

IN THE MATTER OF
ARBITRATION BETWEEN

SPRINGFIELD FIREFIGHTERS ASSOCIATION, LOCAL 648, IAFF, AFL-CIO
and

CITY OF SPRINGFIELD

Interest Arbitration
Case No. JLMC-14-3657F

Arbitration Panel: Beth Anne Wolfson, Neutral Arbitrator
Dean Mazzarella, Management Representative
Robert T. Taylor, Fire Representative

Appearances:
For the City: William E. Mahoney, Director
Department of Human Resources and Labor Relations
For the Union: Joseph G. Donnellan, Esq.
Angoff, Goldman, Manning & Hynes, PC

Decision and Award
By the Arbitration Panel

Background

The City of Springfield (City) and the Springfield Firefighters Association, Local 648, IAFF, AFL-CIO (Union) are parties to a collective bargaining agreement that expired June 30, 2012. The Union represents a bargaining unit composed of approximately one hundred seventy-seven (177) firefighters, forty-one (41) lieutenants, and fifteen (15) captains. The District Chiefs, Deputy Chiefs, and the Chief are not part of the bargaining unit. The City is the third largest in Massachusetts, with a population of about 153,000.

A petition was previously filed with the Massachusetts Joint Labor Management Committee (JLMC). On January 9, 2015, the parties through their duly authorized representatives agreed to proceed directly and voluntarily to arbitration of the dispute currently before the JLMC. By letter dated January 29, 2015, the undersigned neutral was appointed by the JLMC to serve as Chairman of the Arbitration Panel. The Management member of the panel was JLMC Committee member Dean Mazzaella, and the Union member was JLMC Committee member Robert T. Taylor.

An arbitration hearing was held on March 16, 2015, before the tripartite panel. At the hearing, the parties were given full opportunity to present evidence and make arguments on their outstanding issues. By agreement, the parties submitted pre-hearing briefs, and presented closing arguments rather than submit post-hearing briefs.

Issue in Contention

The parties agreed that an award would be rendered on the issue of the language in Article 12, Swapping of Tours.¹

City's Proposal

The City took the position that the language of Article 12.02 should be as follows:

Effective upon the ratification of the arbitration award by the Springfield City Council employees of the Department may exchange time with other employees of the Department under the following conditions:

1. Employees may request an exchange of time six (6) times per calendar year.
2. There will be four (4) quarterly exchange periods January 1-March 31, April 1-June 30, July 1-September 30, October 1-

¹ The parties resolved all other outstanding issues prior to the arbitration hearing and came to agreement on a 1-year collective bargaining agreement with a term from July 1, 2012 to June 30, 2013, and a 3-year collective bargaining agreement with a term from July 1, 2013 to June 30, 2016.

December 31. All exchanges must be completed within the designated exchange period.

3. An employee who fails to complete an exchange during the above exchange periods will be required to complete the exchange during the first week of the following exchange period and will forfeit the ability to exchange tours for the quarter following the quarter when the exchange was scheduled to occur. An employee who fails to complete two (2) exchanges during the above-referenced exchange periods in a year shall forfeit the ability to exchange tours for one (1) year.²
4. Employees may exchange time only with Employees of their assigned Company or, if none being available, with other employees of their assigned station, except in unusual circumstances, or if time is owed as the result of a previous exchange.
5. Application for an exchange of time shall be made only on forms provided for this purpose.
6. Employees may only exchange time for good and sufficient reason; however requests shall not be unreasonably denied.
7. Employees may exchange time for a maximum of two (2) consecutive tours of duty with the approval of the Company officer and the Deputy or District Chief in command.³
8. All swaps initiated before the ratification of the arbitration award in JLMC case No. 14-3657F, shall be considered completed at midnight on March 31, 2015.⁴

City's Argument

The City argues that tracking the firefighters' swaps is too difficult, therefore, it seeks reasonable parameters. Its current computer software does not track swaps well; the system does not monitor when/if a swap is repaid and it does not track who owes a swap unless special reports are written and reviewed. This is a time consuming process and diverts resources from other administrative tasks. Limiting swaps to a maximum of six (6) swaps per year is fair and reasonable. In 2014, 72.3% of the City's firefighters used six swaps or less, which is further

² The City has asked that paragraphs 1-3 above be awarded by the Arbitration Panel Award.

³ Paragraphs 4-7 of its request are already contained in subparagraphs (2)-(5) of the parties' prior collective bargaining agreement.

