

IN THE MATTER OF THE *FIRE PROTECTION AND PREVENTION ACT, 1997*

-and-

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

THE CORPORATION OF THE CITY OF VAUGHAN

- The Employer

-and-

THE VAUGHAN PROFESSIONAL FIREFIGHTERS ASSOCIATION

- The Union

Arbitration Board:

Howard Snow, Chair
Bruce Light, Employer Nominee
Bill Cole, Union Nominee

Hearing held May 12 and June 22, 2005, and April 21, 2006, in Toronto, Ontario.

SUPPLEMENTARY AWARD

I. INTRODUCTION

This is a supplementary award in an interest arbitration between the Corporation of the City of Vaughan, the Employer, and the Vaughan Professional Firefighters Association, the Union representing the full time employees of the Vaughan Fire and Rescue Service.

As noted in the Board's main award, the Union expressed concerns about the system for promoting employees. In that award, we referred the matter of promotions back to the parties and retained jurisdiction in the event the parties were unable to reach agreement on promotions.

When the parties failed to reach agreement on this matter, an additional day of hearing was held to hear further submissions. The Board has considered all the materials submitted at the hearings, has met in executive session, and has engaged in extensive correspondence on this issue for more than a year.

The award reflects what I believe the parties would have agreed upon had they reached their own settlement. I have considered the criteria in the *Fire Protection and Prevention Act, 1997* but have primarily relied upon other collective agreements regulating the employment of fire fighters within Ontario.

The promotional system is addressed in two parts.

II. PROMOTIONS FROM PROBATIONARY TO FIRST CLASS FIRE FIGHTER

The parties discussed the process for the progression of fire fighters from the beginning of

their employment until they achieve the rank of first class fire fighter. However, the parties then disagreed as to whether the resulting document represented an agreement in isolation from an agreement on the officer promotional issues. Regardless of the status of that document, I consider it valuable and adopt it with minor modifications.

Most fire fighters are hired as 4th class fire fighters and move up through the ranks to become 1st class fire fighters. Article 11 of the collective agreement addresses this issue of the progression of fire fighters to first class fire fighter. All of the changes made in this award to Article 11 are in Article 11.02 and are intended to clarify the process of examination. Articles 11.01, 11.03, and 11.04 are to remain as in the old collective agreement. Article 11.05 is to remain as in the Board's main award.

In addition, the parties reached tentative agreement on a new letter of understanding regarding the right of a Union observer to be present for these "classification upgrade examinations." Had the parties been able to reach a full collective agreement, I believe they would have included that letter in their agreement. For this reason I am adding their letter to the collective agreement.

Decision:

I order that Article 11.02 of the collective agreement be as follows:

After serving twelve (12) months and upon being examined and recommended by the Fire Chief, and not otherwise, each Firefighter shall be advanced one classification every twelve (12) months thereafter until reaching the rank of Firefighter 1st Class.

To qualify for upgrading from Firefighter 4th Class to Firefighter 3rd Class, a mark of seventy percent (70%) must be attained on the written examination and seventy percent (70%) on the practical examination. To qualify for upgrading from Firefighter 3rd Class to Firefighter 2nd Class and from Firefighter 2nd Class to

Firefighter 1st Class, a mark of seventy-five percent (75%) must be attained on the written examination and seventy-five percent (75%) on the practical examination.

A Firefighter who does not attain the marks required to upgrade to the next classification may appeal his/her examination and practical results to the Deputy Fire Chief.

A Firefighter who does not receive an upgrade to which he/she believe he/she is entitled to under this clause may appeal directly to Stage 2 of the normal grievance procedure.

In addition, I order the inclusion of a letter of understanding as follows:

Letter of Understanding

In the interest of the continued integrity of the classification upgrade examination routines, the Corporation and the Association agree that an Association Observer will be in attendance at written and practical examinations.

In December, the Association President will determine the individual(s) who will be authorized to act as Association Observer for the following calendar year and notify the Fire Chief in writing, no later than January 1st. It is understood that the Association Observer will be, at a minimum, a 1st Class Firefighter and a member of the VPFPA Executive Committee.

The parties agree that the duties of the Association Observer will be:

- To passively observe the examination process*
- Immediately after the examination, to report to the Officer in Charge in the event that there is a concern about the examination process*
- At the conclusion of the activities of the day, to file a written statement, reporting specifically on the activities of the day, with the Fire Chief and the Association President*
- Within seven (7) days of the conclusion of the examination days for the classification level, to file a written statement, specific to the series of examination days with the Fire Chief and the Association President.*

In the event that the Association Observer is not in attendance, it is understood that the examination process will proceed based on the established schedule.

The attendance of the Association Observer will be at no cost to the Corporation.

III. PROMOTION ABOVE FIRST CLASS FIRE FIGHTER

Old agreement

After they achieve the rank of first class fire fighter, many fire fighters seek to be promoted to Assistant Captain, Captain, Platoon Chief, etc. The collective agreement specifies the salary for these ranks and the process for promotion to these ranks.

