

American Arbitration Association

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

**CHELMSFORD FIREFIGHTERS UNION, LOCAL 1839, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS**

-and-

TOWN OF CHELMSFORD

Case Number: 01-16-0001-6208

AWARD OF ARBITRATOR

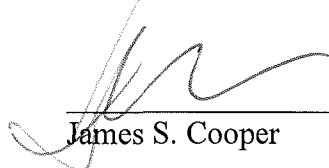
THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named Parties dated June 18, 2013, and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

For the reasons set forth in attached Opinion and Award, the following is hereby awarded:

Chief [REDACTED] did not have just and sufficient cause to veto the bid of Firefighter [REDACTED] in March 2016. In a truly Solomon-like remedy, the following remedy is hereby awarded:

1. In September 2017 the Chief shall award Firefighter [REDACTED] bid to Engine 5 and veto Firefighter [REDACTED] bid thereto.
2. In April 2018, the Chief shall award Firefighter [REDACTED] bid to Engine 5 and veto Firefighter [REDACTED] bid thereto.
3. This alternate awarding of bids to Engine 5 shall continue until (a) one of the two firefighters no longer seeks to bid to Engine 5; or (b) Firefighters [REDACTED] and [REDACTED] submit a written agreement to the Chief that they will honor and respect the other and fulfill the basic duties of the senior firefighter at Engine 5.

Date: May 1, 2017


James S. Cooper

2. If so, what shall the remedy be?²

Facts

In early March 2016 Firefighter [REDACTED] bid to work on Engine 5 on the Unit 2 shift beginning on April 3, 2016. On March 10, 2016 Chief [REDACTED] vetoed Firefighter [REDACTED] bid and on March 30, 2016 the Union grieved the Chief's action claiming there was no "just and sufficient cause" to veto [REDACTED] bid. The Town denied the Union's grievance. The current arbitration seeks to resolve whether Chief [REDACTED] veto was for "just and sufficient cause."

While that is a thumbnail of what this dispute is about, there is a rather lengthy history behind the Chief's veto and the Union's grievance. It is necessary to recite this history in order to determine whether "just and sufficient cause" existed. There is no dispute that Firefighter [REDACTED] had the requisite seniority to bid for Unit 2, Engine 5. As of March 2016 Firefighter [REDACTED] had served as a firefighter for the Town for over twenty two years and there is no dispute that, but for Chief [REDACTED] veto, in accordance with Article 8, §(f.) Firefighter [REDACTED] had the requisite seniority and therefore right to bid and obtain an assignment to Engine 5, Unit 2. At the same time, the Chelmsford Fire Department employed Firefighter [REDACTED] who had over thirty years of seniority and who bid and obtained appointment to Unit 1 on Engine 5, an engine he had worked on for twenty years, including his most recent stint which has been continuously his

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- e. If a new position manning any fire apparatus is added to the bargaining unit, a new bed will allowed at Engine 5, making a total of two (2) bids for that Engine.
 - f.
 - g. Bidding shall be by Chelmsford Fire Department seniority within each unit...
 - h. The bidding process shall continue until either all openings specified by this Agreement are filled or all employees have been given an opportunity to bid.
 - i. The Chief may veto any position bid for just and sufficient cause. Such veto shall be subject to the grievance and arbitration provisions of Article 8 of this Agreement.
 - j.
 - k.

² The Union's proposed remedy is for Firefighter [REDACTED] bid shall be honored immediately. There is no claim for back pay.

³ Firefighter [REDACTED] has a brother who is a Captain in the Chelmsford Fire Department. It is therefore necessary to specify "Firefighter" for [REDACTED] and "Captain" for [REDACTED] to distinguish between the two.

choice since 2009. The Chief's veto of Firefighter [REDACTED] bid was due to claimed incidents between Firefight [REDACTED] and Firefighter [REDACTED] during November 2014. The dispute in this case pits the Union's claim that there is no evidence to support the Chief's veto while the Town argues that there is more than ample circumstantial evidence to support the Chief's veto which effectively kept Firefighter [REDACTED] from interacting with Firefighter [REDACTED] at Engine 5, particularly during changeover from one shift to the other, but also at other times when there was opportunity for Firefighter [REDACTED] to disturb Firefighter [REDACTED] equipment.