⁴ During the City's closing argument it withdrew paragraph 8 of its request.

proof that the six swap limit is reasonable. Combined with requiring that swaps be repaid within each calendar quarter would ensure that swaps are repaid and there aren't outstanding balances. This is necessary because the Public Employee Retirement Administration Commission (PERAC) now requires the Fire Commissioner certify that a retiring firefighter has repaid all swaps.

The City also contends that a cap would eliminate abuse of swaps. Since 2009, when the City began using electronic records, there is an outstanding balance of 1,481 swaps owed. In 2014, 33 firefighters used 10 swaps or more. Of that group, 7 used 20 or more swaps and one firefighter had 36 swaps. In addition, excessive use of swaps creates a situation where firefighters are not available to drill with their teams, adversely affecting their training. Swaps also cause teams to be unavailable to serve the public.

The City also argues that limiting the number of swaps and the time period for repayment would bring the City's firefighters in line with comparable collective bargaining agreements. The City's patrol officers and its Police Supervisors both have a 6-week cycle for swaps. The City of Chicopee, which is adjacent to Springfield, and the City of Holyoke limit their firefighters to 10 swaps per year. Furthermore, in a recent JLMC award, the repayment period for swaps in the Plymouth Police Department was limited to 60 days in light of the PERAC certification requirement.

Finally, the City asserts that it gave firefighters a 1.5% increase in return for operational changes. The changes were a reduction from 16 to 14 firefighters who can be absent at once, and the ability to come before this panel to resolve the swaps issue. In light of this, the City should get the swap language change it proposes as part of its *quid pro quo*.

Union's Proposal

Status quo.⁵

Union's Argument

The Union takes the position that it is not insensitive to the number of outstanding swaps, however management never notified employees of their outstanding swaps. Furthermore, the City does not even follow the language in the parties' collective bargaining agreement. The Union is merely looking for the "benefit of the bargain," *i.e.*, following the contract language.

The Union argues that the City could employ other methods to control swaps. For example, it could make a person clear up his/her outstanding swaps before being promoted. In addition, it acknowledged that putting a cap on outstanding swaps would be a good idea. The Union contends that the parties' system should not be thrown out just because of a couple of abuses, particularly because those situations were not brought up to the individuals involved or to the Union.

The Union also contends that requiring a set time per quarter to take and payback a swap does not give firefighters with short-term needs time to arrange a payback. In fact, no neighboring communities use this type of system. Furthermore, the use of swaps cuts down on overtime and sick leave. With respect to the City's argument that swaps cause firefighters to work away from their regular assignment and affects training, the Union asserts that firefighters work away from their assignments on every shift because of overtime and detailing firefighters to stations where they are not regularly assigned to balance out shifts.

⁵ In its closing the Union stated that it is seeking the "benefit of the bargain," *i.e.*, that the parties follow the current language in Article 12 of their collective bargaining agreement. It also indicated that a member should finish up any outstanding swaps before being promoted. Finally, it indicated agreement with the concept of a cap on outstanding swaps.

Finally, the Union asserts the 1.5% adjustment was for operational changes agreed to, i.e., the change from 16 to 14 firefighters absent at one time. This makes getting time off more difficult. There was no reservation language concerning the swaps. Changing the swap language would make getting time off even more difficult.

Discussion

Article 12 of the parties' collective bargaining agreement covers swaps. There is currently no limitation to the number of swaps that can be made in a calendar year and no limit on when a swap must be repaid. Although Article 12.01(2) contains some limitation on who may swap with whom, according to testimony this language has not been strictly enforced. In addition, before 2009 the City had no computer system by which it could track swaps. Finally, because firefighters may not swap with lieutenants or captains, once a firefighter is promoted he/she cannot repay an outstanding swap to a firefighter.

While the Panel has noted the City's position that tracking swaps, even with its current computer software system, can be time consuming, that is a function of management. In fact, Article 12.01(7)(c) specifically states that captains will keep records of all swaps within their respective companies and will submit copies of their reports concerning authorized swaps for the previous calendar year, through channels, to the Commissioner in January. This contractual obligation predates the City's installation of its current software. In addition, pursuant to PERAC's Memo concerning Shift Substitution, Credible Service and Regular Compensation (City. Ex. 1, book 1, tab 5), the City is obligated to keep accurate records because of its certification obligation. The Panel also notes that PERAC, in its Memo, stated "[t]here is at least one software provider who offers shift substitution' software for employers."

Even though the City may not have notified the Union or individual firefighters about the number of outstanding swaps, both should have been aware of who had swapped shifts and who still needed to repay a swap. Furthermore, in light of the fact that a retiring firefighter's retirement credit is affected by whether he/she has repaid all swaps, it is incumbent on the firefighters to fulfill this obligation.

