

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between  
Professional Firefighters Association of  
Nassau County, Local 1588, IAFF, AFL-CIO

And

The Village of Garden City

Grievance: Improper Transfer of Bargaining  
Unit Work

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APPEARANCES:

On behalf of the Village of Garden City  
Bond, Schoeneck & King, PLLC  
By Terry O'Neil, Esq.

Professional Firefighters Association of  
Nassau County, Local 1588, IAFF, AFL-CIO  
Meyer Suozzi  
By Richard S. Corenthal, Esq.

ISSUE PRESENTED:

The essence of the instant dispute as formulated by the Union is “whether the Village of Garden City violated the parties’ Collective Bargaining Agreement by transferring bargaining unit work from the paid career Fire Fighter represented by the Union to volunteer fire fighters outside of the bargaining unit in violation of the Union’s exclusive jurisdiction over the operation of the first line response fire apparatus, including the operation of the first line ladder truck...”

The Union’s formulation clearly identifies the issue as presented at the hearing and is adopted as the issue.

The grievance underlying this proceeding states:

“Local 1588, Professional Firefighters Association of Nassau County (“Union”) grieves the directive dated November 19, 2017 unilaterally issued by Fire Chief Gallo. The new directive does not comply with the Award of Arbitrator Barbara Deinhardt in AAA Case No. 13 300 0175 012, confirmed by the Appellate Division, Second Department and the collective bargaining agreement, including Articles I and VI and assigns operation of first line ladder truck to volunteers. Immediately cease and desist from assigning bargaining unit work to non-bargaining unit members and make Union members whole for any lost compensation as a result of improper assignment of bargaining unit work to non-bargaining unit members.”

The factual basis on which the grievance rests originates in a November 19, 2017 Order issued by Garden City Fire Chief Brian Gallo that stated that:

“moving forward when dropping below 3 members of Hq company please assign the 2 remaining members to the engines we will not cover with overtime, and the ladder will be covered by Engine and Truck company.”

The reference to “Hq. Company” refers to paid firefighters and the reference to Engine and Truck company refers to volunteers.”

As the Union sees it, “...the Order resulted in a transfer of bargaining unit work historically performed exclusively by the paid members of the GCFD, who are represented by the Professional Firefighters of Nassau County, Local 1588 (“Union”), to volunteer members of GDFD.”

This issue has been subject to several previous arbitrations and has also been submitted to the courts for review. One of the underlying arbitration awards, issued by Arbitrator Barbara C. Deinhardt, found that, beginning at least with a codified Standard Operating Protocol which had been negotiated between the Village and the Union, the professional firefighters have exclusive jurisdiction over operating first line apparatus. The instant dispute involves just such work. The Deinhardt award was confirmed by the NYS Appellate Division Second Department which found that Arbitrator was within her rights in assigning the operation of first line apparatus to the professional firefighters since that is what the Standard Operating Protocol provided. As recently as May 23<sup>rd</sup>, 2018 the Appellate Division Second Department found in favor of the Union in

grievances involving its right to arbitrate improper transfers of bargaining unit work to volunteers. The essence of the matter is the Union's exclusive jurisdiction over first line service apparatus.

The Village argues that this proceeding cannot review the question of whether the Village violated the Deinhardt award. The issue in this proceeding is not enforcement of the Deinhardt award but, rather, raises a similar issue as the Deinhardt matter, i.e. whether the Village violated the current contract by transferring bargaining unit work to non-bargaining unit volunteers. (See Issue framed above.) An issue as defined in the Contract is a "dispute arising out of the interpretation, application, performance or construction of the terms of this agreement...".

The Village argues that it did not violate the terms of Article 1(Recognition) since the recognition clause merely identifies the positions included in the unit; additionally, that it did not violate Article VI which describes the job description of firefighters. The Village also argues that Article VI does not grant exclusivity to the work nor does it require the continuation of past practices.

The core of the Village's argument rests on Article XVII – Management Rights which, inter alia, allows the Village to "contract for the performance of any of its services and increase or decrease the scope thereof." Management argues that an agreement that allows the Village "to contract out all of the paid firefighters' services certainly must have provided it the right to arrange for other in the Village (volunteers) to perform their work." As the Village observes, the Public Employment Relations Board has recognized the a "public employer need not negotiate with respect to its mission or changing the level of services to be provided." In this case it did not.

The Village observes that the Article VI job description, while quite detailed, says nothing about a grant of exclusivity to paid fire fighters. It argues that the without such a specific contractual grant of exclusivity, it remains free to do what it did. It also points out that, since the

contract has no past practice clause to support the argument of exclusivity, it is free to alter existing practices (*City of Saratoga Springs, 16 PERB 3058*).

In addition, citing negotiation proposals dealing with minimum manning which were made over the year without success, the Village argues that the paid firefighters should not be allowed to obtain through arbitration what it failed to successfully negotiate.

The Union rests a good part of its argument on language from the Deinhardt February 2013 Arbitration Award in which she finds that the Standard Operating Procedure negotiated between the Union and the Village effectively grants the Union exclusivity over operating first line apparatus, “since as to the work in question, the parties have negotiated the allocation of the work between the professional fire fighters and the volunteers. The employer cannot now unilaterally change the negotiated allocation.” Additionally, Arbitrator Deinhardt found that by agreement of the parties the “professional fire fighters have exclusive jurisdiction over operating first line apparatus, i.e., apparatus that first responds to an alarm, with a limited exception related to the turntable position, which exception does not encroach on the exclusivity of the bargaining unit over first line service operations.” Arbitrator Deinhardt’s Award and Opinion is not binding on this arbitrator, but it does have some persuasive significance.

