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August 24, 2010

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Re: FMCS Case No. 080501-55755-A

Dear Ladies and Gentlemen:

Enclosed herewith please find my opinion and award and bill for services rendered in the above-referenced matter.

Very truly yours,

William B. Gould IV

ARBITRATOR WILLIAM B. GOULD IV

In the Matter of the Arbitration -between- IAFF Local F-145, Union -and- United States Department of the Interior National Park Service, Golden Gate National Recreation Area, Employer FMCS Case No. 080501-55755-A, Firefighters	Appearances: For the Union (IAFF): Baldwin Robertson, Esq. Douglas L. Steele, Esq. Woodley & McGillvary 1101 Vermont Avenue N.W. Suite 1000 Washington, DC 20005 Al Duncan, President of IAFF F-145 For the Employer: Karen D. Glasgow Department of the Interior Oakland, CA

I. INTRODUCTION

Hearings were held in the above-referenced matter at the Golden Gate National Recreation Area, Fort Mason Building 201 in San Francisco on May 7, 8, August 31 and December 15, 2009. A transcript of 411 pages was taken during those four days of hearings and numerous exhibits were submitted to the Arbitrator as well. Prior to the commencement of the hearings the Arbitrator had both correspondence and telephone conversations with the parties jointly to examine questions relating to both mediation of the dispute and discovery procedures to be followed.

At the hearing, IAFF Local F-451, hereinafter to be referred to as the Union, and United States Department of Interior, National Park Service, Golden Gate National Recreation Area, hereinafter to be referred to as the Employer, were both given a full opportunity to introduce and

submit evidence including testimony and exhibits; to examine and cross-examine witnesses and to make argument on behalf of the evidence. Subsequent to the hearing in February and March 2010 briefs were submitted by both the Union and the Employer.

At the hearing the Union and Employer jointly stipulated that the issues submitted to the Arbitrator are the following:

(1) Is the Agency in violation of Article 13, Section 2 of the Collective Bargaining Agreement, Agency regulation DO-58, and/or Public Law 104-113, by failing to staff the Presidio Fire Department in accordance with the deployment standards of NFPA 1710 and, if so, what is the remedy?

(2) In decommissioning two apparatus on April 27, 2008, did the Agency violate Article 2, Section 3 and/or Article 3, Section 1 of the Collective Bargaining Agreement by failing to notify and negotiate with the Union first and, if so, what is the remedy?

(3) In refusing to arbitrate the Union's April 2, 2008 grievance without conditions did the Agency violate Article 9, Section 1 of the Collective Bargaining Agreement and, if so, what is the remedy?

The parties agree that the second issue has been resolved between them and that the only ones remaining for the Arbitrator are issues 1 and 3.

II. FACTUAL BACKGROUND

The Presidio Fire Department was established when the Presidio itself was an installation operated by the United States Army in 1917. Some of the 700 structures date back to the Civil War or War of the Rebellion and are spread among 1500 acres. There are multi-story, historical, restored and un-restored buildings, both residential and commercial. There are attached and single-family homes, mostly without fire sprinklers; there are multi-story, multi-family homes. Additionally there are restaurants, warehouses, some of which are rented for large events or used for storage and retail spaces. There are apartment complexes, two youth hostels, five million square feet of commercial property, a daycare, a high school, museums, a marina, a luxury spa, a

YMCA overnight camp, and many other structures. Many of the buildings were built during World War II as temporary military housing without building codes in place, and now stand as protected, historic buildings.

In 1994 the Presidio was given to the National Park Service, which incorporated into the Golden Gate National Recreation Area (GGNRA), the parent organization of the Presidio Fire Department. This area covers not only the Presidio itself but also the Golden Gate Bridge and, to the north, the Marin Headlands. It is this entire area for which the Presidio Fire Department is expected to have complete fire and emergency response capabilities throughout its jurisdiction.

Union President, Al Duncan, testified that the PFD is an "all-hazard, all-risks" fire department which serves as a primary responder for medical calls, vehicle accidents, cliff rescues, structure fires, car fires, and hazardous material spills. A memorandum of understanding between the Presidio Trust and GGNRA established that the Presidio Fire Department is expected to provide "complete" fire and emergency response in its entire jurisdiction.

