
**In the Matter of the
Dispute Between**

**A Timely Appeal for a Step
4 Arbitration Hearing
Before**

**The Air Force Materiel Command
(AFMC)**

and

**Ann C. Wendt
Arbitrator**

**The International Association of
Fire Fighters (IAFF), o/b/o IAFF
Local F-78, IAFF Local F-88, and
IAFF Local F-211**

Hearing: April 17 & 18, 2008

Record Closed: August 1, 2008

FMCS Case No. 07-55478

Award: September 22, 2008

AUTHORITY

In compliance with Article IX: GRIEVANCE PROCEDURE, of the Agreement between THE AIR FORCE MATERIEL COMMAND, Washington D.C. and THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (AFL-CIO), effective December 4, 2002, a Step 4 Arbitration Hearing was held between THE AIR FORCE MATERIEL COMMAND, Washington D.C., herein referred to as the Agency, and THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (AFL-CIO), herein referred to as the Union, on April 17 and 18, 2008, in Building 266, Area A Room A111, Wright-Patterson AFB, Ohio. The witnesses were sworn and some were separated. An official verbatim transcript of these proceedings was made. The parties entered testimony and documentary evidence into the Record of these proceedings. The Arbitrator, being duly authorized, now makes and enters the following findings.

ISSUE

Did the employer violate the Command Labor Agreement, DoDI 6055.06, and/or (if applicable) NFPA 403, by reducing staffing on its Aircraft Rescue Fire Fighting vehicles, and if so what is the remedy?

STIPULATION

This matter is properly before the Arbitrator with resolution of merits.

JOINT EXHIBITS

- Joint Exhibit 1- Command Labor Agreement between The Air Force Materiel Command and The International Association of Fire Fighters (AFL-CIO) dated September 5, 2002. (105 pages)
- Joint Exhibit 2 - Union Grievance dated March 10th, 2007. (1 page)
- Joint Exhibit 3 - Agency Response to the Grievance dated March 30th, 2007. (1 page)

UNION EXHIBITS

- Union Exhibit 1 - Union Grievance dated March 10th, 2007. (1 page)
- Union Exhibit 2 - Agency Response to the Grievance dated March 30th, 2007. (1 page)
- Union Exhibit 3 - E-mail to B.R., Union Counsel, from J.J., Grievant, dated August 13, 2007 containing the Agency's response to the Grievance dated March 10, 2007. (1 page)
- Union Exhibit 4 - Excerpt copy of the Command Labor Agreement between The Air Force Materiel Command and The International Association of Fire Fighters (AFL-CIO). (Table of Contents, pp. 3, 73 and 87)
- Union Exhibit 5 - Excerpt copy of the Local Supplemental Labor Agreement between Wright-Patterson AFB and The International Association of Firefighters (AFL-CIO) Local F-88. (Table of Contents, p. 19)
- Union Exhibit 6 - Department of Defense (DoD) Instruction Number 6055.06 dated December 21, 2006 containing information relevant to the DoD Fire and Emergency Services (F&ES) Program. (pp.1-35)
- Union Exhibit 7 - National Fire Protection Association (NFPA) 403: Standard for Aircraft Rescue and Fire-Fighting Services at Airports- 2003 Edition. (64 pages)
- Union Exhibit 8 - U.S. Air Force Technical Implementation Guide 403-01 for NFPA 403, Standard for Aircraft Rescue and Fire Fighting Services at Airports--Published December 2004 and Revised February 10, 2006. (26 Pages)
- Union Exhibit 9 - Air Force Instruction 32-2001, Civil Engineering, The Fire Protection Operations and Fire Prevention Program dated April 1, 1999. (pp. 1-23)
- Union Exhibit 10 - Memorandum, dated July 17, 2007 and signed by A.B., to Deputy Assistant Secretary of the Army (Installations and Housing), Deputy Assistant Secretary of the Navy (Safety), Deputy Assistant Secretary of the Air Force (Environment, Safety & Occupational Health), and Director, Defense Logistics Agency concerning the clarification of vehicle staffing requirements, Department of Defense Instruction 6055.06, DoD Fire and Emergency Service (F&ES) Program from A.B., Assistant Deputy Under Secretary of Defense (Environment, Safety and Occupational health). (1 page)

- Union Exhibit 11 - Letter dated September 24, 2007 to T.B., Director of Communications, Installations, and Mission Support, from R.C., President of Local F88 and IAFF/AFMC liaison officer, , requesting specific documentation relevant to Hanscom AFB, Tinker AFB and Wright-Patterson AFB and concerning the Grievance dated March 10, 2007. (3 pages)
- Union Exhibit 12 - Memorandum dated November 14, 2007 to B.R., Union Counsel, from T.B., Director of Communications, Installations, and Mission Support in response to Union Exhibit 11. (3 pages)
- Union Exhibit 13 - Three maps: (1) Wright-Patterson AFB Area A & C, (2) Wright-Patterson AFB Area B, and (3) Wright-Patterson Area and surrounding cities. (No date) (3 pages)
- Union Exhibit 14 - AFTO Form 88- Aircraft Pre-Fire Plan for aircraft type-C5 dated February 2008. (2 pages)
- Union Exhibit 15 - WP Fire and Emergency Services Risk Matrix dated March 10, 2008. (1 page)
- Union Exhibit 16 - Department of the Air Force, Manning by Position/Contingency Plan, CEF SOP 201.01 dated April 10, 2007 and signed by K.K., Chief, Fire and Emergency Services and R.C., President, IAFF Local F-88--with Attachment Minimum Manning-24 Operations personnel plus a minimum of 2 Chiefs. (3 pages)
- Union Exhibit 17 - E-mail to all 88 ABW/CEF Personnel, and D.S. dated March 20, 2008 from T.Y. Civ USAF AFMC, concerning Aircraft Composite Fiber & Resin Hazards. (1 page)
- Union Exhibit 18 - One map: Tinker FB Fire and Emergency Services. (No date) (1 page)
- Union Exhibit 19 - Tinker Fire and Emergency Services Aircraft Pre-Fire Plan, No. 0120, dated April 3, 2008 (pp. 7-10)
- Union Exhibit 20 - Tinker AFB Division Management Plan 32-3 dated November 14, 2006. (pp. 1-11)
- Union Exhibit 21 - Local Supplement Agreement between The Oklahoma City Air Logistics Center Fire Department and The International Association of Fire Fighters (AFL-CIO) Local F-211. (Table of Contents, p. 22)
- Union Exhibit 22 - Resume of W.K., CFO, MIFirE (Expert witness). (3 page)
- Union Exhibit 23 - Department of Defense Instruction, DoD Fire and Emergency Services Program number 6055.6 dated October 10, 2000