Chief [REDACTED] denial of the grievance lays out part of the history of this dispute in which, after meeting with Union President Firefighter [REDACTED] following the filing of the grievance, Chief [REDACTED] wrote on April 7, 2016 in part: "I agreed with then-Chief [REDACTED] April 6, 2015 of the Local's grievance filed on March 21, 2015. In addition, I issued a denial of the Local's October 6, 2015 grievance on October 7, 2015. My decision to deny FF [REDACTED] most recent bid is wholly based on the same incident and reasons for which Chief [REDACTED] voided FF [REDACTED] bid in April 2015 i.e. the gear tampering incident and the unsuccessful attempts by Captains [REDACTED] and [REDACTED] to resolve the issues between FF [REDACTED] and FF [REDACTED]"⁴ When the Union appealed Chief [REDACTED] decision to the Town, Town Manager [REDACTED] added further reasons to the Town's denial by letter dated April 20, 2016:

On Wednesday, March 9, 2016, you met with Chief [REDACTED] at which time FF [REDACTED] bid was discussed, as was his decision to veto it for a fourth time. Chief [REDACTED] denial of this most recent grievance makes it clear that his decision to veto FF [REDACTED] April [2016] bid to Engine 5 was done for the same reasons his bid was vetoed in December 2014, April 2015 and October 2015. As the Union did not contest any of the prior instances where FF [REDACTED] bid was denied beyond Step 2, the Union has acknowledged that the Chief had just and sufficient cause to veto each bid for the reasons set in the prior denials. As the most recent bid was denied by Chief for the same reasons the prior bids were denied, just and sufficient cause exists to veto FF [REDACTED] April bid.

⁴ Chief [REDACTED] predecessor, now retired former Chief [REDACTED] denied Firefighter [REDACTED] bid to Unit 2, Engine 5 in April 2015. Chief [REDACTED] retired after thirty nine years with the Chelmsford Fire Department on June 30, 2015. Chief [REDACTED] returned to Town Hall to testify in this matter, as set forth later herein.

On May 2, 2016, the Union filed a demand for arbitration with the American Arbitration Association and the above specified hearings took place. The bulk of the testimony and documentation involved in this matter concerned the parties' dispute over the "gear tampering" incident and "issues" between Firefighters [REDACTED] and [REDACTED]

Background

Firefighter [REDACTED] [REDACTED] a seven year veteran of the Department, testified that he worked on Engine 5 with Firefighter [REDACTED] in Unit 2. When one unit replaces another, the senior firefighter on the departing unit gives a briefing to the senior firefighter on the oncoming unit. The briefing, as the word suggests, simply explains anything that has happened during the shift worthy of note and the status of all the equipment. The rundown lasts five minutes to fifteen minutes depending on the level of activity or the amount of information.

[REDACTED] explained he was present when Unit 1 relieved Unit 2 on Engine 5. Firefighter [REDACTED] was the senior firefighter in Unit 1 and Firefighter [REDACTED] was senior on Unit 2. According to [REDACTED] when Unit 1 relieved Unit 2 there was minimal contact between [REDACTED] and [REDACTED]. According to [REDACTED] there was "zero" contact between him and [REDACTED] but instead he spoke to the less senior firefighter on Unit 2, usually Firefighter [REDACTED] or someone filling in for him as a swing man. [REDACTED] testified that it was "fruitless" for him to speak with Firefighter [REDACTED] because he never spoke back to him. Firefighter [REDACTED] confirmed that he shunned Firefighter [REDACTED] stating that "[REDACTED] [REDACTED] is not someone I would ever want to associate with. No relationship."

During the fall of 2014, [REDACTED] started complaining that when his unit was relieving Firefighter [REDACTED] unit he found the white board⁵ erased and various chores were not being completed; chores which are the responsibility of the unit going off duty. [REDACTED] said Unit 2 would not perform routine house duties such as cleaning the bathroom, pulling the shades up, adjusting the thermostat or shutting down or turning on the compressor. Sometimes [REDACTED] found trash, such as discarded soda bottles and food wrappers inside the Engine 5 cab after Firefighter [REDACTED] Unit 2 departed. As a

⁵ The white board is an erasable board which is used to provide necessary information to the firefighters about issues which may affect their ability to fulfill their mission, such as road closures, equipment problems and the like.

firefighter with over thirty years of service, [REDACTED] found this lack of respect for oncoming fellow officers intolerable. When [REDACTED] brought these items to the attention of then-Chief [REDACTED] Chief [REDACTED] told the Deputy Chief to assign the Department's Captains, Captain [REDACTED] and Captain [REDACTED] to speak to Firefighters [REDACTED] and [REDACTED] and see if they could work these issues out. In late October 2014 Captain [REDACTED] spoke to his brother Firefighter [REDACTED] and Captain [REDACTED] spoke to Firefighter [REDACTED]. The captains reported back to Chief [REDACTED] that there was no apparent resolution of the issues between the two firefighters. It was with this background that the equipment tampering incident occurred.

