BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between the

SHEBOYGAN PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 483

and

CITY OF SHEBOYGAN

Case ID: 266.0014
Case Type: MA

AWARD NO. 7991

Appearances:

Attorney Sean Lees, for the Union.

Attorneys Kyle Gulya and Hannah Chin, for the City.

ARBITRATION AWARD

Pursuant to the joint request of the Sheboygan Professional Firefighters Association, Local 483 and the City of Sheboygan, I was assigned by the Wisconsin Employment Relations Commission to serve as the arbitrator regarding two extra duty pay grievances. A hearing was held in Sheboygan, Wisconsin on March 13, 2023. The proceedings were not recorded or transcribed. The parties thereafter filed written argument by May 12, 2023.

ISSUES

The parties agreed that the following issues are before me.

Did the City of Sheboygan violate Article XIX, Section F (2) of the parties' collective bargaining agreement when it failed to pay Lieutenant Bollar for conducting hazmat trainings? If so, what is the appropriate remedy?

Did the City of Sheboygan violate Article XIX, Section F (2) of the parties' collective bargaining agreement when it failed to pay Lieutenant Loose for a trench rescue training? If so, what is the appropriate remedy?

DISCUSSION

Article XIX, Section F states:

F. Instructor Premium Pay.

1. An off-duty employee requested to instruct department-required training, as designated by the Fire Chief as extra duty, will be paid at the time and one-half (1-1/2) rate . . . .

2. An on-duty employee requested to instruct department-required training, as designated by the Fire Chief as extra duty, will receive instructor premium pay . . . .

Bollar and Loose sought instructor premium pay for training they were asked to perform while on-duty. The Fire Chief/City denied their requests because the Chief had not designated the training as "extra duty."

The Union asserts that the outcome of these grievances turns on the meaning of "extra duty." It contends that "extra duty" is ambiguous but should be interpreted in a manner consistent with a practice of providing instructor premium pay in circumstances such as those at issue here.

The City argues the contract is clear. Unless the Chief "designates" training as "extra duty" instructor premium pay is not owed. Further, the City alleges that because various Chiefs have exercised their designation discretion differently over the years, there is no consistent practice.

It is traditional to begin analysis with a consideration of the contract language itself. However, because the parties spent much time and effort sorting out their respective views on the potential existence of a past practice and related matters, I begin with a consideration of those efforts.

As to each contention that the Union has raised regarding facts it believes support its position, the City has presented evidence that it asserts is contrary to the Union position.

A case in point is the Union claim that instructor premium pay was provided for the same training when performed by the grievants' off-duty. Because the off-duty and on-duty contract provisions have the same qualifying language (i.e. department-required and Chief approved), the Union argues the grievants are entitled to on-duty instructor premium pay. In support of its contention, the Union points to pay stubs that are coded "FIRE INSTR". The City counters with testimony that the code does not reflect receipt of instructor premium pay and that the payment in question only reflects that the grievants worked overtime on the day in question.

Similarly, the Union provided documents showing past instances where premium pay was provided for on-duty training of the type in question. The City counters with past instances in which premium pay was not provided and no grievance was filed. The City further asserts that in some of the instances cited by the Union the premium pay was provided in error.

The Union also provided a 2015 memo from a member of City management that it contends supports its position as to meaning of the disputed contract language. The City countered with a 2020 rejected Union bargaining proposal that it asserts supports its position in the instant dispute. The City also presented testimony supporting its position from a current member of management who was formerly the long time Union President and Union Board member.

From the foregoing examples, it is clear to me that there is no definitive evidence of a past practice that supports either the Union or the City.

Returning to the traditional starting point for analysis of a contract provision, the key phrases are "department-required" and "as designated by the Fire Chief".

The Union takes the view that "department-required" means no more than a supervisor requests or directs an employee to perform the training. The City argues that this phrase is best understood as training that all unit employees are required to receive. This City argument is consistent with a common understanding of the phrase. It is also consistent with the testimony of the former Union President who distinguished between "department-wide" training which does not need to be made up by those who missed it and "department-required" training which does need to be made up. The training in dispute in this matter did not need to be made up.

The phrase "as designated by the Fire Chief" at a minimum reflects the need for some approval by management-either by the Chief directly or someone the Chief has designated as having approval authority. While the Union argues there is no existing process for seeking such approval, it seems that making a request to the Chief is a simple and straightforward method.

The Union protests that if the Chief has discretion to approve or deny premium pay, it follows that no premium pay may ever be authorized. The record reflects that there has been ebb and flow as to receipt of premium pay depending on who is Chief and budgetary concerns. The current Chief has approved premium pay in the past and there is no reason to believe he will not do so in the future.[1]

Given all of the foregoing, I conclude the City did not violate the collective bargaining agreement by failing to pay instructor premium pay.

Issued at the City of Madison, Wisconsin, this 18th day of October, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter G. Davis, Arbitrator

[1] A blanket refusal to approve Premium Pay for all "department-required" training might be subject to grievance attack as an "arbitrary" exercise of a contractual right.