

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
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 LOCAL 414, KENOSHA FIRE FIGHTERS :
 INTERNATIONAL ASSOCIATION OF FIRE :
 FIGHTERS : Case 162
 : No. 46015
 and : MA-6844
 :
 CITY OF KENOSHA (FIRE DEPARTMENT) :
 :

Appearances:

Mr. John Celebre, President, Local 414, IAFF, appearing on behalf of the
Davis & Kuelthau, S.C., by Mr. Roger E. Walsh, and Mr. Lon D. Moeller,

Union.
appear

ARBITRATION AWARD

The Employer and Union above are parties to a 1989-91 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance filed by Firefighter Mark Honey on behalf of all employees assigned to rescue squad duty, concerning the Employer's refusal to pay rescue squad pay to employees assigned to the reserve rescue squads.

The undersigned was appointed and held a hearing on November 4, 1991 in Kenosha, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on January 21, 1992.

STIPULATED ISSUES:

1. Are Kenosha Firefighter employees on reserve rescue units entitled to the additional compensation described in Section 11.05 of the contract?
2. If so, what remedy is appropriate?

RELEVANT CONTRACTUAL PROVISIONS:

. . .

ARTICLE 11 - CLASSIFICATION AND COMPENSATION PLAN

. . .

11.05 Any employee assigned to and actually working on rescue squad duty for more than twelve (12) hours during a duty day shall receive an additional \$5.00 for such day. In the case of two employees assigned to and actually working twelve (12) hours each on rescue squad duty in the same duty day, then each employee shall receive an additional \$2.50 for the day.

. . .

FACTS:

The Kenosha Fire Department has three "Med units", which are emergency medical services units used for providing front-line emergency services. These are staffed by teams of firefighter/paramedics and firefighter/EMT's, with two paramedics and one EMT per unit. The rescue squad pay involved in this grievance has always been paid to the EMT assigned to the regular Med units, and that is not in dispute here. For many years, however, the Department has also maintained a "Reserve Rescue Squad", staffed on a different basis. It is the applicability of rescue squad pay to this type of unit which is in dispute.

Prior to May 1, 1991, there was a single Reserve Rescue Squad, known as Rescue 6, and kept at Fire Station No. 4. Station 4 also housed Ladder 4 and Engine 4, and no employes were permanently assigned to Rescue 6. Instead, different members of the Fire Station crew would be assigned to Rescue 6 on an as-needed basis. In recent years, the arrangement was that the two fire suppression units were permanently "staffed", until and unless all three regular Med units were out on calls. When that occurred [about 10 to 14 times a month] the dispatcher would notify Fire Station 4 that Rescue 6 was "next up". Ladder 4 would then be taken out of service on the roster and the employes assigned to that unit listed as available for Rescue 6. It is undisputed that no employe was ever assigned to and working on Rescue 6, within the meaning of Section 11.05 of the Agreement, for more than 12 hours in a duty day. A 1984 grievance protesting the Employer's refusal to pay rescue squad pay for EMT's assigned to Rescue 6 was dropped.

About May 1, 1991, the Department changed its method of assignment of reserve rescue personnel. The change, which was delayed in practice until about July 1, involved adding a second reserve rescue unit, stationed at Station No. 1. Station 1 thereafter housed Engine 1, Ladder 1, and the new Rescue 1. Rescue 6 continued in operation. In Station 1, as in Station 4, the employes normally assigned to the Ladder Companies were those now assigned to the Reserve Rescue Squad at that Station.

The policy and procedure memo governing the change states as follows:

PURPOSE: The purpose for this policy and procedure is to ensure consistency in the operation, staffing and maintenance of the Reserve Rescue Vehicle.

POLICY/PROCEDURE:

1. All Kenosha Fire Department personnel will adhere to this policy dealing with the Reserve Rescue units.
2. The Ladder Company officer is responsible to see that the reserve unit will be staffed with a minimum of three (3) Kenosha Fire Department personnel of which two (2) are trained at EMT level and one of those EMT's is certified at EMT-DA level.
3. Ladder Company crews will be utilized whenever the Reserve Rescue unit is activated for EMS calls.
4. There shall not be more than one Ladder Company at a given time out of service functioning as a reserve rescue squad.
5. The reserve rescue will be implemented for fourth call status only when both Ladder Companies are in service.