Equipment Tampering Incident

Firefighter [REDACTED] worked the night shift on Thursday November 20, 2014 during which he placed his equipment on Engine 5 but there were no calls that night. As he took his gear off Engine 5 the next morning, Friday, November 21st, [REDACTED] saw a half-full juice bottle on the officer's side of Engine 5's cab, the place assigned to the senior firefighter when Engine 5 is activated. [REDACTED] left the bottle because as he explained he was sick of being the only one who was picking up trash from the cab and did not want to do it again. On Saturday, November 22,nd [REDACTED] reported to work an overtime shift on Engine 4. He picked up his equipment from the Engine 5 station to take it to Engine 4 when he noted the same juice bottle that he had seen the previous morning on the floor of Engine 5 was stuck into the webbing of his helmet. Upset by what he considered an insulting gimmick, [REDACTED] picked up juice bottle, opened the Day Room door and threw the plastic bottle into the room where it hit the floor and bounced up hitting Firefighter [REDACTED] while Firefighter [REDACTED] was standing by. [REDACTED] said he observed [REDACTED] pick up the bottle and throw it in the trash. [REDACTED] said: "That's not my bottle and I did not leave it there" and walked out. Firefighter [REDACTED] confirmed that [REDACTED] threw what he thought was a plastic water bottle and that it hit him. [REDACTED] said "it was trash from the engine" and left for Station 4. [REDACTED] testified that he picked up the bottle and threw it in the trash.

█████ worked a twenty-four hour shift at Engine 4 and returned to Station 5 the next morning, Sunday, November 23rd. █████ stowed his gear. His two Scott masks⁶ remained on his equipment hook outside his assigned locker. █████ did not notice anything unusual about or around his locker. That afternoon Firefighter █████ █████ called █████ and told him that his Scott masks were not hanging on █████ hook; shortly thereafter, █████ called █████ again and reported that he saw the two Scott masks on top of the Hazmat trailer which was parked in the apparatus room nearby the hook █████ used for his Scott masks. █████ immediately called Chief █████ who instructed him to call Deputy Chief █████. While on the telephone with █████ Firefighter █████ called back and said that the juice bottle that he had described previously was sitting on top of █████ locker. █████ testified that he was infuriated because he knew it was Firefighter █████ who had done this stuff and he drove to Station 5 and took pictures of the juice bottle on the top of his locker and the Scott masks visible on the top of the Hazmat trailer with his cell phone.

The next day, Monday, November 24th █████ unit was not working but he went to headquarters and showed Deputy Chief █████ the pictures he had taken. On Tuesday, █████ reported for work in the morning and noted that the Hazmat trailer had been taken to a call during the night before. When it returned, █████ spoke to Firefighter █████ who was coming off duty on a shift where Firefighter █████ was not working and asked whether he had █████ Scott masks. █████ told him that he did not see anything on the trailer until it got light out and then he found one Scott mask on the trailer. The other Scott mask must have fallen off during the Hazmat run.⁷ █████ reported the incident to Deputy █████ who allowed █████ “to vent” and thereafter instructed █████ to write up what happened; which Firefighter █████ did (Town Exhibit

⁶ Scott Masks are masks used by firefighters to breath and avoid smoke inhalation. Each mask is custom fitted to the firefighter’s face. They are a basic safety tool for all firefighters. █████ testified that he did not take his Scott masks to Engine 4 because he could use the non-personally fitted Scott masks already at Engine 4.

⁷ In his testimony at the arbitration, when questioned as to why he left his Scott masks on the Hazmat trailer, █████ explained that the trailer does not go out very often and he wanted to leave them there so that the Chief could observe where they were placed. █████ second Scott mask was never recovered.

#4).⁸ Deputy [REDACTED] also wrote up what [REDACTED] had told him (Town Exhibit #9). The Deputy turned both reports into the Chief who instructed the Deputy to engage Firefighters [REDACTED] and [REDACTED] through the chain of command to see if the ongoing dispute between the two could be resolved.

On December 23, 2014 Captain [REDACTED] and Captain [REDACTED] met with Firefighters [REDACTED] and [REDACTED]. They reported to Chief [REDACTED] that there was no resolution.⁹ The Chief decided “these 2 firefighters can’t work in the same station and I was concerned that if they weren’t separated the situation would only escalate.” (Town Exh. # 8) In the absence of a resolution between the firefighters, Chief [REDACTED] reassigned Firefighters [REDACTED] and [REDACTED] to different stations and announced his intention: “In April it is my intention to allow the senior fire fighter ([REDACTED] [REDACTED]) to bid any station that his seniority allows. Fire fighter [REDACTED] [REDACTED] can also bid according to his seniority as long as it is not in the same station. This policy will stay in effect until further notice.” (Town Exhibit #8).¹⁰

In March 2015 Firefighter [REDACTED] bid for Engine 5. Firefighter [REDACTED] bid for Engine 5. Chief [REDACTED] vetoed Firefighter [REDACTED] bid per Article 38, § (h.), and assigned [REDACTED] to an Engine other than Engine 5. The Union filed a grievance which Chief [REDACTED] denied writing “If I were to allow both FF [REDACTED] and FF [REDACTED] to return

⁸ Deputy Chief [REDACTED] also instructed Captain [REDACTED] to obtain a written statement from Firefighter [REDACTED] as to the ongoing issues at Station 5. Captain [REDACTED] spoke to Firefighter [REDACTED] on December 2, 2014 regarding that station and all of the firefighters assigned there. Firefighter [REDACTED] declined to submit a statement.