AGENCY EXHIBITS

- Agency Exhibit 1 - Letter dated October 29, 2007 to H.S., President, International Association of Fire Fighters from P.G., Deputy Under Secretary of Defense (Installations and Environment) in response to IAFF's letter of August 6, 2007 concerning Clarification of Vehicle Staffing Requirements. (1 page)
- Agency Exhibit 2 - Image posted by IAFF on billboard containing graphic representation of a potential C5 fire. (1 page)
- Agency Exhibit 3 - Aerial Photograph, Actual C5 crash/fire (1 page)
- Agency Exhibit 4 - Ground Photograph, Actual C5 crash/fire (1 page)
- Agency Exhibit 5 - Department of Defense Instruction, DoD Fire and Emergency Services (F&ES) Program, Number 6055.06 dated December 21, 2006. (pp. 1-35)
- Agency Exhibit 6 - Implementation of Civil Engineer (CE) Transformation Plan, Headquarters United States Air Force dated April 19, 2007. (14 pages)
- Agency Exhibit 7 - Air Force Instruction 32-2001, Civil Engineering, The Fire Protection Operations and Fire Prevention Program dated April 1, 1999. (pp. 1-23)
- Agency Exhibit 8 - Tinker Fire and Emergency Services, Strike Team Operation dated February 20, 2006. (2 pages)
- Agency Exhibit 9 - [Duplicate] Tinker Fire and Emergency Services, Strike Team Operation dated February 20, 2006. (2 pages)
- Agency Exhibit 10 - Crisis Management Diagram, PBD 720 Cuts/ C-5 Fire with Air Crew Rescue (No date) (1 page)
- Agency Exhibit 11- AFMC Counterproposal, Article 2 Laws and Regulations dated April 27, 2000 (1 page)

APPLICABLE AGREEMENT PROVISIONS

Command Labor Agreement between The Air Force Materiel Command and The International Association of Fire Fighters (AFL-CIO)

Article II

Laws and Regulations

Section 1: Within the context of the Federal Sector Labor Relations Statute, it is agreed and understood that in the administration of all matters covered by the Command Labor Agreement (CLA) and any Local Supplement Agreement (LSA) thereto, the Employer, the Union and unit employees are governed by applicable existing and future laws and government-wide and Department of Defense (DOD) policies and regulations. Additionally the parties recognize that they are governed by applicable existing policies and regulations of appropriate authorities, such as Presidential Executive Orders, United States Air Force and Air Force Materiel Command policies and instructions, and local operating Instructions (OI's). In cases of conflict between the CLA or any LSA and any Air Force instruction, regulation, or policy issued subsequent to the approval of the CLA/LSA, the CLA/LSA shall take precedence over the instruction, regulation or policy unless mutually agreed to by the Parties. In cases of conflict between the CLA or any LSA and any local instruction/policy and/or Fire Department Standard Operating Instruction (SOI) issued subsequent to the approval of the CLA/LSA, the CLA/LSA shall take precedence over the local instruction/policy and/or Fire Department SOI unless mutually agreed to by the parties. (Joint Exhibit 1, p. 3].

Article IV

Rights Of The Employer

Section 1: Pursuant to 5 USC 7106, the Employer retains the right:

- a. To determine the mission, budget, organization, number of employees, and internal security practices and
 - (1) To hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees
 - (2) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which activity operations shall be conducted
 - (3) With respect to filling positions, to make selections for appointments from:
 - (a) Among properly ranked and certified candidates for promotion or
 - (b) Any other appropriate source and
 - (4) To take whatever action may be necessary to carry out the agency mission during emergencies.
- b. Nothing in this Article shall preclude the Employer and the Union from consulting and/or negotiating--
 - (1) At the election of the Employer, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work

- (2) Procedures which the Employer will observe in exercising any authority under this Article or
- (3) Appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by the Employer. [Joint Exhibit 1, p. 7].

Article XXV

Health and Safety

Section 1: The Employer will assure that safe and healthful working and living conditions are provided for bargaining unit employees that are consistent with the provisions of applicable laws and regulations. The Parties agree that the AFMC Fire and Emergency Services Program shall comply with applicable DoD instructions, Air Force Instructions, NFPA Standards, OSHA Regulations and other applicable laws and regulations. The Union agrees to cooperate with the Employer by encouraging employees to conscientiously abide by established safety rules; to work in a safe manner; to wear protective equipment prescribed by the Employer and to report observed safety and health hazards to the Employer in accordance with applicable procedures. [Joint Exhibit 1, p. 73].

Article XXX

General Provisions

Section 3: Workplace Fairness

The Employer agrees that the workplace will be free from arbitrary and capricious actions and decisions by supervisors. Decisions and/or actions taken by the Employer will be in accordance with applicable laws, rules regulations and negotiated agreements. [Joint Exhibit 1, p. 87].