The dispute which has triggered this arbitration proceeding arises out of questions relating to safe staffing standards and NFPA 1710 provisions relating to staffing matters, discussions and grievances taking place in 2005 and 2007 and funding requests made to the National Park Service to obtain additional positions. The subsequent denial of a funding request led to this grievance on April 2, 2008. Subsequent to the filing of the April 2, 2008 grievance in May the agency decommissioned both the paramedic ambulance at Station 52 ("medic 52") and the ladder truck at Station 51 ("truck 51"). The Union, contending that this made the situation worse, demanded the right to bargain and on the change before the implementation of it.

III. PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article 9
Arbitration Procedure
Section 1. In the event the Employer and the Union fail to satisfactorily settle any grievance under Article 8, the grievance procedure of this AGREEMENT, then such grievance(s), upon written notice by the Partner desiring arbitration, shall be referred to arbitration. Requests for arbitration will be submitted within thirty (30) calendar days after receipt of the decision rendered at Step 3 of the grievance procedure, or within fifteen (15) calendar days of the respondent Party's reply or their failure refusal to a grievance processed under Article 8, Section 10, or within ten (10) calendar days from the conclusion of any grievance mediation meeting(s) under Article 8, Section 11 of this AGREEMENT.

Article 13
Health and Safety
Section 1. The Employer will assure that safe and healthful working and living conditions are provided for unit employees that are consistent with the provisions of applicable laws and regulations. To this end, the Employer agrees that the GGNRA Fire Protection and Fire Prevention Program will comply with existing and future NFPA and OSHA Standards/Regulations whichever is more stringent. The Union agrees to cooperate with the Employer by encouraging employees to work in a safe manner and wear protective equipment prescribed by the PARTNERS and to report observed safety and health hazards to the Employer in accordance with applicable procedures.

Section 2. The Employer agrees to staff and operate all required Fire Apparatus pursuant to the provisions of the NFPA/OSHA Standards whichever is more stringent pursuant to Section 1 of this article.

IV. CONTENTIONS OF THE PARTIES

The Union relies upon two reports done in advance of the hearing – the first of them done for the Presidio Trust by an outside consultant, Citygate Associates, a fire and emergency services consulting firm, which reviewed the quality of fire and emergency services provided by GGNRA. The report stated that the Presidio Fire Department "has not been able to comply ... with Director's Order #58, and many sections of various National Fire Protection Association operational, equipment, and firefighter health and safety standards." The report connected the

Presidio Fire Department's failure to a GAO study noting the National Park Service's nationwide failure to "meet its structural fire safety responsibilities." The Union also relied upon a report done by its parent organization, the International Association of Fire Fighters (IAFF) which conducted a Geographical Information Systems (GIS) study of the GGNRA. This study, states the Union, "presents a devastating look at the inadequate staffing and response times of the PFD."

Central to the Union's case is its contention that the Employer is obligated to comply with NFPA 1710 relating to staffing with which the Employer is not in compliance. The Union states that the obligation to comply exists in the Employer's own internal regulation, Order 58, which adopts the NFPA codes for fire protection and suppression and in the collective bargaining agreement between the Employer and the Union. Order 58 adopts the current version of NFPA and Article 13 of the collective bargaining agreement noted above provides that the Employer "assure that safe and healthful working and living conditions are provided for unit employees ... consistent with the provisions of applicable laws and regulations." The contractual provision then obliges the Employer to "... comply with existing and future NFPA and OSHA Standards/Regulations whichever is more stringent." Section 2 reiterates this obligation by obliging the Employer to agree to "staff and operate all required Fire Apparatus pursuant to the provisions of the NFPA/OSHA Standards whichever is more stringent pursuant to Section 1 of this article."

The Union raises a number of arguments which anticipate the Employer's reliance upon management rights – but the Employer does not appear to join issue with the Union on this matter and therefore the Union's arguments do not need to be repeated. I assume – and

apparently the Employer assumes, the validity of the Union's position but, in any event, this issue does not appear to be in dispute.

