South Shore Professional Fire Fighters.

The Department operates engines, quints and ambulances. An engine is a vehicle which transports firefighters and has a motor pump. A quint is a fire engine with a motor pump, aerial ladder, water tank and hose. Ambulances do not have motor pumps. Motor pump operators (hereinafter referred to as “MPOs”) are commonly understood to be the drivers of fire suppression apparatus.

Starting at least by the 1980s, the Department provided ambulance and fire suppression services. The Department cross-staffed firefighter emergency medical technicians with a piece of fire suppression apparatus, meaning an EMT was dually assigned to fire suppression apparatus and an ambulance. As a result, drivers of fire suppression apparatus also drove the ambulance and were paid at the MPO rate since they were driving a fire suppression apparatus. The Department used this cross-staffing model until it implemented the paramedic program.

In 1998, in addition to implementing a paramedic trainee program, the Department created dedicated ALS units. A dedicated ALS unit is an ambulance staffed by a crew of paramedics whose sole assignment is to complete ambulance runs. Dedicated ALS crews were not assigned to perform fire suppression work, but would do so if an emergency situation presented itself. From implementation through January 2001, when the 1999 – 2001 collective bargaining agreement was executed, MPOs and firefighters assigned to command an ALS unit did not receive step-up pay. Dedicated ALS units ended on or about when the parties ratified the 1999 – 2001 agreement, and the Department reverted to its prior cross-vehicle staffing of fire suppression apparatus and ambulances.

Effective January 4, 2014, the Village reorganized the Department and reinstated the dedicated ALS units at some Department stations.

On January 8, 2014, and January 14, 2014, Firefighter / Paramedic Christopher Heinz, who had less than five years employment experience with the Department, was assigned to a dedicated ALS unit, drove the ambulance, and received step-up pay compensation.

On January 9, 2014, Dustin Ellis was approved for step-up pay to MPO when he was assigned to and drove the dedicated ALS unit. Ellis had not attained five years employment experience as of that date.

On January 23, 2014, and January 29, 2014, Heinz was again assigned to and drove an ALS unit, but was not compensated at the step-up rate.

The Union filed an ongoing grievance on February 18, 2014, alleging that the Village violated Section 14.5 of the collective bargaining agreement.

### DISCUSSION

This is a contract interpretation case. The interpretative process involves ascertaining the parties' intended meaning of the terms and provisions of a collective bargaining agreement. A contract term is ambiguous if it is susceptible to more than one meaning. Elkouri & Elkouri, *How Arbitration Works*, 6th ed., p.434 (2002). If the words are plain and clear and convey one distinct idea, then it is unnecessary to resort to interpretation or extrinsic evidence. *Id.* Alternately, if the language is ambiguous, then extrinsic evidence and the principles of contract and statutory interpretation are utilized and serve as guides to determining the parties' intent.

Both the Village and the Union argue this is a "plain language" case, yet they reach differing conclusions. The Union argues that "acting drivers (MPOs)" refers to all drivers of ALS units, while the Village maintains "MPO" was a qualifier added to "acting driver." Since an ambulance does not have a motor pump, quite literally, the driver of an ambulance is not operating a motor pump and therefore is not entitled to step-up pay. The fact that the parties assign a different meaning to the same contract language does not necessarily mean that the contract language is ambiguous. I therefore start with the language in dispute.

Section 14.5 provides:

Whenever an employee shall perform full-time work out of his / her grade for one (8) hour work period, he / she shall be paid for the entire time so engaged at either his / her own rate or the rate of the job; whichever is higher. These are as follows: Firefighter to M.P.O.; Firefighter / M.P.O. to Lieutenant. Such assignment must be made by the Chief, Battalion Chief or Duty Officer and is at his / her discretion. Lieutenants assuming the duties of Battalion Chief shall be paid \$3.00 per hour above their

normal rate for 2009 and thereafter. Acting drivers (MPOs) and those temporarily assuming the Lieutenant's duties on dedicated A.L.S. rescue squads shall receive step-up pay.