Local Supplemental Labor Agreement between WPAFB and The International Association of Fire Fighters (AFL-CIO) Local F-88

Article X

General Provisions

Section 4: Manning/Staffing

The Employer agrees to staff and operate all required fire apparatus pursuant to the provisions of higher authority, law, rule, and regulations. The Employer agrees to negotiate with the Union of their desire to reduce the manning/staffing levels below the minimum requirements. [Union Exhibit 6, p. 19].

**Local Supplemental Labor Agreement between The Oklahoma City Air Logistics
Center Fire Department and The International Association of Fire Fighters (AFL-
CIO) Local F-211**

Article XI

General Provisions

Section 6: The Employer agrees to staff and operate all required fire apparatus pursuant to the provisions of higher "authority" law, rule and regulation. The Employer agrees that any deviation to the minimum staffing requirements established by the Department of Defense (DOD) and the Department of the Air Force will only be accomplished after a waiver has been granted by the Secretary of the Air Force and/or his/her designee. The Employer further agrees to notify the Union in writing of their desire to reduce the manning/staffing levels below the minimum requirements. The Union will be provided copies of all requests for waivers initiated by the Employer in addition to any approved waivers granted by the Secretary of the Air Force upon request. [Union Exhibit 21, p. 22].

Union Position

The best opening for these proceedings is actually going to be the Grievant himself to inform the Arbitrator about the full nature of the dispute, but briefly, the International Association of Fire Fighters and the Air Force Materiel Command, also known as AFMC, are parties to a Command Labor Agreement that concerns fire fighters employed at various federal Air Force facilities. It is our contention with respect to three of those facilities, that the employer's action in reducing staffing on Aircraft Rescue Fire Fighting vehicles, or ARFF, A-R-F-F, violated the employee's (sic) obligations under the Command Labor Agreement under the Department of Defense Instruction, DoDI 6055.06, and also under applicable NFPA standards, specifically 403. The three facilities that are involved in the case, and there will be testimony concerning each of them, the first is Wright-Patterson where we are today, the second is Tinker Air Force Base in Oklahoma, and the third is Hanscom Air Force Base in Massachusetts. The Union will present testimony from Mr. J.J., Vice President of the 16th District of the International Association of Fire Fighters, who filed the grievance; also from Mr. R. C., President of Local F88 and IAFF/AFMC liaison officer; and Mr. T.L., President for Local F211, Tinker Air Force Base. We will also be presenting testimony from an individual with tremendous background and expertise in federal fire fighting, and particularly the development and implementation of DoDI 6055.

At its core, while on its face the grievance is a grievance largely about DoDI 6055, the reason why it's important and the reason why we're here, is at core this really is a safety grievance. The issue of proper staffing of the Aircraft Rescue vehicles impacts the safety of fire fighters responding to these incidents; the safety of the men and women that are aboard the aircraft that take off and land at the facilities; and the safety of both the military and the civilian employees and visitors who live, work and visit these facilities.

This is not a grievance about dictating to the Agency how to manage its operations, but simply the Union is requesting compliance with the governing contract as well as applicable DoDI and NFPA standards.

Agency Position

This arbitration is the result of a Union grievance dated March 10th, 2007, signed by the IAFF District 16 Vice President and served upon General B. C., Commander, Air Force Materiel Command, which is also known as AFMC. In its grievance the Union established the challenged Agency action by stating the Agency has reduced staffing on fire apparatus at AFMC facilities, as specified. The grievance then identifies Wright-Patterson Air Force Base, Ohio; Hanscom Air Force Base, Massachusetts; and Tinker Air Force Base, Oklahoma, which are all AFMC bases. The grievance also specifies the Agency has reduced staffing on aircraft rescue fire fighting vehicles to two personnel at each base. Finally, the grievance describes the provisions of the parties contract which the Union claims AFMC is violating by not being in compliance with Department of Defense Instruction or DoDI Number 6055.06, dated December 21st, 2006, and National Fire Protection Association or NFPA standards.

The Agency will stipulate that manpower was reduced at all the bases discussed in the grievance. Thus, the narrow and specific issue which we are arbitrating, the issue the Union identified in its grievance is: has the reduction in the number of personnel resulted in a violation of DoDI 6055.06 and applicable NFPA standards as they pertain to staffing ARFF vehicles? So the narrow issue is whether or not the Air Force staffing violates these two standards. Safety on the ground is not something that is germane to what we are discussing here or germane to the dispute. It is an ancillary issue. The testimony will prove that since DoDI 6055.06 does not and was never intended to tie personnel to specific vehicles, the reduction in the number of fire fighters is in compliance with DoDI 6055.06. The testimony also will prove that since NFPA standards do not require personnel travel to an incident on the vehicle in which they will respond to an aircraft fire, AFMC is also in compliance with those standards. The witnesses will demonstrate that the critical number is the number of fire fighters at the scene, rather than the number which travel to the incident on an individual vehicle. The latest version of DoDI 6055.06, titled DoD Fire and Emergency Services Program, was created in 2006 by a six person Department of Defense fire and emergency services working group. Two of the six individuals who created DoDI 6055.06 will testify today for the Air Force regarding their intent in creating the instruction. Those witnesses will testify that one reason the instruction was revised was to clear up the misunderstanding that the previous DoDI tied personnel staffing to vehicles. DoDI 6055.06 was a result of several meetings of the working group. The Grievant in this case, the IAFF, had a representative present at these meetings. These representatives, including the Vice President of the 16th District of the International Association of Fire Fighters, were present to provide input into issues such as fire fighter staffing. The direct issue we are discussing today. At no time did the IAFF representative object to the changes made to DoDI 6055.06 as they pertain to ARFF staffing. The Air Force witnesses who created DoDI 6055.06 will explain that the instruction does not require a certain number of individuals on a fire fighting vehicle. However, it requires a certain number of fire fighters and vehicles arrive at the scene of a fire. It is unimportant how the fire fighters get to the scene as long as the appropriate total number of fire fighters and ARFF vehicles arrive at the scene. The instruction does not specify staffing per vehicle, but basing staffing requirements on the types of emergency each fire department expects to encounter. The witnesses will illustrate how the DoD instruction directs each service to determine, document and provide staffing required to meet its standards. They will show how the Air Force has complete discretion in determining the scope and level of fire fighting service. Additionally, the Air Force has discretion in fire fighter staffing as long as the number of fire fighters at the scene of a fire is in accordance with the