As the Union sees it, the order of Chief Gallo does precisely what was prohibited in the Deinhardt award. Chief Gallo’s Order of November 19, 2017 order effectively transferred bargaining unit work from the paid career Fire Fighter represented by the Union to volunteer fire fighters outside of the bargaining unit.

The record reflects that in 2002 the Village Administrator Robert Schoelle signed an agreement with the Union which expressly acknowledged a Village Standard Operating Procedure that the “bargaining unit represented by Local 1588, PFFAA, IAFF, has, exclusively driven and

operated all equipment of the Garden City Fire Department heretofore designate as first line equipment.” That agreement also states that “occasional turntable use by a volunteer does not encroach on the exclusivity of the bargaining unit over first line service operation.” The Union argues that the instant case “does not involve an exceptional or aberrational circumstance warranting a limited exception to the Union’s exclusive work jurisdiction.” It also argues that “Given the substantial reduction in the size of the bargaining unit as a result of layoffs, retirements, and attrition, the violation of the Union’s work jurisdiction is completely manufactured and engineered by the Village’s failure to backfill vacant positions without causing overtime.”

The Union argues that this matter is an attempt by the Village to usurp the Union’s exclusive jurisdiction over first line service apparatus; an attempt, it argues, that the Village has tried frequently to obtain at the bargaining table, without success.

#### DISCUSSION:

The Contract describes the job of a firefighter as including:

General: Under supervision assist in preventing, controlling and extinguishing fires and perform related duties as required.

Complexity: The duties require the exercise of good judgement under hazardous and dangerous conditions.

Typical:

1. Enforce laws, ordinances, rules and regulations and regulations regarding the prevention, control and extinguishment of fires.
2. Perform inspectional, investigational and regulative duties connected with the prevention, control and extinguishment of fires.
3. Respond to fire alarms and emergency calls.
4. Lay, connect, direct, pickup and store hose lines.
5. Erect and climb ladders.
6. Enter burning buildings.

7. Rescue and remove people from burning buildings and dangerous situations and assist in giving first aid to the injured.
8. Perform salvage operations and remove debris as directed.
9. Learn and practice new methods of firefighting, fire prevention and first aid.
10. Perform maintenance and repair of buildings and grounds.
11. Perform assigned clerical tasks.

The record in this proceeding establishes that the Village has tried, unsuccessfully, to persuade the Union to give up exclusivity without success. In successive contract negotiations sessions over the years, management has asked for this concession, and never gotten it.

In 1989, 1992, 1996, 2000 and 2004 the Union proposed in negotiations that Headquarters engine and ladder be manned by a minimum of two paid Fire Fighters on all weekdays of the year. The proposal was never adopted by the Village. As Management observes, the Union should not get in contract interpretation arbitration what it was unsuccessful in getting at the bargaining table. That understanding is generally adopted by most arbitrators. But minimum manning is not the same issue as exclusivity, and jurisdiction over the work. The issue in this case is precisely whether bargaining unit work that has historically been given by contract to the paid members of the GCFD can be unilaterally transferred to unpaid GCFD volunteers.

The Deinhardt Award established the principle that should be followed. When read with the Standard Operating Procedure which was negotiated between the parties in 2002, and repeated with agreements with subsequent chiefs, it is clear that the professional firefighters have exclusive jurisdiction over the disputed work. This arrangement has been directly negotiated between the Union and various chiefs. It has stood the test of time and should remain undisturbed. It cannot, as Arbitrator Deinhardt ruled, be unilaterally changed. Even without the Deinhardt precedent, the logic of the principle articulated in her decision would apply to any analysis of the issues.

It must be found that the Village of Garden City violated the parties Collective Bargaining Agreement by transferring bargaining unit work from the paid career Fire Fighter represented by the Union to volunteer fire fighters outside of the bargaining unit in violation of the Union's exclusive jurisdiction over the operation of the first line response fire apparatus, including the operation of the first line ladder truck. It cannot be disputed that the Union has "exclusive" jurisdiction over work covered by a collective bargaining agreement. Representation of persons within the bargaining unit lies within the purview of the Union. The use of volunteers has existed over the years but cannot be done to replace unit members.

The work described in Article VI is there for a purpose, and identifies the work which is the subject of the agreement. This detailing of the work has been there since the contract's inception, and must be given its plain meaning. The union has primacy over the work. Even if it were to be found that the Union had failed to enforce that primacy in the past; the right continues in to exist in Article VI and must be enforced.

July 6, 2018

  
John M Dorfoghue

AWARD OF ARBITRATOR

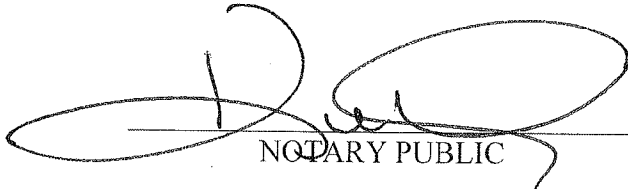
The grievance is sustained. The Village of Garden City violated the parties collective bargaining by transferring bargaining unit work from the paid career Fire Fighter represented by the Union to volunteer fire fighters outside of the bargaining unit in violation of the Union's contractual jurisdiction over the operation of the first line response fire apparatus, including the operation of the first line ladder truck. It shall cease and desist from any further such transference of bargaining unit work. Volunteers may continue to be called but only after paid career firefighters are called. No further remedy is awarded at this time.

July 6, 2018

  
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JOHN M. DONOGHUE

State of New York    )  
County of Dutchess   )

On the 6<sup>th</sup> Day of July, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared John M. Donoghue, personally known to me to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature he executed the instrument.

  
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NOTARY PUBLIC  
KELLIE MCCRAY-GENTLE  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01MC6033171  
QUALIFIED IN DUTCHESS COUNTY  
COMMISSION EXPIRES: NOVEMBER 15, 2021