The first three sentences are clear and not contested. If an employee is assigned to work out of grade, grade meaning firefighter, MPO or lieutenant, then they are paid at the higher rate because they are performing work which has a higher fiscal value. The fourth sentence addresses the wage earned when a lieutenant works as a battalion chief. This dispute arises with the last sentence, which sets forth two qualifying criteria that determine when the employee "shall receive step-up pay." There is no challenge as to when an employee is working on a dedicated ALS squad, and the parties have not identified any concern relative to the lieutenant duties assignment, therefore, the only issue is who is or what does "acting drivers (MPOs)" mean.

## **I. THE CONTRACT AS A WHOLE.**

Interpretive principles dictate that when seeking the true intent of the parties, the labor agreement should be construed as a whole. Elkouri & Elkouri, *How Arbitration Works*, 6th ed., p.462 (2002), citing *Hemlock Pub. Sch. Bd. of Educ.*, 83 LA 474, 477 (Dobry, 1984). In addition to Section 14.5, there are two sections of the collective bargaining agreement relevant to this analysis, Section 35.13 and Section 14.1.

Article 35, Paramedics, was added to the collective bargaining agreement at the same time as the last sentence of Section 14.5. Section 35.13 addresses ALS:

Advanced Life Support units shall be commanded by a Lieutenant, Motor Pump Operator or Senior Fire Fighter. Motor Pump Operator or Senior Fire Fighters assigned to Command ALS units shall receive step-up pay. The Village agrees to fill fire suppression unit vacancies that are created when a Lieutenant or Motor Pump Operator is temporarily transferred from a fire suppression unit to the command of an ALS unit. Employees who step-up on a fire suppression unit shall receive step-up pay according to Article 14.4 of the collective bargaining agreement.

This language specifically authorized step-up pay to MPOs and senior firefighters for commanding ALS units. Disregarding that "MPO" and "senior firefighter" classifications do not exist, and Section 14.4 does not address or authorize step-up pay (both holdovers from the pre-1999 - 2001 labor agreement that remain in the current labor agreement), it is clear motor pump operator was a title and not a responsibility. While the parties' dispute relates to whether "acting drivers (MPOs)" earn step-up pay when driving an ALS unit, the fact that a senior firefighter earns step-up pay to MPO by commanding an ALS unit seriously challenges the

Village's position that the MPO step-up compensation requires that the employee is driving an apparatus that has a motor pump.

Section 14.1 identifies "personnel" of the Department including firefighter, lieutenant / lieutenant fire inspector and paramedic.<sup>1</sup> MPO does not exist as an individual rank, wage or classification in the labor agreement; rather, it is part of the "firefighter / MPO" classification and firefighters earn this after five years of service. Since the Village requires firefighters, upon hire, to hold the driver / operator-pumper certification, the MPO designation is solely a seniority-based wage label that a firefighter attains once he / she meets the tenure requirement. There is no expectation that the five year firefighter operate a motor pump in order to receive the MPO rate.

Section 35.13 authorizes MPO pay to firefighters who command an ALS unit and Section 14.1 sets forth a MPO rate based solely on seniority, neither of which bears any relation to the firefighter operating a motor pump. These two sections of the labor agreement refute the Village's position that operation of a motor pump is a condition precedent to earning MPO step-up wages.

The Union's position that "acting drivers (MPOs)" was intended to provide step-up pay to those firefighters that did not meet the "firefighter / MPO" seniority threshold is supported by the second sentence of Section 14.5. In the second sentence, the parties specified step-up pay for "Firefighter to M.P.O." This clause is therefore only applicable to those firefighters that have not reached the "firefighter / MPO" classification which are those with less than five years' service. This clause in the second sentence would be rendered meaningless under the Village's reading of the language of Section 14.5.

The Village argues that the MPO designation is tied to job duties as contained in the firefighter job description. I do not find the job description as useful as the Village for a number of reasons. First, the firefighter job description is not a negotiated document even though a copy of the job description was provided to the Union during the 1999 - 2001 negotiations. Second, the job description for firefighter requires that they hold a driver / operator - pumper certification at hire and, thus, all firefighters can be viewed as MPOs. Third, the job description divides firefighter duties into three areas: fire apparatus driver, ambulance driver and motor pump operator which conflicts with the Village's assertion that fire apparatus drivers and MPOs are one and the same.