objectives set out in DoDI 6055.06. The testimony will demonstrate that each installation fire chief determines the number of fire fighters and vehicles needed for a specific situation based on given risk factors. The Air Force witnesses will testify that under DoDI 6055.06, fire fighters and vehicles are two independent and distinct resources. There are two critical factors at the scene of a fire: (1) that the requisite number and type of fire fighting vehicles arrive at the scene of a fire and (2) that the requisite number of fire fighters are present for operations at the fire. The Agency has a right to assign work under the Federal Service Labor Management Relations Statute. Moreover, the Air Force has the right to determine the personnel by which activity operations shall be conducted. Determining Air Force manning requirements is a permissive subject of bargaining. The Air Force can bargain the number of employees at its election and if it chooses not to negotiate, there is no requirement to do so. The Air Force has chosen not to engage in any bargaining on the manning issue and that the issue not be tied to fire vehicles, including ARFF vehicles.

Again, the arbitration comes down to a simple, direct issue. Does the reduction in the number of personnel violate DoDI 6055.06 and applicable NFPA standards as they relate to ARFF events. All additional issues, including issues regarding safety, are not germane to this grievance. The testimony of the Air Force witnesses who actually created DoDI 6055.06 know the intent of the instruction and will demonstrate that the reduction did not violate the DoDI or applicable NFPA standards.

FINDINGS

1. Mr. J.J., the National Vice President of the 16th District of the International Association of Fire Fighters testified that he represents the IAFF fire fighters of the 16th district. His representation responsibilities since 2003 include: providing advice and guidance to the federal locals that IAFF represent on federal installations and advocating for those locals on the IAFF Executive Board where the policies of the International are administered. His experience includes 20-21 years of fire fighting. The first four-five years was as a fire fighter for the United States Marine Corps followed by placement in the Air Force system as a civilian during which certification requirements were completed. Certifications include: driver/operator level, HAZMAT technician, emergency medical service, EMT certifications and confined space certifications. All are certifications required by the Air Force. The majority of Air Force time was spent as a Driver/Operator at Wright-Patterson Air Force Base where he served 16 years before assuming his current position.
2. Mr. J.J identified himself as the Grievant in these proceedings. The Grievant identified the grievance dated March 10th, 2007 as the basis of the instant dispute [Union Exhibit #1]. The Grievant explained that the purpose of the grievance was that the Agency initiated action to reduce the staffing on the crash vehicles/the Aircraft Rescue Fire Fighting (ARFF) vehicles. Based on those anticipated reductions IAFF reviewed material from DoDI 6055.06, the DoD documents and the NFPA standards (NFPA is a national consensus standard). Upon review and consideration of the Agency's anticipated actions and to which the Agency did take action to reduce the positions, IAFF determined that the Agency was in violation with the standards and the items cited in the grievance.

The Grievant further testified that ARFF vehicles are designed expressly for aircraft fire fighting where high temperature fires are likely. These vehicles contain three fire fighting agents: (1) water, (2) foam, and (3) a dry chemical. Specialized training is required to operate ARFF vehicles. The Grievant has completed this training.

The Grievant acknowledged that he was aware of Public Law 104-113 through which all federal agencies are required to adopt and comply with national consensus standards. He further testified that although the law is not explicitly cited in the Grievance [Joint Exhibit #2] its application is implied on page 2 "under the cite on Article 25, Section 1, which mentions other applicable laws and regulations" and on page 3.

3. The Grievant testified that prior to the reduction instituted by the Agency the normal staffing on a daily basis was three personnel on each one of the ARFF vehicles. After the reductions, the staffing changed to a ratio of two fire fighters per two ARFF vehicles. Further changes resulted in the ratio being altered to three fire fighters on one ARFF vehicle while having one fire fighter on a second ARFF vehicle. The Grievant added that some facilities are still manned with three fire fighters per ARFF vehicle.
4. The Command Labor Agreement includes four bases: Hanscom Air Force Base, Tinker Air Force Base, Wright-Patterson Air Force Base and Robbins Air Force Base. Each of the four bases has a local supplement which contains work rules pertinent to that facility.
5. The Grievant refers to Article II, Section 1 which stipulates that the Command Labor Agreements/Local Supplement Agreement takes precedence over any other regulations or policies. Based on this, the Grievant testified that Article XXV, Section 1 was in violation when the Agency enacted changes that negated the Command Labor Agreement.
6. The Grievant stated that he was an invited guest to some of the meetings of the Working Group which revised DoDI 6055.06 effective December 21, 2006. The Grievant clarified that he was not a member of the Working Group. They were simply guests. He stated that the DoDI 6055.06 establishes the requirements of fire emergency services through the Department of Defense components, which would be the Army, the Navy, Air Force, the Marine Corps and the Defense Logistics Agency. The Grievant further testified that the reduction in staffing ARFF vehicles was never discussed at a meeting he attended.

The intent of the DoDI 6055.06 is to establish and maintain a comprehensive fire and emergency services program as an element of the overall DoD Environmental, Safety and Occupational Health Program.

