BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF KENOSHA

and

KENOSHA FIRE FIGHTERS, IAFF LOCAL 141

Case ID: 432.0002
Case Type: MA

AWARD NO. 7965

Appearances:

Brian Waterman for the City.

Tim Hawks for the Association.

ARBITRATION AWARD

Pursuant to the terms of a collective bargaining agreement, the parties jointly requested that the undersigned be assigned by the Wisconsin Employment Relations Commission to serve as arbitrator as to a work assignment grievance. The Commission honored that request. A hearing was held in Kenosha, Wisconsin on February 12, 2020. A transcript of the hearing was prepared, and the parties thereafter filed briefs and supplemental argument by July 17, 2020.

ISSUE

The parties were unable to agree on a statement of the issue but did give me authority to frame the issue after considering their respective positions. Having done so, I conclude the issue to be resolved by this Award is:

> Did the City violate the collective bargaining agreement when it assigned laundry duties to bargaining unit members at Fire Station #1 and, if so, what remedy is appropriate?

DISCUSSION

The City opened a new fire station (Fire Station #1). Unlike all other fire stations in the City, the new station was equipped with laundry facilities. The City assigned bargaining unit members at Fire Station #1 to perform certain laundry duties. No bargaining unit members had previously been required to perform any laundry duties.

Central to resolution of the issue before me is answering the following questions regarding the contractual Article 4-Maintenance of Standards clause the Union asserts was violated by the assignment of laundry duty. Initially setting aside whether laundry duty is a mandatory or permissive subject of bargaining, does the language of the clause, when viewed in the context of other contractual provisions and the historical practices of the parties, prohibit imposition of laundry duties? If so, does that prohibition only apply if the duty is a mandatory subject of bargaining or is the scope of the clause broad enough to prohibit imposition of the duty even if it is a permissive subject of bargaining?

The Maintenance of Standards clause states:

> 4.01 The City agrees that all conditions of employment in the unit of bargaining covered by this agreement relating to wages, hours of work, overtime, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this agreement. As to any item not covered by this agreement, reference may be made by either party to past practice, departmental policy, City Ordinances or Resolutions, and State Statutes as guidelines in attempting to settle a particular dispute.

I begin by generally concluding that whether employees are to perform laundry duties is a "condition of employment . . . relating to . . . general working conditions . . . ." More specifically in this matter, the "general working condition" is not having to perform laundry duty. When reaching that conclusion, I have considered but rejected the City's contention that the language in the Management Rights clause regarding the right to manage and direct employees/determine methods and means of operations is predominant over the protections created by Article 4. I do so because the Management Rights clause is expressly limited in its scope to matters not specifically addressed elsewhere in the contract-such as by Article 4. A closer question is presented by the City's citation to other contract provisions where the parties have specified certain maintenance and cleaning duties that bargaining unit members can or cannot be required to perform. Those other provisions create an inference that the scope of the "working conditions" covered by the Maintenance of Standards clause does not extend to matters such as laundry duty. However, I think the better view is that those contractually identified maintenance and cleaning matters are issues that the parties chose to address at the bargaining table (much like they might choose to do so here) but do not signify an intent to remove all such matters from the otherwise existing scope of the Maintenance of Standards clause.

I have also considered and rejected the City's assertion that the long standing "general working condition" of not having to do laundry should be disregarded because the City's fire stations were never previously equipped to allow for in-house laundry to be performed. This is indeed a change of circumstance that would be highly relevant if the matter before me did not hinge on the Maintenance of Standards clause as opposed to a free-standing claim of past practice. However, because Article 4 does not contain an "except if circumstances change" exemption from the obligation to maintain "general working conditions," this City argument is not persuasive.

Having concluded as a threshold matter that the language of Article 4 does prohibit the City from requiring employees to perform laundry duties, the question becomes whether that prohibition exists without regard to whether laundry duties are a mandatory subject of bargaining. I conclude that it does. Unlike the contract language cited by the City in a City of Oshkosh grievance arbitration award, there is no language in Article 4 limiting its scope to matters that are mandatory subject of bargaining. Thus, without regard to whether laundry duties are a mandatory or permissive subject of bargaining[1], so long as a collective bargaining agreement containing Article 4 is in effect, the City violates that agreement by requiring bargaining unit employees to perform laundry duties.[2] Consistent with the Union's remedial request, the City shall cease and desist from said violation.

Issued at the City of Madison, Wisconsin, this 1st day of September 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter G. Davis, Arbitrator

[1]If I were to so conclude and if no agreement were to be in effect when this Award is issued, the City asks that I determine whether laundry duties are a mandatory or permissive subject of bargaining. The Union did not join in that request and noted that only the Commission can make a binding determination as to mandatory/permissive distinctions. Absent a mutual request that I do so, I will not make a mandatory/permissive determination as it is beyond the scope of what is required to resolve the contractual issue before me.

[2]The City asserts that successful pursuit of this grievance violates the Union's Section 2.03 contractual obligation "to cooperate with the City to ensure maximum services to the public at minimum cost." In effect, this City argument would potentially nullify the Maintenance of Standards clause inasmuch as all of the "general working conditions" covered by the clause presumably have some cost to the City. As all provisions of a contract are to be given meaning, I reject this argument. I also note that the Union and the City did have settlement discussions which would have obligated employees to perform the laundry duties and also provided some of the resulting savings to the City.