The contract as a whole supports the Union's reading of Section 14.5.

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<sup>1</sup> The current labor agreement provides advancement to "firefighter / MPO" at five years, but the 1999 - 2001 collective bargaining agreement provided for movement to that title and wage at four years as a firefighter.

## II. BARGAINING HISTORY.

The language in dispute was negotiated as part of the 1999 – 2001 collective bargaining agreement. The parties point to three events in the bargaining history that offer insight as to the intended meaning of the last sentence of Section 14.5. First, the removal of the word “not” in what eventually became Section 35.13; second, the definition of “fire apparatus” as contained in the side letter that grandfathered firefighters to MPOs; and, third, the insertion of “(MPO)” into the sentence. I start with a review of the chronology of the parties’ 1999 – 2001 bargaining that is relevant to these three arguments.

The last sentence of Section 14.5 was new language added to the parties’ 1999 – 2001 collective bargaining agreement. Negotiations for this agreement started in 1998 and culminated in January 2001. Concurrent with bargaining the successor agreement, the parties addressed the creation of a paramedic program. Well before ratification of the entire collective bargaining agreement, the parties executed a Paramedic Memorandum of Understanding dated September 28, 1998, which defined the terms and conditions as to how firefighters would be trained, assigned, and compensated when filling the paramedic positions. Of specific relevance was a section which defined the ALS unit:

Advanced Life Support units shall be commanded by a Lieutenant, Motor Pump Operator or Senior Fire Fighter. Motor Pump Operator or Senior Fire Fighters assigned to command ALS units shall not receive step-up pay. The Town agrees to fill fire suppression unit vacancies that are created when a Lieutenant or Motor Pump Operator is temporarily transferred from a fire suppression unit to the command of a (sic) ALS unit. Employees who step-up on a fire suppression unit shall receive step-up pay according to Article 14.4 of the collective bargaining agreement.

Underlining added for emphasis.

This same language, identified as Section 35.8 in new “Article XXXV – Paramedics,” was signed off on as a part of a tentative agreement on October 12, 1999.<sup>2</sup>

During the summer of 1999, the Village proposed collapsing the wage schedule by eliminating the MPO position and significantly increasing the compensation of firefighters. Negotiations over the MPO elimination continued in April and May of the following year. By letter dated June 19, 2000, the Union proposed the removal of the word “not” in the second sentence of the new paramedic language and new MPO language which addressed automatic

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<sup>2</sup> The Village’s exhibits conflict as to when the word “not” was struck. Village Exhibit 8 which is the signed tentative agreement from October 1999 includes the word “not” while Exhibit 11 has the word “not” lined out.

assignment of firefighters to MPO after four years, MPO assignment to driver positions, and MPO step-up to lieutenant.

On July 7, 2000, the Village responded with paramedic program language, as well as other language items. While the Village did not bargain the job description for new firefighters / MPOs, it offered it to the Union at this time.

On July 27, 2000, new Fire Chief Bouma sent an email which proposed to grandfather nine (a tenth was later added) employees to permanent assignment as fire apparatus drivers with the option to be the first to step-up to lieutenants. The email included the sentence, “[t]he ambulance at #1 station will also be considered a fire apparatus.” Bouma’s grandfathering proposal was contained in an October 20, 2000 Village settlement offer which read:

**EXHIBIT B**  
**SIDE LETTER OF AGREEMENT**  
**MOTOR PUMP OPERATOR**  
**GRANDFATHERING OF CERTAIN EMPLOYEES**

The following employees shall be grandfathered and permanently assigned as fire apparatus drivers (excluding all shift trades other than a trade between two drivers listed herein). It is understood that the following employees actively hold the rank of MPO in order to be covered by this side agreement. The following employees will be the first to step up to temporarily assume the duties of Lieutenant unless mutually agreed between the Town and the employee:

Doug Marks  
Rob Kaminskis  
Kevin Bense  
Chuck Kralicek  
Bob Feest Jr.  
Scott Walquist  
Don Nowak  
Robert Jorgensen  
Steve Marsteller  
Ed Lockhart

The implementation or application of this side agreement shall not be subject to the grievance procedure by any individual other than those listed above and only during the time the side agreement is otherwise applicable to that employee. Only those individuals listed above may exercise these rights. The Town may

bypass the terms of this side agreement when training or when an emergency in the Department so requires. Rescue squads shall be considered fire apparatus.

