

Brown #6

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between:

EMPLOYER

-and

UNION,

Re: Report Assignments to Acting Lieutenants

OPINION AND AWARD

The undersigned, Barry C. Brown, was mutually selected by the parties under the auspices of the American Arbitration Association to render an Opinion and Award in its case no.: 54 39 1889 79. Hearing was held in the City A City Hall, in City A, Michigan on March 28, 1980. The parties orally summarized their positions at that time and, thereafter, the record was closed.

ISSUE:

Did the Employer violate the collective bargaining agreement when it required certain personnel acting as Lieutenants to complete Michigan Fire Incident Reporting Service (MFIRS) reports?

ARTICLE IV. MANAGEMENT RIGHTS

Section 1. Except as otherwise specifically provided herein, the Management of the Employer and the direction of the work force, including but not limited to the right to hire, the right to discipline or discharge for proper cause, the right to decide job qualifications for hiring, the right to lay off for lack of work or funds, the right to abolish positions, the right to make rules and regulations governing conduct and safety, the right to determine schedules of work, the right to subcontract work (when it is not feasible or economical for the Employer employees to perform such work), together with the right to determine the methods, processes and manner of performing work, are vested exclusively in Management. Management, in exercising these functions, will not discriminate against any employee because of membership in the Union.

Section 2. Rules of conduct not inconsistent herewith in effect at the date of this Agreement shall be continued. Management shall have the right to amend, supplement, or add to said rules during the term of this Agreement, provided, however, that Management shall first meet and confer with the Union prior to any such amendments. Such rules shall be reasonable and shall relate to the proper performance of a firefighter's duties and shall not be applied in a discriminatory manner. It is recognized that rules covering off-duty conduct are related to the proper performance of a firefighter's duties.

ARTICLE VIII. GRIEVANCE PROCEDURE

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Section 3. Grievances will be processed in the following manner and within the stated time limits:

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Step 3. Arbitration

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- b. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The power of the arbitrator shall be limited to the interpretation and application of the terms of this Agreement and the arbitrator shall have no power to alter, add to, subtract from or otherwise modify the terms of this Agreement as written. Decisions, on grievances within the jurisdiction of the arbitrator, shall be final and binding on the employee or employees, the Union and Management.

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ARTICLE XVI. NEW OR CHANGED JOBS

Section 1.

- a. Existing classifications and job descriptions may be amended during the life of the Agreement in a manner consistent with Civil Service Board rules for the maintenance

of the classification plan.

- b. The parties will negotiate as to whether a new and/or changed job should be in or out of the bargaining unit. Disputes as to whether a new or changed job should be in or out of the bargaining unit shall be resolved by the Michigan Employment Relations Commission in accordance with their applicable administrative procedures.
- c. The parties will negotiate as to the salary range for all new and/or changed jobs determined to be included in the bargaining unit.

ARTICLE XVIII. PAY CHANGES

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Section 2. Definitions for Purposes of this Article:

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- e. Salary Step Increase shall mean an increase in compensation to the next higher step in the same pay range.
- f. Acting Assignment shall mean an assignment for a limited time to a position class as determined by the needs of the service; such assignment not involving promotion, demotion or change of status, notwithstanding any provision or rule to the contrary. Acting assignments, when utilized to fill a permanent vacancy, shall be made from existing eligible lists for the position.

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Section 4. Compensation Determinations.

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- e. Acting Assignment:
 - (1) If a man works on acting assignment to a higher or lower position class pursuant to a written order from Management for more than one (1) work day or fraction thereof, he shall be paid at the higher or lower rate beginning on the second day of each work assignment.
 - (2) An acting assignment to a lower position class may be utilized in the event an employee is unable to perform the duties of his regularly assigned position class by reason of loss of Motor Vehicle Operators License, but only for the duration of the loss of the Motor Vehicle Operators License.
 - (3) Duration of acting assignment shall be determined by the needs of the service.

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ARTICLE XXX. MAINTENANCE OF STANDARDS

Section 1. Management agrees that all conditions of employment not otherwise provided for herein relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at the standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

APPENDIX D (Effective July 1, 1979) SALARY STEPS

Code No.	Classification Title	B	C	D	E	F
201	Firefighter	13262	14367	15472	16577	18751
202	Fire Equipment Operator					19698
203	Fire Lieutenant					21564

* * *

STATEMENT OF FACTS:

Employee 1, the grievant, is a firefighter for the Employer. He is assigned to a four man crew which operates the No. 12 engine truck. When that equipment is assigned to a fire, there are normally three men who make the run. The grievant is the firefighter on the crew and there is a driver (Equipment Operator) and the Lieutenant who is in charge. It is the Lieutenant on the crew who fills out the fire incident report after the fire fight is completed. This report is a highly structured document which is required by the Michigan State Police Fire Marshal's Division. The Michigan Fire Incident Reporting System (MFIRS) report requires information about the equipment used in response to the alarm, the weather conditions, occupant information, structure information, information regarding the origin and nature of the fire, casualty reports, property loss estimates, gallons of water pumped, hoses used, and other data. The Lieutenants have been given many hours of training by the Employer in correct completion of these reports. The Union and the Employer recognize that the completion of such reports is a regular part of the job

description of a Lieutenant.