During fifth call or when a Ladder Company is out of service, mutual assistance from Pleasant Prairie Fire and Rescue (south of 52nd Street) and Somers Rescue (north of 52nd Street).

6. Daily vehicle inspection is the responsibility of the Apparatus Operator with assistance from Ladder Company firefighters. Routine inspection record log will be signed daily, similar to the first line units.

Items to be inspected daily;

- a.) Trauma Bag
 - b.) Oxygen Supply, including "D" tank.
 - c.) Portable Radio
 - d.) Automatic Defibrillator Unit
 - e.) Suction Unit
7. Tuesday of each week a complete inventory check of the unit will be done. The squad inventory check sheet should be completed on that day.
 8. The exterior and interior of the vehicle will be cleaned after each use.
 9. Supply replacement should be obtained from the hospital immediately after each call. All supplies used should be charged to the patient at the receiving hospital.

10. The Paramedic reserve unit is identified as Rescue #6. In the event that a front line Paramedic unit is out of service for repairs, than Rescue #6 should be implemented from Station #4.

Reserve Rescue #1 will than cover fourth calls within the city.

The Duty Assistant Chief shall be notified whenever Rescue #6 functions in the capacities as a Paramedic unit.

11. Whenever the Ladder Company is in service on the road, i.e. driver training, city stores, Station #4 inspections, the officer must inform Dispatch that the reserve rescue assigned to that station is out of service. Upon returning to the Station, the officer will notify Dispatch that the reserve rescue is available for calls.

EMS Manager Richard Meeker testified that under the former procedure, assignments to employes involved in the Reserve Rescue unit were primarily to the Ladder Company, and the Reserve Rescue unit was a secondary assignment. Under the new procedure, Meeker testified, the assignments are concurrent and either the Ladder or Reserve Rescue unit can be dispatched at a moment's notice. Meeker testified that "actually working on" the Reserve Rescue unit means called out of the Station, but Meeker also testified to the effect that an employe could be actually working on that unit while it was in the Station.

Meeker testified that the reason for writing the new policy was to insure clarity and consistency, but that no change was intended in the fundamental nature of the assignments. He stated that the memo quoted above was more of a clarification than a change in substance. Assistant Chief Jerry Wamboldt testified that the policy was changed because under the Department's "first responder" system, the Department stood to lose its Reserve Rescue unit if there was an EMT on that Engine Company. This was because prior to the change, the officer in Station 4 could assign to the Reserve Rescue unit either employes from the Ladder Company or from the Engine Company, depending on which employes had EMT certification.

There is no dispute that the regular Med units are called out several thousand times a year.

THE UNION'S POSITION:

The Union contends that the 1991 changes in assignment procedure resulted in employes being assigned primarily to Reserve Rescue units and only secondarily to firefighting units. Such assignment, the Union argues, constitutes Rescue Squad duty for the purpose of interpreting Section 11.05 of the labor agreement. In connection with this, the Union contends that in a prior case in which the Union sought payment of the 11.05 pay to personnel assigned to "first responder" units, the Employer filed a brief arguing that "Rescue Squad duty is the assignment of non-paramedic personnel to a Rescue Squad unit", including Rescue 6. The Union argues that in that case, Arbitrator Nielsen agreed, and stated that the Reserve Rescue unit was included in Article 11.05. The Union contends that item 11 of the Policy Memo identifies the Reserve units as "available for call", in Meeker's words, and that this has changed the amount of time which should be included within the calculation for purposes of Section 11.05. There is no longer any advance notice of the Reserve unit being "next up", and employes assigned to that unit are therefore "working on" that unit for the duration of the assignment. The Union notes that prior to the new policy, the normal designation used for the Reserve Rescue unit was "out of service", and that this was changed only after a dispatcher called the Station to advise that all other Med units were now out on calls. The Union contends that the phrase "actually working" has meaning in its interpretation, because there is not necessarily a parallel between those persons permanently assigned to Rescue 6 [for example] and those actually working, because of substitutions into other capacities. The Union argues that the phrase "actually working" applies to those employes assigned on the days' roster, but does apply at all times that the Reserve Rescue unit is in service.