This side letter shall expire at such time as all of the foregoing employees have retired, been promoted or otherwise separated from employment with the Town of Mount Pleasant - Fire Department.

Effective this \_\_\_\_\_ November, 2000.

FOR THE TOWN

/s/

01-20-2001

FOR IAFF LOCAL 2939

/s/

01-13-2001

The Union countered with a proposal to “[i]nset into Art. 14.5 Drivers of dedicated ALS units shall receive step-up pay.” The Village responded by inserting “acting” before the word “drivers” and “(MPO)” after the words “acting drivers,” replacing the word “units” with “squads,” and adding the phrase “those temporarily assuming the lieutenant duties.” The final language included on the bottom of the grandfathering side letter read:

Insert into Article 14.5, Acting Drivers (MPO) and those who temporarily assume the Lieutenant duties of dedicated ALS Rescue Squads shall receive step-up pay.

**A. Meaning of Removal of “Not” from Section 35.13.**

In the 1998 Paramedic Memorandum of Understanding, the parties agreed that step-up was not available to MPOs or senior firefighters that commanded ALS units. That language was replicated in the tentative agreement executed in October 1999; but, in October 2000, the parties modified the language that would become Section 35.13. In that last bargaining session, the word “not” was removed from the second sentence of Section 35.13 thus changing the meaning and authorizing step-up pay to MPOs and senior firefighters that were assigned to command ALS units.

The record establishes that this turnaround occurred in response to dissatisfaction within the Union ranks due to the elimination of the MPO rank. Village negotiator Robert Mulcahy testified that:

... what was obstructing the bargaining at that time was the fact that MPOs and the lieutenants could outvote the firefighters, and they were actually holding up the settlement at that point based on

the fact they wanted some additional concessions coming their way to the MPOs and to the lieutenants.

Tr.276.

Accepting that the parties were attempting to create incentives that would encourage the MPOs and lieutenants to vote in favor of the final agreement, the inclusion of MPOs in Section 14.5 can be viewed as motivation toward this end.

**B. Relevance of Meaning of Fire Apparatus Definition.**

The parties argue that the sentence contained in the grandfathering side letter, “[r]escue squads shall be considered fire apparatus,” supports each of their respective cases. The Village posits, since the parties specified in the side letter that rescue squads were fire apparatus, the parties’ failure to similarly specify same in Section 14.5 was intentional and therefore ALS vehicles are not fire apparatus. Conversely, the Union points out that the side letter originally contained both this defining sentence and the last sentence of Section 14.5, and, therefore, it was unnecessary and redundant to repeat the definition of fire apparatus.

The grandfathering side letter “promoted” ten firefighters to MPOs even though there was no corresponding rank or wage. The benefit to the ten firefighters was first consideration to lieutenant opportunities on all fire apparatus service vehicles. It is reasonable to conclude that prior to the grandfathering side letter it was not the consensus that an ALS vehicle was fire apparatus, otherwise, it would have been unnecessary to specifically indicate that it was fire apparatus. Given this, when Section 14.5 was removed from the bottom of the grandfathering side letter and placed into the negotiated agreement, the parties were fully capable of repeating that “rescue squads shall be considered fire apparatus” in the new paramedic article, but did not do so. Given the experience of the negotiators, I find that the omission of that language in the new Section 14.5 supports the Village’s contention that an ALS vehicle was not commonly understood as fire apparatus, yet this does not establish that “acting drivers (MPOs)” was intended to deny step-up pay to less than five-year firefighters.

**C. Insertion of “(MPO)” after “Acting Drivers.”**

The addition of “(MPO)” following the words “acting drivers” occurred at the end of the bargaining negotiations and was inserted at the request of the Village. Mulcahy testified that:

The “(MPO),” adding it after the words “acting drivers,” I would have added that into the language as a qualifier as to the fact that the acting drivers would have to be in the MPO category.

Tr.288.