Frequently, the engine truck is called to a fire when one of the regular crew is not in the station. One of the personnel assigned to the truck could be off duty because it is his day off or he is ill or on a training assignment. In such cases, the men on duty are temporarily upgraded and they take an acting assignment in a higher position on a voluntary, seniority basis. Thus, the firefighter grievant here has often been given the job as acting Lieutenant on a fire run. Prior to November 1, 1979, the department described the acting Lieutenant's (Straw Boss) report completion duties as follows:

When the final draft of the Reporting Procedure Adjustments was made one important feature was not included. This procedure has to do with a single machine response when a "Straw Boss" is in charge.

When a single machine responds to an alarm and a Straw Boss is in charge, the Straw Boss will be responsible for obtaining all the necessary information that will be required to properly complete the report(s). The Company Officer next on duty will have the responsibility for properly completing the necessary report(s). Men in charge on an acting assignment will not be given the responsibility of making out the reports. This is one of the company officers most basic responsibilities. However, these men should be sufficiently familiar with the report so that they are aware of what information they are required to complete.

The policy regarding completing these reports was clarified on November 18, 1978, by the following directive from the Deputy Chief:

The 1979 M.F.I.R.S. material is essentially unchanged from 1978. The FM-18A and FM-18B reports are the same and we will be using the same Handbook (FM-18C).

The purpose of this directive is to consolidate all the State material, and our numerous information additions, that have been issued since the present reporting system was started.

As in the past it is imperative that the company officers become thoroughly familiar with all the related material and their provisions. This is the one most important essential that allows the proper completion of the required reports. All questions about the meaning or intent should be directed to the office person in charge of the Fire Department Records, who presently is Person 1. Final determination of any unresolved problems or additions

will be made at the Deputy Chief level and, if necessary, the Handbook updated to reflect those decisions. On page 4 of the Handbook there is a paragraph entitled "What Is The Sequence To Follow In Filling Out the Forms?" This should be reviewed until it becomes an established habit when completing the forms.

POLICY:

Forms FM-18A and Fm-18B will be completed, whenever possible, by the responding Engine Company Officer in whose inspection district the incident occurs. When this position is filled by an "acting assignment individual" and there is a Truck Company Officer present from the same station, it will be his responsibility to complete the required reports. When there is no Company Officer present from the involved district the "acting assignment person" from the Engine Company of that district will be responsible to accumulate all the necessary information to properly complete the required reports. It will be the company officers responsibility to properly instruct these acting assignment individuals so that they know exactly what information, in varied circumstances, it will be necessary for them to obtain. In circumstances, not covered here, or in unusual cases, the Battalion Chief in charge of the incident will assign an individual the responsibility for completing the required reports. When an individual in an acting assignment gathers the necessary information, it will be the responsibility of a company officer from that company to actually complete the required reports.

The officer completing the report must sign (legible signature) the report in the proper space. If a chief officer is in charge of the incident his name must be typed or printed in the appropriate space with enough room left for his signature. The chief officers will review all reports for incidents in which they are in charge. After satisfying themselves that the report is essentially correct, they shall also sign the report.

However, so as not to unduly delay the reports, if a completed report is at a station for more than two days, it should be sent to the record office. The chief officer can sign it there at his first opportunity.

A diagram or drawing of the fire scene, on the back of the original FM-18A report only, will be required when a supply line is laid from a hydrant or tanker, and used, in all structure or vehicular fires.

First aid reports are required whenever a person is given first aid or emergency medical treatment by our personnel, in station or out. It is not necessary that first aid supplies be used to require a first aid report. If any type of treatment is given a first aid report is required. [Five pages of specific instructions followed.]

On November 1, 1979, this policy was, changed regarding the individuals on acting assignment as follows:

POLICY:

Forms FM-18A and FM-18B will be completed by the individual in charge of the responding engine company in whose inspection district the incident occurs. On a single machine still it will be the individual in charge of the machine, regardless of the response location, who will be responsible for the report. It will be this individual's responsibility to accumulate all the necessary data and to properly and correctly complete the report(s). This applies to the individual in an acting assignment as well as the company officers. In multiple alarms, unusual situations, or to equitably distribute the work load, the Battalion Chief may, if he deems it advisable, assign the responsibility to another individual.