⁹ On December 23, 2014 Captains [REDACTED] and [REDACTED] met with all the firefighters assigned to Units 1 and 2 at Engine 5 including Firefighters [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. Only Firefighters [REDACTED] and [REDACTED] spoke with each one giving his side of the story. The conversation got heated and when Captain [REDACTED] told [REDACTED] to stop yelling, he abruptly left stating that he did not need to listen to the captains, deputies or the chief but was going to the Town’s Human Resources Manager. The Captains reported this event to the Chief the same day.

¹⁰ The Chief’s reference to Article 6 of the Agreement refers to Management Rights which provides in relevant part: “that management officials of the Town shall retain the right to ... assign ... employees within the Fire Department...” The Chief’s reference to April was to the ensuing bidding procedure for engine and unit assignments per Article 38 of the Agreement. Article 38 requires bidding to take place during the first ten days of March and the first ten days of September for assignments effective April 1st and October 1st each year.

to Engine 5, their interaction could possibly result in a verbal or physical confrontation....” The Union did not pursue the grievance beyond the Chief’s denial.

Fast forward to October 2015 and the same scenario appears only by this time Chief [REDACTED] had retired and Chief [REDACTED] had taken his place. Chief [REDACTED] allowed Firefighter [REDACTED] more senior bid to Engine 5 and denied Firefighter [REDACTED] bid to the same engine. Once again the Union grieved and Chief [REDACTED] relying on Chief [REDACTED] prior decision to deny Firefighter [REDACTED] bid to Engine 5 and further added “[a]s the Local [Union] did not contest Chief [REDACTED] denial of the previous grievance beyond Step 1, the Local accepted the Chief’s basis for the denial as being just and sufficient.” (Joint Exhibit #10). Following Chief [REDACTED] denial, the Union appealed the Chief’s decision to Town Manager [REDACTED]. Town Manager [REDACTED] denied the grievance on October 29th, for the same reasons Chief [REDACTED] denied the grievance plus the Town claimed that the Union missed the time limit for appealing to Step 2 of the grievance procedure.¹¹ The Union did not process the grievance further.

In March 2016, Firefighter [REDACTED] bid for Engine 5 as did Firefighter [REDACTED]. Chief [REDACTED] vetoed Firefighter [REDACTED] bid for the same gear tampering incident plus the unsuccessful attempts of Captains [REDACTED] and [REDACTED] to resolve the issues between the two firefighters. In addition to claiming that the Union accepted his decision that he had just and sufficient cause based on the Union’s April 2015 failure to appeal the decision to the Town Manager, Chief [REDACTED] added that the Union’s failure to contest the Town Manager’s decision on this issue in October 2015 also signaled the Union’s acceptance of the Chief’s decision. On April 15, 2016, within the ten day window established under Article 8, the Union filed an appeal with the Town Manager. The Town Manager denied the grievance for the same reasons provided by Chief [REDACTED] plus it added that the Union failed to grieve Chief [REDACTED] initial removal of Firefighter [REDACTED] from Engine 5 in December 2014, making this the fourth time the Union has contested the same decision. The Union filed a timely demand for arbitration which took place as set forth above.

¹¹ Article 8, Employee Grievance Procedure provides in relevant part “Step 2:... Written grievance processed to the second step shall be submitted to the Town Manager within *ten (10)* days after receipt of the Fire Chief’s answer.” Chief [REDACTED] denied the Union’s Grievance on October 7, 2015. The Union submitted its appeal to Town Manager [REDACTED] on October 27, 2015.