And in response to whether adding (MPO) after acting drivers was intended to “say that if somebody with less than four years is assigned to drive a dedicated ALS rescue squad, they will receive step-up pay”:

Actually I have a very clear recollection on that. That was not the intent of the parties and that is why I inserted the word “MPO.” It had nothing to do with getting step-up pay for driving the ambulance. It had everything to do with getting step-up pay for being an MPO.

Tr.302.

The parties had eliminated the MPO category, instead combining that job classification with firefighters with four years of experience and labeling them as “firefighters / MPOs.” Lacking a category, the Village’s need to qualify “acting drivers” does not make sense. Although it is not surprising given the prevalence of “MPO” references remaining in the parties’ labor agreement.

Next, the “(MPO)” qualifier was added to the very sentence that granted step-up pay to acting drivers of ALS units. Therefore, the Village’s position that it had “nothing to do with getting step-up pay for driving the ambulance” is a conundrum. But assuming that these irregularities can be explained, the Village’s proposition that the last sentence of Section 14.5 was added to compensate MPOs cannot be reconciled with its position that the driver, acting or MPO, must be driving a vehicle that has a motor pump in order to receive step-up compensation, since an ALS unit does not have a motor pump. Thus, under the Village’s reading, Section 14.5 does not grant step-up pay for driving a dedicated ALS unit under any circumstances. I do not believe that this is what the parties intended when the language was drafted.

### **III. PAST PRACTICE.**

As the Village readily admits, any reference to the non-payment of step-up pay for ambulance drivers the first time the Village used dedicated ALS units must be discounted because Section 14.5 did not exist prior to the ratification of the 1999 – 2001 labor agreement. After the agreement was in effect, there was one instance in January 2001 that the Village maintains replicates the circumstances in dispute and the driver did not receive step-up pay. This instance is contrasted with how Heinz was paid during January 2014. Heinz was paid step-up pay twice and was not paid in two instances. Ultimately, the January 2014 payments are no different than the January 2001 instance, none of which serve as a past practice, much less a binding past practice.

#### **IV. CONCLUSION.**

The language of Section 14.5 is neither clear nor unambiguous. The parties included a term that, for all practical purposes, was eliminated from the labor agreement but continued to be used in practice. The language is abstruse and it was necessary to look to extrinsic evidence to ascertain the meaning.

The evidence establishes the parties addressed numerous issues in the 1999 – 2001 collective bargaining agreement. With specific regard to this grievance, due to the extensive time it took to negotiate this agreement, there was language agreed to early in the process that, if not in direct conflict, was obscured by issues addressed at the end of the bargaining. The parties reached agreement on the paramedic program in 1998 that denied step-up pay for command of ALS squads only to completely reverse course by the end of the negotiations. The Village started not only with one administrator and ended with a different administrator, but started with one fire chief and ended with a different fire chief. The substantive changes, coupled with the elimination of a position and rank and the internal political fallout which accompanied that, served as the backdrop to the final agreement.

The Village's position – that (MPO) is tied to driving fire apparatus with a motor pump - cannot be harmonized with the remainder of the collective bargaining agreement. The bargaining history is less than helpful and there is no past practice evidence which provides support to either the Village's or the Union's positions. The Union's argument that fire apparatus includes ALS units is not supported by the record nor did the Union's witnesses provide testimony beyond contradiction. Ultimately, I am unable to reconcile the Village's argument – that step-up pay requires operation of a motor pump – with the sections of the labor agreement that reference MPOs but do not require motor pump operation and Section 14.5, inasmuch as it would negate any payment of step-up compensation for driving a dedicated ALS unit since it does not have a motor pump.

#### **AWARD**

Yes, the Village of Mount Pleasant violated Section 14.5 of the collective bargaining agreement when it failed to pay firefighters with less than five years seniority step-up pay when assigned to act as the driver of a dedicated ALS rescue squad.

The appropriate remedy is to make whole those firefighters with less than five years seniority who served as dedicated ALS drivers. The undersigned will retain jurisdiction for ninety (90) days for the purpose of resolving any disputes with regard to remedy.

Signed at the City of Rhinelander, Wisconsin, this 23rd day of December 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Lauri A. Millot, Arbitrator