The required reports will be completed and ready to be submitted to the Fire Records Office by the responsible individual no later than their duty day following the date of the incident. If this time span is more than five days another officer of the company will complete and submit the report(s). If for some reason the report cannot be submitted on time the Fire Records Office must be called and notified as to when they can expect the report and the reason for the delay.

The individual completing the report must sign (legible signature) the report in the proper space. If a chief officer is in charge of the incident his name must be typed or printed in the appropriate space with enough room left for his signature.. The chief officer will review all reports for incidents in which they are in charge. After satisfying themselves that the report is essentially correct, they shall also sign the report.

However, so as not to unduly delay the reports, if a completed report is at a station for more than two days, it should be sent to the Records Office. The chief officer can sign it there at his first opportunity.

A diagram or drawing of the fire scene, on the back of the original FM-18A report only will be required when a supply line is laid, and used, from a hydrant, tanker or other water supply.

Instructions for the completion of the First Aid Care Report Form will be detailed in a separate directive.

[Five pages of specific instructions followed.]

The grievant said that because the acting Lieutenant had to complete this report, certain more senior firefighters were passing up such temporary upgrading opportunities and he was more often required to take such assignments. He said it now happens about three times a month. He said he had had no problem accumulating the necessary data for the report as he had in the

past, but he had difficulty in completing the complex report because he had had no schooling about its completion. Further, he said that after a major fire it could take two hours to complete the report. Even though there is a MFIRS book which explains the report available to him, he says it is difficult to understand and it takes him extra time to fill out the forms because of his unfamiliarity with it. Finally, the grievant notes that his pay as a Lieutenant does not begin until after he has completed one work day in the higher assignment (Article XVIII, Section 3), and he is, therefore, often required to do the more complicated part of the Lieutenant's job when he is being paid at a firefighter's rate. The grievant did say he has acted as a Lieutenant for periods of as long as one month and he did all of a Lieutenant's job assignments then (except payroll) and received a full salary as a Lieutenant during such entire period.

The Union was particularly concerned that the grievant or men like him could be required to make a completed report when he was the acting command officer on the engine (pumper) truck assigned to a major fire involving several pieces of equipment. They felt this would be particularly unfair because of the complexity and importance of such report and the fact that a firefighter would be expected to complete it even though several other officers from the department would be present, at such a major fire. Further, they felt that this additional burden would be unfairly placed on just the men in engine companies because the department's policy did not affect men on acting assignments as squad officers or aerial truck officers.

In the negotiations for the present contract between the parties, the Union sought immediate full pay for an individual who was upgraded to a higher paying position. While the Union was not able to secure the higher pay for the first work day of an acting assignment, they were able to eliminate the several intermediate salary steps for the higher classifications in Appendix D of the collective bargaining agreement. This new pay practice took effect on July 1,

1979. The parties did not discuss what duties would be done by a man on acting assignment, however, the existing job descriptions were well known to both parties during negotiations. The Union said it did not anticipate that men acting as Lieutenants would be now expected to do more report work than they had in the past. The Employer said it presumed that a man acting in a higher rank and now being paid the full salary for that rank would perform fully all of the duties of that position.

The Employer did show that report making policies have been regularly changed in the past by the Fire Chief without objection by the Union. Further, the Employer noted that the paperwork requirements had been increased for all officers in recent years. Finally, they said that the experience gained by an employee on acting assignment could be helpful to him for future promotions to such higher rank.

The parties were unable to resolve this grievance at the various steps of the grievance procedure and it is now before the arbitrator without claim of a procedural defect.

THE UNION'S POSITION:

The Union contends that a firefighter who is only acting as a Lieutenant should not be expected to do everything which is performed by an individual who normally holds that rank. Further, they say that the job description for a Lieutenant was the same in the past when men on acting assignment were not expected to complete the MFIRS report. They argued that, therefore, the Employer should not enlarge the duties of men on acting assignment without a corresponding change or addition to the job description. They also said that even if the Employer has the right to make such changes, they should have first met and conferred with the Union as required in Article IV. Finally, the Union asserted that this change by the Employer was retaliatory because

the Union had secured a higher salary for men on acting assignment in negotiations. The Union said this act had changed their general working conditions in effect at the time the contract was signed and, thereby, the Employer violated the Maintenance of Standards provision in the collective bargaining agreement (Article XXX). For these reasons, the Union asks that the Employer's assignment of the MFIRS report completion to men on acting assignments be declared a violation of the agreement and that the Employer be ordered to discontinue such policy.