Schedule B of the old agreement addresses the process for selecting fire fighters for promotion beyond first class, as well as selecting a fire fighter to act on a temporary basis when an officer of a higher rank is absent.

The normal promotion after first class fire fighter is to Assistant Captain. If a fire fighter seeks such a promotion, Schedule B currently provides that the candidate must pass a four-part test offered by the Employer. Each of the four parts is marked separately and a candidate must obtain a minimum mark of 50% on each part but also needs to obtain an average mark of 75% on the four parts. If a candidate achieves the required marks, he or she is included on a list of persons who are “qualified” to be promoted to Assistant Captain and who are eligible to serve as an Acting Assistant Captain during the absence of an Assistant Captain.

When the Employer decides to appoint another Assistant Captain, a Promotional Review Board selects four candidates from the list of those fire fighters who are “qualified” for the promotion and that list of four candidates is forwarded to the Fire Chief. The Chief, in turn, interviews the four persons and awards the promotion.

A qualified person would remain on the list of qualified Assistant Captains for four years

and, if not promoted during that time, must re-qualify in the above manner.

A similar process is used for promotions to other ranks.

Proposals

The Union sought to change the system in Schedule B as outlined above with a system often called the “most senior qualified.” In simplified terms, under that system fire fighters who passed the Employer’s four-part test would be promoted in order of seniority as the vacancies became available.

The Union raised many concerns about the current promotion process. At its heart, the Union was concerned about the fairness of that process. The Union disliked the process by which a Promotional Recommendation Board chose a smaller group from among the “qualified” fire fighters and, second, the Union was opposed to the process by which the Fire Chief selected a person for promotion.

On the other hand, the Employer proposed changes which would have the effect of giving the Fire Chief greater discretion in promotions.

Decision

None of the collective agreements for comparable fire services have a system like the one found here. I have endeavoured to fashion a system which retains some of the existing collective agreement but moves toward the type of promotional systems in use elsewhere. The successful candidates are to be ranked in order of their scores on the Employer tests. Thereafter, subject to the exception noted in the next sentence, both promotions to a higher

rank and opportunities to “act” in a higher rank position on a temporary basis are to be made in accordance with the fire fighter’s ranking among the successful candidates. The one exception is as follows - in a situation of relative equality between candidates, the more senior candidate is to be preferred both in promotions in rank and in opportunities to serve in a higher rank on an acting basis.

Finally, Schedule B occupies eight pages of the collective agreement and I have not re-drafted it. I direct the parties to prepare language to implement the order below.

I order that Schedule B of the collective agreement be amended as follows:

- (1) Candidates will be ranked according to their overall results of the four-part evaluation pursuant to s.2.2 and s.2.3. As a consequence, Article 2.5(e); Article 2.6(d); Article 2.7(g) and Article 2.8(b) are modified to indicate the percentage score, deleting reference to “qualified” or “not qualified”.*
- (2) The term “Qualifying Board” will be amended to “Examination Board” throughout Schedule B.*
- (3) Article 2.9(b)(i) is modified to rank personnel according to their aggregate scores on the four areas set out in 2.2, unless otherwise modified by seniority as set out in paragraph (5) of this award, below. Article 2.9(b)(iv) is modified to provide entitlement to acting on each platoon to be determined by the person’s rank on the aggregate list - the person with the highest ranking having the opportunity to act first.*
- (4) Articles 3.2, and 3.3; 4.2, and 4.3; and 5.2, and 5.3 are deleted. Successful candidates for the position of Fire Prevention Captain, Assistant Captain, and Captain will be determined according to the individual’s placement on the list set out above.*
- (5) Articles 3.5; 4.5; 5.4; 7.3 regarding Platoon Chief; 7.4 regarding training officers (I note what appears to be a typographical error in the collective agreement - the language covering the promotion of training officers ought properly be s.8); 9.3; and 10.3 are modified to provide that where two candidates are “relatively equal” in their aggregate scores, the more senior member will be ranked higher for the purpose of both promotion and acting assignments.*

(6) Article 7.2 (regarding Platoon Chief), 9.2 and 10.2 are modified to provide that eligible personnel who apply for the position of Platoon Chief, Chief Training Officer or Chief Fire Prevention Officer will be ranked in accordance with their aggregate scores from the Fire Chief's assessment process, under the guidance of the Examination Committee. Article 7.2(c) (Platoon Chief) is modified to provide entitlement to acting on the basis of the candidates' position on the acting/promotion list. There is no change to 7.2(b); 9.2(b) or 10.2(b).

With the exception of acting appointments, all the changes in this award are to be effective as of the date of this award. The changes regarding acting appointments are effective with the beginning of the day shift Monday December 3, 2007.

Finally, the Board remains seised to deal with any issues which may arise in the implementation of this award.

Dated in London, Ontario, this 12th day of October, 2007.

Howard Snow, Chair

I dissent (dissent to follow)

"Bruce Light"
Bruce Light, Employer Nominee

I concur (see attached concurrence)

"Bill Cole"
Bill Cole, Union Nominee