Positions of the Parties

The Union argues that the bidding procedure within the Chelmsford Fire Department is a sacred and protected right under their contract. The provision of Article 38 requiring the Chief to have “just and sufficient cause” to veto a firefighter’s hard-earned seniority protection for bidding is a steep incursion into the management rights of the Town and the Chief and any infringement thereon should not be taken lightly. In this case, as in each of the other instances in which Firefighter [REDACTED] seniority rights were trampled, all decisions were based on Chief [REDACTED] decision. The Union argues that notwithstanding [REDACTED] many faults with Firefighter [REDACTED] as reported to the Chief, not one of them fell within the purview of hampering the Fire Department’s mission. For example, the Union argues that [REDACTED] complained that Firefighter [REDACTED] unit failed to clean the bathroom or adjust the thermostat or adjust the shades. Such housekeeping issues the Union argues are petty complaints that the Chief should not need to deal with. [REDACTED] complained about Firefighter [REDACTED] erasing the whiteboard, but such erasures were common when the information was stale, as testified to by Firefighters [REDACTED] and Captain [REDACTED]. Similarly, [REDACTED] took offense when at the change of shift, he always dealt with the junior firefighter in Unit 2 rather than senior Firefighter [REDACTED] as mandated by the rules. However [REDACTED] never singled out any lapse in the passing on information or that somehow [REDACTED] failed to meet [REDACTED] need to know requirements. In short the Union argues [REDACTED] escalated what in every other firehouse in the country would be considered petty, insignificant job duties, into allegations of “hostile environment.”

Chief [REDACTED] admitted, the Union argues, that he made no investigation into the Scott mask tampering incident.¹² There was no direct evidence whatsoever that Firefighter [REDACTED] tampered with Firefighter [REDACTED] Scott Masks. The circumstantial evidence was only that Firefighters [REDACTED] and [REDACTED] were not getting along, ergo, Firefighter [REDACTED] did it. Such circumstantial evidence, the Union argues, does not

¹² On cross-examination by Union counsel, Chief [REDACTED] admitted that for many years he has been a member of the same social club and motorcycle group as Firefighter [REDACTED]. This affiliation, the Union suggests, explains the Chief’s bias to protect [REDACTED] status within the Department by completely avoiding an investigation of the incident in November or December 2014.

amount to just and sufficient cause to veto Firefighter [REDACTED] contractual bid to work at Engine 5.

The Union suggests that simply because [REDACTED] did not like or want to interact with [REDACTED] does not mean that the two could not work in the same fire station. There is not a scintilla of evidence that the personality differences between [REDACTED] and [REDACTED] interfered with the Fire Department's operations. The failed efforts by Captains [REDACTED] and [REDACTED] to bring the two men to terms does not mean that there will never be any reconciliation nor does it mean that the Fire Department's operations will somehow suffer because the two do not get along.

Further, even assuming that the Union *agreed* with Chief [REDACTED] decisions of December 2014 and April 2015 and further *agreed* with Chief [REDACTED] decision of October 2015 to veto the bid, such agreement does not commit the Union to agree in perpetuity. The Union's claim in this case is that an incident occurring almost three years ago, even if proven, would not justify the incessant veto of Firefighter [REDACTED] bid. The bid should be allowed and the firefighter place on strict warning that they are to get along or they will both be removed from Engine 5.

The Town argues first that by Agreement, Article 8 §(g)¹³ the Union should be precluded from pursuing the current grievance based upon the Union's previous actions and inactions with respect to the exact same issue. Pointing out that the Union had multiple opportunities to challenge Chief [REDACTED] and Chief [REDACTED] decisions to veto Firefighter [REDACTED] bid *before* filing the current grievance and in each of those prior instances the Union either backed away or decided not to pursue the claim it now seeks to present.¹⁴ The Union did not grieve either Firefighters [REDACTED] or [REDACTED] reassignment in December; in March/April 2015 the Union grieved but following Chief [REDACTED] denial

¹³ Article 8, § (g.) provides:

A grievance not initiated within the time specified shall be deemed waived. Failure of the Union to appeal a decision within a time limit specified shall mean that the grievance shall be considered settled on the basis of the decision last made and shall not be eligible for further appeal.

¹⁴ The instances the Town cites are (1) Chief [REDACTED] voiding [REDACTED] and [REDACTED] bids when he reassigned both fire fighters in December 2014; (2) Chief [REDACTED] denial of Firefighter [REDACTED] bid in March 2015; and (3) Chief [REDACTED] denial of Firefighter [REDACTED] bid in September 2015.

did not pursue the grievance to the Town Manager as required in the Agreement; and in September/October 2015 Chief [REDACTED] denial of the Union's grievance was appealed to the Town Manager who rejected the grievance, but the Union failed to seek arbitration. The Agreement mandates that the Union's failure to appeal "shall be considered settled on the basis of the decision last made and shall not be eligible for further appeal." Hence, the Town claims that by agreement the Union has "settled" the grievance concerning Firefighter [REDACTED] right to bid to Engine 5.