THE EMPLOYER'S POSITION:

The Employer maintained that Article XXX only prevented changes in conditions of employment not provided for in the collective bargaining agreement. They said that temporary assignments and acting assignment compensation and job descriptions were all covered by the agreement and, therefore, the Maintenance of Standards provision did not apply. Further, the Employer said that its management rights, as set forth in Article IV of the contract, clearly gave it the right to determine the manner of performing work by its employees. The completion of reports is a work assignment and changes in such assignments are within the prerogatives of management. The Employer also said that changes in the method and manner of form completion had been frequently made in the past, well establishing its practice in this area. The Employer also contended that in the past it had chosen to not involve the acting Lieutenants in the MFIRS report completion as its election of how work was to be performed. Thus, that past policy is not a binding past practice which should govern the outcome of this case. The Employer said also that when a person is assigned, paid and classified in a higher rated position, they may be required to do all the tasks normally performed in that higher rank and there is no contractual basis to exclude a portion of such assignment from someone temporarily assigned to

that job. Finally, the Employer said it has not changed any work rules requiring that it meet and confer with the Union under Article IV. For all of these reasons, the Employer asks that the grievance be denied.

DISCUSSION:

The change made by the Employer on and after November 1, 1979 was a change in work assignment and not a work rule change of the sort requiring that it meet and confer with the Union. The mention of "performance of a firefighter's duties" in the contract language is a statement of protection of a firefighter's private life activities and simply limits the Employer's right to promulgate rules which are not job related. It is clear that the meet and confer rights of the Union, set forth in Article _IV, Section_2 does not require the Employer to_ preliminarily discuss job assignment changes with the Union.

Article IV does give the Employer the exclusive right to direct the work force and to determine the methods, processes and manner of performing work. They cannot use this right to improperly assign the work of one job classification to another. But in this case, we have the grievant acting as a Lieutenant and being required to do work which is in the long standing job description for a Lieutenant. Thus, this is not a case where work is being moved from one classification to another. Rather, it appears to be a question of whether an acting Lieutenant can be assigned the same work as an employee regularly so classified. The arbitrator can find no contract provision that makes a distinction in the duties of a man on acting assignment from one who is permanently assigned. The arbitrator is bound to not modify or add to the terms of the agreement. On its face it appears that management has exercised its rights properly.

The Union asserts that there was a binding past practice which created a working condition which is protected by the Maintenance of Standards provisions of Article XXX.

However, that section clearly excludes matters which are expressly covered by the contract provisions. Here, the management rights clause (Article IV) and the provisions of the work assignment (Article XIV) and the compensation section (Article XVIII, Section 4(e)), seem to expressly cover the rights of firefighters who are temporarily upgraded. The Employer's choice of not requiring MFIRS report completion by acting officers prior to 1979 was not a binding practice but, rather, was the Employer's exercise of its prerogative of work assignments. It was this same power which excluded squad and aerial truck officers from report completion. In the future, the department could require them to make such reports and they would have no grievance. In conclusion, the job description governs; the person who is a Lieutenant, acting or regular, on an engine truck must make out the MFIRS report.

However, the Union did make two valid points in their grievance that must also be addressed by the arbitrator. First, it is unfair, and an arbitrary exercise of management's rights to direct an employee to do a complicated act without proper training. The men who are regularly upgraded to act as Lieutenants must be trained, as are officers, on how to complete the MFIRS reports. It is surely not enough to direct them to a complex instruction book nor to expect the officer in the station to adequately train them. They should receive classroom instruction so that they can comfortably and promptly complete their reports.

Secondly, it is also unreasonable and an arbitrary exercise of management's rights to expect the relatively inexperienced and untrained acting Lieutenant to complete a MFIRS report at a major or multi-alarm fire. In such cases, the Battalion Chief or the highest ranking officer at the fire must assign another regular officer to complete the needed MFIRS reports. The complexity and importance of such reports at a major fire demands the judgment and training of a regular officer and it is not reasonable to expect a man on acting assignment to assume such

responsibility when other qualified and experienced officers are also at the fire scene and available for such assignment.

AWARD

The grievance is denied in part. Acting officers must complete MFIRS reports. However, in major fires another regular officer at the fire scene will be assigned such duty. Further, individuals regularly expected to complete MFIRS reports will be properly trained for such assignment.

DATED: April 29, 1980

BARRY C. BROWN,

Arbitrator

P.S. The arbitrator determines that neither party entirely won this case so the fee is to be split equally.