7. The Grievant read sections 4.2 and 4.3 of the DoDI 6055.06 [Union Exhibit #6] into the record. Section 4.2 reads, "Protect DoD personnel and the public from risk of death, injury, illness, or property damage as a result of DoD activities." Section 4.3 reads "Prevent and minimize loss of DoD lives and damage to property and the environment occurring in periods of peace, war, homeland security/defense, military operations other than war, and humanitarian operations."

The Grievant testified that he believes there are two reasons for these sections. The first is for the safety of employees who are fighting the fire. A certain number of employees and equipment is necessary to ensure their safety. The second is the overall safety of the crew, passengers and aircraft.

8. The Grievant testified that Section 6.8 of DoDI 6055.06 was violated by the change in minimum staffing of ARFF vehicles because in order to enter an aircraft two fire fighters must be available for entry and two fire fighters to remain outside. With the reduction in staffing there is inadequate manning to enter an aircraft with the first unit on the scene of a fire incident.
9. The Grievant testified that the reduction in staffing violated Section 6.10 of DoDI 6055.06 because the reduction of minimum staffing and equipment reduces the ability of the fire fighters to achieve a positive outcome.
10. The Grievant testified that the manning reductions do not comply with any of the criteria established in the DoDI 6055.06 under Sections 6.16.1 through 6.16.4 for waivers. Short-term deviations involve unique situations for a maximum of 90 days. Temporary deviations extend from over 90 days to a maximum of three years. These must include a plan for returning the unit to established criteria within the three years, which includes an assessment of risk, an action plan and acceptance of the risk from the Installation Commander with oversight from authority at least one level above the Installation Commander. Long-term deviations are not expected to be remedied however approval only extends for three year intervals. The Grievant testified that he is unaware of the Air Materiel Command making application for any type of deviation in the minimum manning of ARFF vehicles and he is unaware that the Agency has filed annual summaries to the Deputy Under-Secretary of Defense as is required under DoDI 6055.06 Section 5.5.6.
11. The Grievant testified that Table E3.T1: Minimum Level of Service Objectives- Operations of the DoDI 6055.06, identifies staffing for announced and unannounced incidents. The minimum manning on the ARFF vehicle specified for first arrival of announced and unannounced aircraft incidents is three (3) fire fighters. The arrival time for unannounced incidents is five (5) minutes and for announced incidents is one (1) minute. Most aircraft fires are unannounced. The reduction in staffing does not permit the first arriving ARFF vehicle and crew to begin fire fighting because there is insufficient manning to enter the aircraft. The minimum staffing is below the established DoDI 6055.06 standard and does not allow for sustainability in controlling and extinguishing a fire incident.
12. The Grievant identified National Fire Protection Association (NFPA) 403: Standard for Aircraft Rescue and Fire-Fighting Services at Airports [Union Exhibit #7]. He testified that this document was established as a standard by the Department of Defense for Aircraft Rescue and Fire fighting. Section 4.3.1 of NFPA, categorizes airports by the largest aircraft that lands at the installation. According to this document, Wright-Patterson Air Force Base is a category 9. NFPA uses this information in Section 6.1.1 to establish the number of ARFF vehicles required per category. For a category 9 the number of ARFF vehicles is 4. NFPA further indicates in Section 8.1.2.1 that the corresponding required personnel for a category 9 is 15 persons.

13. The Grievant identified, U.S. Air Force Technical Implementation Guide 403-01 for NFPA 403, Standard for Aircraft Rescue and Fire Fighting Services at Airports published December 2004 and revised February 10, 2006 [Union Exhibit #8]. In this document the Grievant identified section 4.3.2., which indicates that DoDI 6055.06 adopted the agent and airport category requirements of NFPA 403, as modified by ASC 019 vehicle sets. The Grievant continued identifying 11.1 and 11.2 as follows: (1) 11.1- "SORC defines a predetermined fire fighting capability predicated upon a specific level of fire department resources (staffing, vehicles, equipment, and fire station locations). If any one of these critical resources is not available, mission objectives cannot be fully accomplished. It is important to understand that a fully staffed ARFF vehicle can accomplish initial offensive aircraft fire ground operations upon arrival" and (2) 11.2- "Conversely, inadequately staffed ARFF vehicles cannot accomplish initial offensive aircraft fire ground operations."
14. The Grievant identified the Air Force Instruction 32-2001, which is Fire Protection Operations and Fire Prevention Program [Union Exhibit #9]. He stated that this document "implements the 6055 and the NFPA standard."
15. The Grievant identified a memorandum from A.B., the Assistant Deputy Under Secretary of Defense for Environment, Safety and Occupational Health [Union Exhibit #10]. The memorandum clarifies vehicle staffing requirements. The Grievant testified that in his opinion the Under Secretary of the Defense for Environment, Safety and Occupational Health does not have the authority to "amend or deviate" from DoDI 6055.06.
16. R.C. is a lead fire fighter (captain rank) at WPAFB in Dayton, OH for 23 years and President of Local F88 and IAFF/AFMC liaison officer. He has been a fire fighter for 28 years. He has the following certifications: HAZMAT technician, Fire Officer I, II and III, EMT intermediate, HAZMAT operations, Fire Fighter I and II, Fire Inspector I and II, Fire Instructor I and II, Confined space rescue.

He explained the concept of IDLH (Immediately Dangerous to Life and Health) as requiring that the fire fighters being "fully bunkered out" (i.e. all protective gear on, including air packs, SCBA, self contained breathing apparatus, and breathing air). Standard procedures for fire fighters require that when one hose line is down another must be available for back up.