Both parties offered some evidence of how other communities have handled the issue of swaps. The City provided the contracts for Chicopee, a much smaller community adjacent to the City, as well as contracts for Holyoke, Northampton, Westfield, and West Springfield. It also provided JLMC awards for the Plymouth police and the City's patrol officers, and the Memorandum of Agreement between the City and its police supervisors. The Union provided the Memorandum of Agreement between the City of Boston and its firefighters and the JLMC award for the Plymouth firefighters. The Panel finds the information from other communities illustrative of the various methods by which swaps may be handled, but not dispositive of the issue because none of the other communities meets the criteria for comparability. With respect to the City's internal contracts, the Panel also does not find these to be dispositive because they involve bargaining units with different duties and schedules.

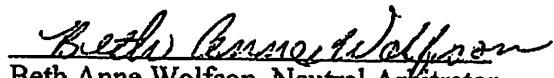
The swap system permits firefighters to fulfill a family obligation without drawing down various types of leave. It is meant to provide some flexibility, not to augment other leave balances. In light of the evidence and arguments presented, as well as the excessive use and repayment problems encountered under the current system and the PERAC requirement, the Panel finds that some limitation on the use of swaps is warranted. The Panel is not persuaded in its decision by either party's argument concerning the impact of swaps on training.


Award

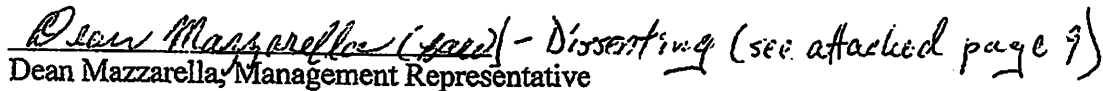
Article 12.01 shall be modified as follows (with all other sections remaining the same):

- (1) From the date of the Decision & Award in JLMC-14-3657F going forward employees may request exchanges of time; however, an exchange must be repaid within nine (9) months of the date of the exchange. Any employee who fails to repay an exchange within nine (9) months of the date of that exchange will not be permitted to request any exchanges of time until all delinquent exchanges have been repaid. Furthermore, an employee may not carry more than six (6) unrepaid exchanges at any time and will not be permitted to request further exchanges of time until his/her unrepaid balance goes below six (6).⁶
- (3) Application for an exchange of time shall be made only on forms provided for this purpose. The form shall include the date by which the exchange must be repaid.
- (7)(c) Company captains shall keep a record of all approved exchanges of time requested by the members of their respective companies and a copy of this report shall be submitted to the Commissioner, through channels, in January of each year, which shall cover exchanges of time authorized in the previous calendar year. Upon receipt, the Commissioner shall submit a copy of said report to the Union President.

Respectfully submitted this 8th day of April, 2015,


Beth Anne Wolfson, Neutral Arbitrator


Robert T. Taylor, Union Representative


Dean Mazzarella, Management Representative

⁶ The Panel believes the parties are best suited to resolve the issue of the outstanding unrepaid swaps that existed prior to the date of this Award. It behooves the parties to do so because a failure to resolve unrepaid swaps incurred prior to the date of this Decision & Award impacts both the City's certification obligation to PERAC and the credible service of those firefighters with outstanding unrepaid swaps at the time of retirement.

Beth Wolfson

From: Dean Mazzarella <DMazzarella@Leominster-MA.gov>
Sent: Wednesday, April 08, 2015 10:10 AM
To: Beth Wolfson
Cc: bobtaylor3@comcast.net
Subject: RE: Signed award JLMC-14-3657F

Sensitivity: Confidential

Beth,

My comments of dissent are as follows:

The city on a number of occasions and in testimony spoke in detail regarding the serious issues created by the current swapping system. The city pointed out that the current system allowed several Firefighters to owe excessive days to others who've worked for them, made it difficult to track, caused issues with the unpredictability of knowing who was working day to day and at times and became extra work for clerical staff to reconcile year end reports.

In my opinion the decision did little to address the number of swaps that the city asked for, did little to lessen the burden on the accounting and reporting and did not provide for any resolution for the existing accumulated days that remain on the books.

The decision provides no remedy for a benefit that was originally created for occasional use and now has become regular use.

It is still my opinion that a cap on days per year and a payback period of 6 months would have been a reasonable option . It is important to note that the city's position was never to abolish the system but instead too repair it and make it more reasonable .

I'd like to thank all parties for their hard work and time.

I wish you all a good day.

Dean