The Town's claim that the grievance has been resolved is supported by arbitral precedent, particularly *Babcock & Wilcox Co.*, 42 LA 541 (Dworkin, Arb., 1955) and various cases since then. Arbitrator Dworkin's rationale, namely that industrial stability in the finality of a determination should be honored or any controversy or claimed contractual violation could become interminable. There the union filed a grievance which was denied and the Union failed to seek arbitration. Arbitrator Dworkin disallowed the second grievance *over the exact same subject matter* for the reasons of "obvious rule of expediency, public policy, and the desire for industrial relations tranquility." This rationale is especially pertinent where the Union in this case had multiple opportunities to pursue a grievance and failed or refused to do so.¹⁵

On the merits the Town argues that there is strong circumstantial evidence that Firefighter [REDACTED] tampered with Firefighter [REDACTED] Scott masks. While there were no eye witnesses, the Town argues "follow the juice bottle." Firefighter [REDACTED] observed the juice bottle on the floor of Engine 5 in the area customarily occupied by the senior firefighter on duty, which was Firefighter [REDACTED] from 8 a.m. November 21 to 8 a.m. November 22, 2014. When Firefighter [REDACTED] returned the next morning to pick up his gear for an overtime shift on Engine 4, he found that same juice bottle stuffed in the web of his helmet. [REDACTED] knew that only Firefighter [REDACTED] would have done that and so he

¹⁵ The Town argues that the Union's excuses for failing to pursue the first two grievances on behalf of Firefighter [REDACTED] are weak indeed. The failure to appeal Chief [REDACTED] March 2015 because a new chief was coming on does not void the principles espoused in Article 8(3)(g) or the reasons set forth in the Dworkin Arbitration decision. The failure to appeal to arbitration Chief [REDACTED] September 2015 decision because of the time delay was directly contradicted because the Union's actions in another case filed in which an award on arbitrability issued by Arbitrator Sarah Kerr Garraty on March 14, 2016. Arbitrator Garraty's award issued long after the Union faced the distinct opportunity to seek arbitration. In neither instance did the seek to preserve its rights when it declined to pursue the grievance further.

angrily threw the bottle into the day room striking Firefighter [REDACTED] who threw it in the trash. That same juice bottle sat on top of [REDACTED] locker two days later at a time when [REDACTED] Scott masks had been placed on the Hazmat Trailer. Only one person would have done such a thing, that is Firefighter [REDACTED] who knew all about the thrown juice bottle and who had utter disregard for Firefighter [REDACTED]. The timing and location of the juice bottle through this series of events is strong evidence of who threw the Scott masks on top of the trailer.

Firefighter [REDACTED] attitude toward [REDACTED] amounts to an admission of liability in this situation. Firefighter [REDACTED] candidly refused to cooperate when Captain [REDACTED] sought his written statement about the events in December 2014; firefighter [REDACTED] openly admitted at the arbitration hearing to his desire to have nothing to do with Firefighter [REDACTED] and to shunning him at all times. This attitude the Town contends, coupled with the “follow the bottle evidence,” provides ample circumstantial evidence that Firefighter [REDACTED] tampered with and removed Firefighter [REDACTED] Scott mask and placed them on top of the Hazmat trailer where one of them got lost. The Scott masks are custom fitted; if there had been a fire and Fire Fighter Clark been compelled to use an ill-fitting Scott mask, it could have led to Firefighter [REDACTED] injury or death. Compelling Firefighter [REDACTED] to work on a different engine is a small price to pay for insuring that there are no similar tampering with lifesaving equipment. For all these reasons the good of the Department depends on Chief [REDACTED] consistently refusing to allow Firefighter [REDACTED] to bid to Engine 5 and the grievance should be denied.

Discussion

Was the Union foreclosed from this grievance because it failed to pursue prior grievances over Firefighter [REDACTED] bid to Engine 5?

I disagree with the Town’s contention that the Union has waived or relinquished its right to contest the Chief’s veto of the Union’s March 30, 2016 grievance over Firefighter [REDACTED] bid to Engine 5. Each time the parties engage in the bidding process it amounts to a new opportunity for each firefighter to bid for a position. Even though the Town presented the same reason for the Chief’s veto such does not mean that Firefighter [REDACTED] bid should be denied based on the equipment tampering and inability of the firefighters to get along in November and December of 2014. The parties’ use of the

words “just and sufficient cause” is analogous to managerial discretion for discipline. In a disciplinary case an employee suffers the consequences of misconduct and takes his lumps via an appropriate level of discipline. The employee cannot be punished again for that exact same conduct for which he or she has already been disciplined. The concept of double jeopardy in criminal law has been universally incorporated into the labor management relations law. In this case, the Chief’s veto of Firefighter [REDACTED] bid was consistently blamed on the previously described events of November and December 2014. Each bid has to be considered on the basis of events which occurred since the previous bid. Assuming the Union accepted Chief [REDACTED] veto in September/October 2015, the Chief had to consider all of the prior events including those that occurred based on the passage of time since the events dating back to November 2014. At some point the events of November/December 2014 become stale and there are indications that the issue created by the conflict between Firefighters [REDACTED] and [REDACTED] no longer amounts to just and sufficient cause to deny only Firefighter [REDACTED] his bid to Engine 5. In other words Chief [REDACTED] must reconsider those events along with the effect of what has between November 2014 and March 2016 independently in deciding whether there is “just and sufficient cause” for vetoing Firefighter [REDACTED] bid in March 2016.