17. R.C. explained that Wright-Patterson Air Force Base receives virtually anything flying in the air, all the way up to a C-5.
18. R.C. identified the Aircraft Pre-Fire Plan for the C-5 aircraft at WPAFB [Union Exhibit #14]. He testified that this plan is used "to determine the hazards and the use of our equipment on how we're going to respond and where we're going to place it and the duties of the personnel."

R.C. testified that under the reduced manning at WPAFB the 3rd and 4th ARFF vehicles arrive at the scene with only a driver who parks the vehicle making it immobilized for fire fighting. R.C. described a scenario that is likely to result. He stated, "You cut our capabilities in half, you cut our safety in half. We don't have that 6,600 gallons of water and 1,000 gallons of foam available to fight fire with us if those guys are up there pushing hose lines in through the fuselage. So although we may have met some kind of a requirement to

get water to the scene, it's no longer available to us. It's just sitting there. It's no different than crashing next to a hydrant."

19. R.C. identified the WPAFB Fire and Emergency Services Risk Matrix dated March 10, 2008 [Union Exhibit #15]. This displays the reconfiguration of fire fighters based on a reduction in staff from 33 to 22 as of October 2008. These reductions will limit utilization of fire fighting equipment.
20. R.C. identified the Manning by Position/Contingency Plan [Union Exhibit #16]. He testified that he recognized they did not have the staffing any more but there was no agreement with cuts. Training sessions with the reduced manning were conducted during 2007. He described the lack of cohesion and inability for the fire fighters to immediately take their positions and begin work because they arrived at different times and not working as a unit.

R.C. testified that before signing the Position/Contingency Plan he wrote, "The Union's signature on this SOP denotes concurrence with the procedures set forth for scheduling annual leave. It does not signify the Union's agreement with dropping the manning levels below those set forth in applicable Air Force or NFPA standards. Any decision to do so is at the discretion of management and does not limit the Union's rights to pursue correction of such action through contractual or statutory means."
21. R.C. described Hanscom Air Force Base as a Municipal Airport owned by Massport or the Port of Massachusetts. He stated, "They contract with Hanscom Air Force Base Fire and Emergency Services to provide the first responder and crash response to that area." They have one ARFF vehicle staffed with two personnel and no Air Force aircraft are assigned to Hanscom.
22. Mr. T.L. is a captain and a lead fire fighter at Tinker Air Force Base and the President of Local F-211, Tinker Professional Fire Fighters, in Pawhuska, OK. He has been a fire fighter for 18 years [seven years active duty Air Force with remainder as civilian]. He has the following certifications: HAZMAT technician, Level II and officer, rescue technician II, HAZMAT IC, incident safety officer, instructor and inspector.
23. T.L. testified that Tinker Air Force Base has three types of aircraft assigned to it: (1) an Air Force component of E-3, (2) a Navy assigned E-6 aircraft and (3) KC-135's assigned as a reserve and guard component. He further explained that Tinker Air Force Base receives "B-1B, B-52, KC-135" and "up to as many as 25 different aircraft that come in for maintenance. "
24. T.L. testified that with only two fire fighters on an ARFF vehicle "you can give the initial disbursement of agent or fight exterior fires solely with the crash truck. Or you can lay the equipment out. But you're going to have to wait for someone else to get there to help you advance the line and enter the aircraft" because the pressure coming from the [hose] line is so great as to create an unsafe situation. He estimated that 75% of the time ARFF vehicles are staffed with two personnel.

25. Mr. W.K., is a Fire Protection Consultant [Expert testimony for Union]. He is a former Fire Chief with the Federal fire service and former Director of fire and emergency services for the United States Navy [Union Exhibit #22]. He testified that in each of the DoDI reference is made to specific national fire codes, such as NFPA 1700, NFPA 403 and NFPA 1500.

26. W.K. testified that he believes NFPA 403 requires that ARFF vehicles be staffed with three personnel pursuant to Union Exhibit #7, Table A.8.1.2, ARFF Personnel Based on Airport Category.

He testified it is the minimal number of people "required to safely execute the duties and performances that are required of a fire fighting team in an incident." He further testified that the "area around that aircraft that's involved is considered the immediate danger to life and health atmosphere. So now you're talking about people that have to be in complete protective clothing, with self-contained breathing apparatus, and there has to be a RIT team on the outside for rescue of those people."

W.K. testified that he does not agree with the Agency's statement that it does not matter how many fire fighters accompany the ARFF vehicles; it's simply a matter of the total overall response. He continued, "And I'll give you an example. The Department of Defense does not operate tanks with less than the required crew. They don't fly airplanes without a copilot or a navigator. The Navy doesn't sail ships without the ship's crew. Because that's the minimum number of people needed to make that platform work. It's the same thing with fire fighting. The minimum number of people needed to safely operate ARFF vehicles and structural vehicles, as established in this standard which is basically a safety standard for fire fighting and aircraft operations. The DoDI instruction is basically a safety standard for ensuring the protection of the lives and property at DoDI installations. And it is a minimum standard. There's nowhere in any of these documents does it say this is a maximum standard." He further clarified that the Air Force participated in revising NFPA 403.

27. W. K. testified that DoDI 6055.06 that ARFF vehicles be staff with three personnel. He noted that "the standards for fire protection and procedures is that the defense agencies and components are to comply with the relevant standards issued by the Department of Labor and the National Fire Protection Association's national fire codes, which includes NFPA 403."

28. W.K. emphasized that the current staffing for ARFF vehicles at Tinker, Hanscom and Wright-Patterson Air Force Bases is not adequate. The reason being "Any time you go below the minimum safe level of staffing in a fire fighting vehicle, the people that you're there to protect and the people that are trying to do the protecting or rescue work, are all in jeopardy because you do not have the minimum prescribed number of people to perform the evolutions necessary to bring that to a successful conclusion. That is, the extinguishing and control of the fire and the rescue of the people who are at risk."