The Union requests that the Arbitrator award back pay under Section 11.05 for all employes who are not paramedics and who have been assigned to Reserve units under the Department's May 1, 1991 policy.

THE EMPLOYER'S POSITION:

The Employer contends that the May, 1991 policy did not make the Reserve Rescue assignment an employe's primary assignment, unlike the regular Med unit.

The Employer argues that the Ladder Company crews assigned to these squads do not actually perform rescue squad work unless the Reserve Rescue Squad is activated, meaning called out, or unless they are doing the requisite maintenance inspection work on the vehicle. The Employer contends that the assignment, standing by itself, does not meet the requirements established under Section 11.05 for Rescue Squad pay. The Employer points to testimony by Meeker and Wamboldt to the effect that the Reserve Rescue Squads are still not activated until all three Med units are responding to calls, and that Reserve Rescue Squad duty is still only a secondary work assignment. The Employer argues in this connection that there has been no change in the priority of the Reserve Rescue Squad work assignment or in the fundamental manner in which the City has administered Section 11.05. The City notes that the Union withdrew a prior grievance on the same issue and has not proposed or negotiated any change in Section 11.05 since. The Employer requests that the grievance be denied.

DISCUSSION:

Upon analyzing the testimony in this matter, it is clear that Meeker, for one, has used terms at one time favorable to the Employer's position and at another time favorable to the Union's, in attempting to describe the nature of the post-May, 1991 assignment process. Even interpreting his testimony in the light most favorable to the Union, however, I am still not persuaded that the assignment to Reserve Rescue units constitutes "actually working" within the meaning of Section 11.05. At best, there is an ambiguity created by the tension between the notion that employes are performing work for the Department while they are in the fire house, or else they would not be paid at all, and the specific language of this clause, which appears to favor a tight requirement which goes beyond mere availability for a call.

In interpreting that ambiguity -- again in the light most favorable to the Union -- I am struck by the fact that there is a great difference in the quantity of work expected of someone assigned to one of the regular Med units and that performed by any individual employe assigned to the Reserve units. Under the new rule, in fact, the amount of work performed by any individual employe on a Reserve unit has decreased by half, because the same number of calls are now being handled by twice as many units. The only increased quantity of work involved is that there are now two units to be maintained and cleaned; but since cleaning and inspection are mainly performed after a call-out, that too is divided among the two units to some extent. There is nothing else in the record that would demonstrate any increase in the amount of time actually spent performing duties related to Reserve Rescue functions, so the Union's case turns ultimately on whether the mere assignment to a Rescue Squad constitutes "actually working" on that Squad. This is the same issue raised and then dropped in the 1984 grievance. Even if the policy change is read as the Union would have it, i.e. as having altered the order of priority such that employees are considered primarily assigned to the Reserve Rescue units, something more than assignment is needed to meet the criterion of "actually working" in Section 11.05, or else those words would be superfluous.

I conclude, therefore, that there has been no material change in the nature of "actual work" as a result of the Department's 1991 policy change and addition of one more Reserve Rescue unit. Meanwhile, the 1990 arbitration proceeding partly relied on by the Union clearly relates to another issue, and neither the City's brief nor the Arbitrator's finding can reasonably read as establishing a precedent as to the meaning of "actually working" as it applies to the Reserve Rescue units.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That employes assigned to a Reserve Rescue unit are not entitled to the additional compensation prescribed in Section 11.05 of the collective bargaining agreement merely because of such assignment.

2. That the grievance is denied.

Dated at Madison, Wisconsin this 3rd day of March, 1992.

By _____
Christopher Honeyman, Arbitrator