The Town’s reliance on *Babcock & Wilcox*, 24 LA 541 (Dworkin, Arb., 1955), is misplaced. There the issue dealt with the right to certain wage bonuses as they were applicable to the entire workforce. Once the union declined to pursue their first wage claim, Arbitrator Dworkin invoked the need for industrial stability. I fully agree with that decision because wage claims are central to the entire bargaining unit. That decision is a far cry from interpreting the words “just and sufficient cause” for vetoing a seniority based bid. Unless the Chief can somehow justify a different or a supplementary reason for denying Firefighter [REDACTED] bid, each bid must be examined and not simply retrofitted to Chief [REDACTED] actions in December 2014.

The other cases cited by the Town do not convince me otherwise. In *Modine Manufacturing Co.*, 39 LA 624 (Russell Smith, Arb., 1962) the case involved a \$0.04/hour incentive pay for all eligible employees. *Parke, Davis & Co.*, 41 LA 8 (Ryder, Arb. 1963) involved seniority rights during a lay-off. There the union accepted an interpretation of bumping rights which were applicable to all employees. In *Republic*

Steel Corp., 25 LA 437 (Platt, Arb., 1955) the foregone grievance was over the same wage incentive plan which the union sought to challenge months later. None of these cases involved a factual resolution applying a “just and sufficient cause” standard to which the union was bound forever.

The Supreme Court’s decision in *Emich Motors Corp. v. General Motors Corp.*, 71 S. Ct. 408 (1951) allowed one party to collaterally stop the other party based upon a judgment previously rendered. While collateral estoppel may be available in arbitration proceedings, the collateral estoppel is based on a judgment rendered. In the current situation there was no third-party judgment to which Firefighter [REDACTED] was bound, hence the doctrine is inapplicable.

Did Chief [REDACTED] have “just and sufficient cause” to deny Firefighter [REDACTED] bid to Engine 5 in March 2016?

There is no direct evidence that Firefighter [REDACTED] moved Firefighter [REDACTED] Scott masks from his hook to the top of the Hazmat trailer. Let me be very clear on the issue of messing with another firefighter’s equipment. Firefighting is a very dangerous profession and one which calls for firefighters to act in minutes, if not seconds, in order to adequately respond. There is an unwritten rule among the brotherhood of firefighters that one does not touch or alter another firefighter’s equipment. All of a firefighter’s equipment is set up on hooks or on or near the engine so that there is as little delay as possible in responding. The equipment is out in the open and easily accessed by anyone in the firehouse. This is not a profession that tolerates game playing or pranks and if I believed that Firefighter [REDACTED] had tampered with Firefighter [REDACTED] equipment, I would sustain a discharge from employment, much less a denial of his bidding rights. There is simply no room for any other decision under those circumstances.

However, in this case, the circumstantial evidence amounts to nothing more than Firefighter [REDACTED] assumptions. He assumed that Firefighter [REDACTED] had inserted the juice bottle into his helmet. He assumed that Firefighter [REDACTED] had retrieved the bottle from the trash and placed the juice bottle on the top of his locker and he assumed that Firefighter [REDACTED] had moved his Scott masks to the top of the Hazmat trailer. All of his assumptions were based on the mutual enmity between himself and Firefighter [REDACTED]

As the Union points out there were two 24-hour shifts of firefighters assigned to Engine 5, none of which included Firefighter [REDACTED] between the time when [REDACTED] drew his equipment to work an overtime detail on another engine and the time that Firefighter [REDACTED] called him about the missing Scott masks. There was ample opportunity for another firefighter to engage in the prohibited behavior.

While the Town argues “follow the juice bottle,” at the time of the incident there was no effort whatsoever to identify whose juice bottle it was; when and who saw the juice bottle on the floor of the cab or who is in the habit of drinking that particular type of juice. There was only the general acceptance of Firefighter [REDACTED] strenuously expressed accusations that it was Firefighter [REDACTED] juice bottle and therefore he engaged in the above described conduct as a further expression of his deep dislike of Firefighter [REDACTED] and as show of their bitter relationship. But there is more to this story.