Third, the Union contends that even where management rights are at issue under federal sector labor law FLRA precedent establishes the proposition that Order 58 is part of "applicable law" under the authority given to the Secretary of the Interior and the National Park Service under the National Park Service Organic Act.

Fourth, the Union contends that even if the subject matter falls under the rubric of management rights, an agreement to bargain over the "numbers" of employees by virtue of Article 13, Sections 1 and 2 authorizes the Arbitrator under federal sector labor law to fashion a remedy for enforcement, i.e., "hiring, automatic aid [with another agency], or some combination of the two." Thus, states the Union: "On its face, the requested remedy plainly reflects a reconstruction of what was already required of the Agency under applicable laws." The Union states that there is no real dispute between the Employer and the Union on the Employer's agreement to "bargain over numbers, types, and grades of employees for the life of the agreement itself."

Fifth, the Union emphasizes that the Employer is not in compliance with NFPA 1710 and its employment standards. These provide, the Union notes, for a minimum of 14 employees to a fire emergency within a maximum of eight minutes as provided. The Union points out that the Employer has only 10 firefighters on duty on any given shift and that this falls short of the 14 which are necessary under NFPA standards to provide "complete" fire and emergency services. Here the Union alludes to the testimony of Chief Brown to this effect. This testimony was to the effect that the Department could comply with the standards without a full complement of 14 only through the use of "automatic, mandatory aid agreements" which it does not have.

In this connection, the Union references the testimony of Acting Chief Kiolbassa who testified that the mutual aid agreement between the Presidio and the San Francisco Fire Department is not mandatory but assistance is not "typically" requested until an incident commander arrives on the scene. The agreement provides for aid, when "possible."

The Union also relies upon its own GIS study which establishes that large areas of the Presidio Fire Department's jurisdiction cannot be reached within critical time constraints – and, more specifically, Map 6 which states that only 49 percent of the jurisdiction is reachable from either Station 51 or 52 within five minutes. The Union emphasizes the fact that areas like Fort Mason, lower Fort Mason, and Fort Baker are outside the four minute coverage. Under Fort Baker there is "... a bar and marina, a children's museum, a luxury hotel and resort, and other structures," states the Union.

With regard to the third grievance, the Union anticipates that the Employer will contend that the grievances are not arbitrable. Here the Union cites correspondence showing that it sought to invoke the contractual provision involved in the third grievance.

In its Closing Argument the Employer does not appear to address the arbitrability issue or many of the arguments put forward by the Union, including those which the Union anticipated that the Employer would rely upon. The position put forward by the Employer is that the mutual aid agreements have always been honored by the Employer's neighbors. Its response to the Union's grievances is as follows:

> In its grievance, the Union contents that the Employer is violating Article 13, section 2 in that geographical areas for which the fire department is required to provide fire suppression services cannot be reached within the NFPA mandated time frames. The Union also argues that the fire department does not employee enough personnel in order to deploy the NFPA mandated number of fire fighters to certain types of fires. The Employer is in agreement

with both propositions but, nevertheless, maintains that the Union has failed to prove that the Employer is in violation of NFPA 1710.

In this connection, the Employer's basic position appears to be that the Presidio Fire Department need not deploy the full numbers required by NFPA 1710 because "... NFPA allows a fire department to use mutual aid and automatic aid agreements to augment its personnel." The Employer states that, whatever the merits of the Union's GIS maps relating to the period of time in which it takes for deployed staff to reach a particular area, "... the fact remains the record is devoid of any evidence that the fire department has failed to respond to any suppression incident outside the 4 minute or 8 minute standard." In its statement on page 4 the Employer appears to concede that the mutual aid agreements are not "automatic" but contends that no evidence was introduced relating to the failure of the Department to meet the standard.

In its reply brief, the Union notes the testimony of both Jonathan Moore and Chief Brown to the effect that the agreements do not mandate assistance and that a lower off duty staff are allowed only under those circumstances. Moreover, the Union notes that the testimony was to the effect that other criteria were missing from the aid arrangements: (1) the companies formed by the aid agreements must assemble so that personnel work together, train together, and are under the leadership of a single officer; (2) there must be a simultaneous dispatch protocol documented in writing. The testimony of both Chief Brown and President Duncan, the Union notes, was that the agreements met none of these criteria. The Union notes the Employer's agreement in its Closing Argument with the proposition that not enough personnel can be deployed to reach the requisite areas within the mandated time.

