In the Matter of the Arbitration Between

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 321, AFL-CIO

and

CITY OF RACINE

Case ID: 53.0017
Case Type: MA

AWARD NO. 7945

Appearances:

Timothy E. Hawks, Attorney, for Local 321.

Scott R. Letteney, City Attorney, for the City.

ARBITRATION AWARD

Pursuant to the terms of their 2015-2017 collective bargaining agreement, the International Association of Firefighters, Local 321, AFL-CIO, and the City of Racine selected the undersigned to serve as arbitrator of a promotions and transfer grievance. Hearing was held in Racine, Wisconsin, on September 13, 2017. No transcript or other recording was made of the proceedings. The parties filed post-hearing briefs by November 9, 2017.

ISSUE

The parties were unable to agree on a statement of the issue to be resolved but did agree the arbitrator could frame the issue after giving due consideration to their respective positions. Having done so, I conclude the issue is best stated as follows:

> Did the City violate the collective bargaining agreement when it denied the grievant's request to move from the Med 3 unit to another open permanent assignment with lesser compensation and, if so, what remedy is appropriate?

DISCUSSION

The City denied the grievant's request to leave his permanent Med 3 assignment and take a different open permanent assignment with lesser compensation. The grievant had more seniority than the employee who received the assignment.

The essence of the Union's argument is that whenever there is an open permanent assignment which will impact an employee's compensation, the City is contractually obligated to grant the most senior eligible employee's request to take that assignment. The City strenuously contends that there is no such contractual right.

Restricting my analysis to the narrow issue I have framed, I conclude that the City does not have a contractual obligation to grant a more senior employee's request to move to a permanent assignment with lesser compensation.[1]

The Union correctly argues that the agreement contains many references to seniority rights and from those many references, the Union contends there is a binding premise that seniority should govern the matter before me. More specifically, the Union ultimately lands on Article XIX Promotional Procedure as the provision of the agreement violated here. However, there is no specific language in Article XIX or elsewhere that addresses the fact scenario before me. Where, as here, the parties have been quite detailed as to the role seniority will play in various situations, the absence of any such language persuades me that the parties have left this matter to the City's discretion. I also note that movement to a position with less compensation is not commonly understood to be a "promotion."

The Article VI Management Rights clause of the 2015-2017 agreement does explicitly acknowledge the potential for a past practice to become contractually binding. However, the record before me contains few, if any, relevant circumstances in which a more senior employee moved from one permanent position to an open lesser paying permanent position. Thus, there is no persuasive basis for concluding that a contractually binding practice exists.

In light of the foregoing, I conclude that the City did not violate the collective bargaining agreement when it denied the grievant's request to move from the Med 3 unit to another open permanent assignment with lesser compensation.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 12th day of December, 2017

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator

[1] As to "vacancies existing as a result of retirement, resignation, dismissal or death," seniority is a contractually specified consideration under Article XIX(4). The vacancy at issue here was not created by any of those events.