In many aspects of this case, Firefighter [REDACTED] engaged in self-inflicted damage designed to increase the Chief’s anger over his accusations of Firefighter [REDACTED] dangerous misconduct.¹⁶ When Firefighter [REDACTED] called [REDACTED] at home to report the missing and later found Scott masks, [REDACTED] told him to leave them where they were rather than simply take them off the trailer and put them on his hook. [REDACTED] immediately drove to the fire station and took pictures of his Scott masks on top of the trailer. He also took pictures of the juice bottle on top of his locker. Not satisfied that these pictures would be enough to show the Chief, [REDACTED] decided to leave the Scott masks on the trailer when he had the clear opportunity to simply put them back on his hook. [REDACTED] decision to leave them on the trailer because the Hazmat trailer rarely left the station was the proximate cause of the loss of one of the Scott masks. All of this was done to emphasize [REDACTED] histrionics over the situation by leaving the so-called crime scene in tact to show the Chief.

¹⁶ The Town presented evidence on how each Scott mask is custom fitted to each firefighter’s face to insure a tight fit of the mask, as required to avoid smoke inhalation during an active fire. This made the movement of Firefighter [REDACTED] masks from his hook to the top of the Hazmat trailer particularly dastardly and dangerous. Firefighter [REDACTED] testified that when he worked the outside detail on Engine 4, he did not bring his personal Scott masks with him but instead intended to use those Scott masks maintained on each engine which are supplied to any firefighter working on that engine. Nevertheless Firefighter [REDACTED] presentation to Chief [REDACTED] emphasized the dangerousness of tampering with his personal Scott masks.

I find there was insufficient evidence to support Chief [REDACTED] decision to deny Firefighter [REDACTED] bid for Engine 5 based on the allegations that [REDACTED] tampered with [REDACTED] Scott masks. However, I do find that Chief [REDACTED] had just and sufficient cause to separate Firefighters [REDACTED] and [REDACTED] from sharing the same engine. This entire case is an utter disgrace to the Fire Department, the Town and the Union. The parties have spent many, many hours and thousands of dollars dealing with third-grade behavior by two firefighters. By his own admission [REDACTED] threw the juice bottle into the day room and stomped off because someone stuffed it into his helmet. There was no reason for that. Similarly someone considered it a prank to move [REDACTED] Scott masks off his hook to the top of the Hazmat trailer a short distance away where they sat in open sight. This is the behavior of ten year olds. In addition, Firefighter [REDACTED] openly admitted to shunning Firefighter [REDACTED] because he was not the kind of person he wanted to hang around with. The Department was not insisting that Firefighter [REDACTED] hang around with [REDACTED] but simply consider him a professional colleague. Firefighter [REDACTED] should recognize that not every one of the station cleaning or station arranging protocols requires the same diligence that he thinks they deserve. When Firefighter [REDACTED] becomes Chief he can police all of the stations to his heart's delight, but until then he has to learn to accept the shortcomings of others who do not share his passion for cleanliness or strictly following every housekeeping rule.

Firefighter [REDACTED] more than amply contributed to this ridiculous situation. Firefighter [REDACTED] declined to write up his side of the story for Captain [REDACTED] thereby encouraging the swirl of rumors and allegations leading to Chief [REDACTED] belief that Firefighter [REDACTED] engaged in what he considered a dangerous prank. Firefighter [REDACTED] steadfastly refused to recognize that his continued shunning amounted to belittling Firefighter [REDACTED] and as such exacerbated the problem. Firefighter [REDACTED] refusal to acknowledge the need to maintain a professional relationship with Firefighter [REDACTED] (i.e. "he is not someone I want to be with") cannot be ignored.

While the Union places the blame on Firefighter [REDACTED] and the Town holds Firefighter [REDACTED] at fault, there is reason to believe that both were simply too stubborn and too vicious to deal with one another. I find that they are equally at fault and the remedy in this case is that both of them should suffer the consequences. The fact that

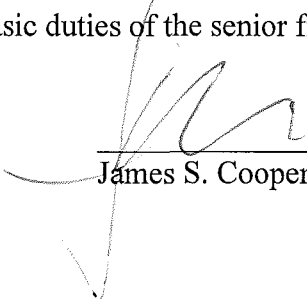
Firefighter [REDACTED] has greater seniority in the bid process should not automatically remove Firefighter [REDACTED] from Engine 5.

Award

I find that Chief [REDACTED] did not have just and sufficient cause to veto the bid of Firefighter [REDACTED] in March 2016. In a truly Solomon-like remedy, the following remedy is hereby awarded:

1. In September 2017 the Chief shall award Firefighter [REDACTED] bid to Engine 5 and veto Firefighter [REDACTED] bid thereto.
2. In April 2018, the Chief shall award Firefighter [REDACTED] bid to Engine 5 and veto Firefighter [REDACTED] bid thereto.
3. This alternate awarding of bids to Engine 5 shall continue until (a) one of the two firefighters no longer seeks to bid to Engine 5; or (b) Firefighters [REDACTED] and [REDACTED] submit a written agreement to the Chief that they will honor and respect the other and fulfill the basic duties of the senior firefighter at Engine 5.

Date: May 1, 2017



James S. Cooper