29. W.K. testified on rebuttal that the Navy is staffing its ARFF vehicles with three personnel according to their interpretation of DoDI 6055.06, table E3.T1.

30. A.K. works in the office of the Deputy Under Secretary of Defense for Installations and Environment and responsible for policy for the fire and emergency services program. He testified to the definition of 'company' and that staffing is not tied to manning of ARFF vehicles but that staffing is dependant on the number of people needed on the ground [at the scene of a fire incident].

He affirmed that A.B., the Assistant Deputy Under Secretary of Defense for Environment, Safety and Occupational Health, had the authority to issue the Memorandum on July 17, 2007 [Union Exhibit #10].

31. A.K. affirmed that in DoDI 6055.06 [Union Exhibit #6], the Air Force, the Navy and the Marine Corps cannot determine for itself what *relevant* means within the meaning of Section 6.1.

32. Mr. M.D. is a Fire Protection Engineer and has a Bachelor of Science degree in Fire Protection Engineering. He spent 16 years in the insurance industry doing fire protection engineering work such as: assessing fire protection systems, writing and underwriting for insurance companies. He testified that although the grievance alleges that the AFMC violates NFPA 403, he stated that "it's not really relevant anyway because our Command Labor Agreement does not adopt NFPA 403. It does not recognize NFPA 403." Under cross-examination he clarified that "it is not incorporated into the CLA. I believe through the Air Force TIG system, that 403 has some applicability."

33. Mr. D.W. is the Air Force Fire Chief and his duties, as they pertain to this position, is to develop policy and advocacy that facilitates fire protection in the Air Force for people and property. He has 20 years of fire fighting experience; his last assignment as Chief at Anderson Air Force Base Quam. He is also the Air Force representative to the DoD fire and emergency services working group that is responsible for writing and revising the DoD policy. He identified a copy of the DoDI 6055.06; the document prepared by the working group [Agency Exhibit #5]. He testified that this document is different from the previous DoDI 6055.6 in that fire fighters were not tied to vehicles.

34. Mr. K.K. is the Fire Chief at Wright-Patterson Air Force Base (WPAFB) since 2003 and has a total of 31 years experience. He testified that WPAFB has a mutual aid agreement that includes 100 fire departments. Most responses would come from Fairborn, Beavercreek, Bethal Township, Huber Heights and Riverside. He testified that WPAFB fire department has a minimal staffing of 22. He further testified that WPAFB has four ARFF vehicles. One is staffed with three (the turret operator and two fire fighters). A total of 15 respond to a major event. Training for major events is conducted quarterly. Different scenarios may be used for each training.

The witness identified an illustration for an incident on a C-5 aircraft [Agency Exhibit #10]. Four ARFF vehicles would respond; one with a driver and two fire fighters. The second ARFF vehicle is operated by the turret operator. Two additional ARFF trucks are at the scene if they become needed. The witness stated that on the illustration "You have four ARFF trucks, you have an engine with four individuals, you have a tanker with one individual, you have two rescue trucks with two each, and the remaining are on the cross-manned units that are in staging." He further testified that the fire department can complete their mission without manning tied to vehicles.

35. Mr. M.M. is currently working for the Air Force Materiel Command in the Labor Relations function. Before his retirement he was the Chief Negotiator at Air Force Materiel Command for the Command Labor Agreement. In response to counsel's question concerning the inclusion of NFPA standards in Article II: Laws and Regulations, of the Command Labor Agreement, the witness testified "in the course of those negotiations the Union proposed that there be included in Article II reference to the NFPA standards. However, management was unwilling to concur or agreed to their inclusion, given that they were non-government standards or guidelines." He further stated that "the next bargaining session occurred in September of 1998. In the course of that bargaining the Union asserted that where there is conflict between a local operating instruction and an NFPA standard, the NFPA standard would -- would prevail. They likewise asserted that where there was conflict between an Air Force standard and an NFPA standard, that the NFPA standard, again, would take precedence. We did not share the same point of view and did not agree with that point of view."

The witness identified AFMC Counterproposal dated April 27, 2000, to which both parties agreed and signed for Article II: Laws and Regulations of the CLA [Agency Exhibit #11].

ANALYSIS AND OPINION

1. To prevail in the instant dispute, the Union must prove by a preponderance of the evidence that the Agency violated the Command Labor Agreement (CLA), DoDI 6055.06, and/or (if applicable) NFPA 403, by reducing manning on its Aircraft Rescue Fire Fighting vehicles.
2. Article II: Laws and Regulations, Section 1 of the Command Labor Agreement, explicitly states that "the parties recognize that they are governed by applicable existing policies and regulations of appropriate authorities, such as Presidential Executive Orders, United States Air Force and Air Force Materiel Command policies and instructions, and local operating Instructions (OI's)." The explicit language of Article II does not permit the parties to use discretion as to which policies are to be honored and as to which policies to disregard.

Reduction in the minimum manning of ARFF vehicles without implementing required procedures for deviation as explicitly stated in DoDI 6055.06 is a violation of Article II: Laws and Regulations. The DoDI 6055.06 established a short-term, long-term and temporary deviation procedure for reduction in the manning of ARFF vehicles. The record is void of testimony or documentary evidence that the Agency fulfilled its obligation under this provision.

The Arbitrator recognizes that budget constraints obligate the Agency to reduce costs in order to adhere to new budget guidelines. Nevertheless, reductions in budget do not permit the Agency to circumvent established procedures for reducing the minimum manning requirements.