In response to other Employer arguments the Union states that is has produced evidence of the Fire Chief's failure to request assistance under the mutual aid agreement from San Francisco; (2) the Union has shown the failure to deliver resources in a timely manner when a

citizen died from exposure and hypothermia yards away from the medic unit that was closed down in the Marin Headlands; (3) the GIS study definitively established the inability of the Department to deliver within the mandatory maximum time limits of NFPA 1710 and the Employer has not rebutted this. The Union states that its "burden of proof surely does not require that a tragedy occur, or even that fire fighters be placed at dire risk of life or injury, before a violation of the standard can be found."

V. OPINION

Notwithstanding the large number of days of hearings and voluminous briefs filed and arguments made, this dispute is a relatively straightforward and a simple one, especially given the narrowing of the issues as set forth in the Employer's Closing Argument. The Employer, it is to be recalled, concedes that the Employer is violating Article 13 when the fire suppression services cannot be provided within the NFPA mandated time frames and that in this case the Fire Department does not employ enough personnel to meet certain mandated time periods. The Employer states that it is in "agreement" with both propositions put forward by the Union but that the Union has failed to make its case that NFPA obligations have not been met. I specifically credit the testimony of Union witnesses and the GIS prepared and presented by the Union to conclude that current staffing does not allow firefighters to reach portions of the GGNRA and therefore to comply with extant staffing obligations.

Therefore, the remaining differences between the parties lie in two areas: (1) whether the Union must show an actual failure to meet a suppression incident within four to eight minutes; (2) whether the mutual aid agreements must be mandatory rather that voluntary. On the latter point, it seems clear that the evidence supports the proposition that the mutual aid agreements must be mandatory in order to meet NFPA standards. There is no evidence in the record to

support the proposition that any agreement is mandatory. All evidence is to the contrary, supporting the Union's position that the agreements are voluntary and do not meet extant standards. The Employer seems solely to rest upon its argument that actual incidents or a "worse case scenario" must be proven before a violation can be established.

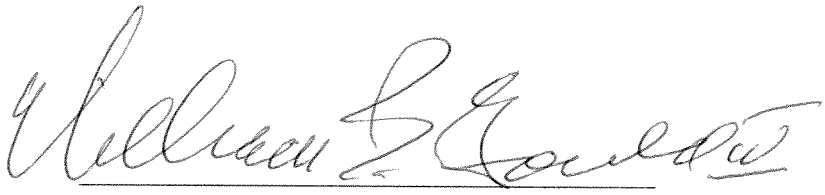
I am of the view that not only are there an absence of required mandatory mutual aid agreements but that also the GIS study relied upon by the Union was unrebutted and that therefore through a preponderance of evidence the Union has established that portions of the Presidio are unreachable and in violation of existing standards. Lives need not be lost (one has been already in the uncontradicted testimony provided by the Union) and the health and safety of firefighters need not be placed in jeopardy before a violation can be established.

I do not hold that the Employer is required to hire anyone but that it must provide adequate staffing either through mandatory mutual aid agreements only which meet the criteria of NFPA 1710 or through a combination of both hiring and mandatory agreements or hiring alone.

Finally, of course, the dispute is arbitrable on its face. In none of the papers provided by the Union or the Employer is there any dispute difference on this. The Employer has not provided any argument or testimony to the contrary.

VI. AWARD

The staffing dispute identified in the submission between the parties is arbitrable. The Employer has violated Article 13, Sections 1 and 2 of the collective bargaining agreement between the Union and the Employer. The Employer is required to adhere to the standards of NFPA 1710 within 30 days of the receipt of this award through mandatory mutual aid agreements or hiring or a combination of the two. The Arbitrator shall retain jurisdiction.



William B. Gould IV,
Arbitrator

Dated August 24, 2010

Notary Public