3. Article IV: Rights of the Employer, Section 1 of the CLA explicitly reserves to the Agency the right to “hire, assign, direct, layoff and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees” and “to assign work, to make determinations with respect to contracting out, and to determine the personnel by which activity operations shall be conducted.” The instant dispute does not circumvent the Agency’s rights under Article IV of the CLA. Instead, the instant dispute addresses a violation of the DoDI 6055.06 concerning the manning of ARFF vehicles. Further, the reduction poses a serious safety issue in the context of the fire fighters, the crew and passengers of the aircraft and to the Agency. The reductions in manning of the ARFF vehicles impede first responders to effectively fight announced or unannounced incidents. The authority to control does not negate the Agency’s obligation to comply with established procedures. The Agency arbitrarily reduced the manning of the ARFF vehicles. The Agency’s action results in ARFF vehicle manning, which virtually immobilizes some of the ARFF vehicles since entering the aircraft requires a “two-in, two-out” and a pump operator on each truck. Clearly, this arbitrarily reduction in the manning of ARFF vehicles multiplies the safety and health risks for all who are on the scene. This action appears contrary to the Agency’s assertion that the safety of fire fighters, flight crew, passengers and the aircraft is the first concern.

The Agency’s had an opportunity to comply with the provisions of the DoDI 6055.06 by completing a risk analysis and establishing a timetable for manning restoration.

4. The parties agreed in Article XXV: Health and Safety, Section 1 of the CLA, to which policies and regulations must be adhered to ensure the safety and health for bargaining unit employees.

The reduced manning of ARFF vehicles creates a safety hazard for the bargaining unit members. Further, it restrains initial responders’ ability to effectively control an aircraft fire. The record reveals that the “two-in, two-out” rule explicitly pertains to the fire fighters. A minimum of two ARFF vehicles manned with a driver/pumper and two fire fighters is essential to begin initial fire fighting attack. An aircraft fire involves high temperatures and the potential for explosion. To mitigate these risks it is essential that ARFF vehicles be manned in accordance with Table E3. T1: Minimum Level of Service Objectives-Operations, of the DoDI 6055.06.

5. Article XXX: General Provisions, Section 3 of the CLA, prohibit the agency from making arbitrary and capricious decisions. The Agency, in its reductions of manning ARFF vehicles, made an arbitrary decision in the interest of budget reductions. The manning of the ARFF vehicles was not within the Agency’s discretionary authority since the Agency in Article II: Laws and Regulations agreed to comply with all “applicable existing policies and regulations of appropriate authorities...”. Based on the record, the Agency violated Article XXX of the CLA.
6. The Local Supplement Agreements (LSA) stem from the CLA. These agreements contain local work rules which are consistent with the CLA. Article X: General Provisions, Section 4, WPAFB LSA, explicitly states, “The Employer agrees to negotiate with the Union of their desire to reduce the manning/staffing levels below the minimum requirements.” The record is void of testimony or documentary evidence that supports the conclusion that the Agency complied with this LSA’s provision.

7. Article XI: General Provisions, Section 6, Oklahoma City, LSA specifically states, "The Employer agrees to staff and operate all required fire apparatus pursuant to the provisions of higher "authority" law, rule and regulation. The Employer agrees that any deviation to the minimum staffing requirements established by the Department of Defense (DOD) and the Department of the Air Force will only be accomplished after a waiver has been granted by the Secretary of the Air Force and/or his/her designee. The Employer further agrees to notify the Union in writing of their desire to reduce the manning/staffing levels below the minimum requirements." In Union Exhibit 10, the grievant in this arbitration testified that the Assistant Deputy Under Secretary of Defense for Environment, Safety and Occupational Health, did not have the authority to "amend or deviate" from DoD 6055.06 in his memorandum clarifying vehicle staffing requirements. This article was violated by the Agency in that authority alone, without the presence of documentation (i.e. a waiver) giving approval to deviate, either short-term, long-term or temporary from the current manning regulations, cannot be the basis for deviation from manning requirements.

The Arbitrator concludes that the Agency failed to fully comply with Article XI: General Provisions, Section 6, Oklahoma City, LSA. This local supplement stems from the CLA and reinforces the Agency's obligation to comply with all "applicable existing policies and regulations of appropriate authorities...".

8. The record supports the conclusion that the Agency violated Articles- II: Laws and Regulations, Section 1, XXV: health and Safety, Section 1 and XXX: General Provisions, Section 3 of the Command Labor Agreement, Local Supplement Agreements, WPAFB, Article X: General Provisions, Section 4 and Oklahoma City, Article XI: General Provisions, Section 6, as they pertain to those respective bargaining units.
9. The Arbitrator in preparing this Award has carefully considered all testimony, documentary evidence, and post-hearing briefs although some may not have been specifically mentioned in the Findings and the Analysis and Opinion.

DECISION

The record supports the conclusion that the Agency violated the Command Labor Agreement when it reduced manning of the ARFF vehicles. Grievance sustained.

REMEDY

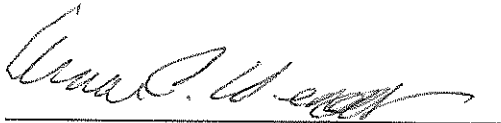
The Agency shall:

(1) Immediately restore minimum manning of ARFF vehicles to three (driver/pump operator and two fire fighters) per ARFF vehicle

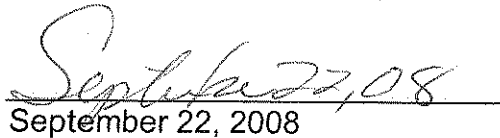
OR

(2) Undertake a risk analysis concerning the reduced manning, propose a time table when the manning will be restored to meet the criteria of the DoDI 6055.06, request an appropriate waiver and notify the union of the waiver's status.

The nature of the remedy in this case warrants the Arbitrator to retain jurisdiction of the case until both parties notify the Arbitrator that one of the two remedy options is implemented.



Ann C. Wendt, Ph.D. SPHR
Arbitrator



September 22, 2008