

STATE OF ILLINOIS  
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

OCT 25 2000

NORTH MAINE FIRE PROTECTION DISTRICT

ILLINOIS LABOR  
RELATIONS BOARD

and

Case No. S-MA-00-056

NORTH MAINE FIREFIGHTERS,  
IAFF, LOCAL 2224

APPEARANCES:

Karl Ottosen on behalf of the District  
Lisa Moss on behalf of the Association

The Association is the bargaining representative of a unit of firefighter personnel employed by the District in the ranks of firefighter and lieutenant. The District operates a fire department with one fire station. It employs approximately twenty five sworn and non sworn employees, plus a number of paid on call firefighters. The District is governed by a three member elected board of trustees. The Board of Trustees appoints three Commissioners, who have statutory authority to make decisions regarding promotions of all full time paid employees of the District. The Department operates three shifts, with one captain, one lieutenant and five firefighters assigned to each shift. Firefighters report to the lieutenant, or, in his absence, an employee designated acting lieutenant. Only the highest ranked firefighters on the current lieutenant promotional roster serve as acting lieutenants.

The Association has been the bargaining representative of the District's firefighters and lieutenants since 1993. The President of the Association is James Reid. He has held that position since 1993. The parties' first Agreement was effective January 1, 1994, and their last Agreement was effective through December 31, 1999.

Neither the 1994-1997 Agreement nor the 1997-99 Agreement contained language pertaining to promotions. Rather, promotions were governed by Statute and the Rules and Regulations of the Commissioners. The Commissioners' current Rules, adopted in March 1998, provide that the final promotional examination score shall

consist of the following criteria: Written test - 70%; department merit and efficiency rating - 20%; and seniority - 10%.

The written examination is a standardized test produced by the International Personnel Management Association.

The Department Merit and Efficiency Rating is calculated based on written evaluations completed by the candidates' superior officers, including the Chief, each captain, and each lieutenant. Lieutenants applying for promotion to captain are evaluated by the Chief and each captain. The Commissioners drop each candidate's highest and lowest evaluation scores, except for the Chief's evaluations.

Based upon the written test scores, the merit and efficiency ratings, and seniority points, the Commissioners issue a preliminary promotional eligibility list. Within ten days, candidates with military service may elect to have veterans' preference points added to their preliminary score. The Commissioners then issue a final promotional eligibility list.

Under the Act, Commissioners may promote any of the top three candidates on the final promotional eligibility roster. Since about 1970, with a few exceptions, the Commissioners have promoted firefighters and lieutenants in order of their ranking on the promotional eligibility roster.

In August, 1998 the Association filed an unfair labor practice charge with the IL State Labor Relations Board alleging that the District violated the IL Public Labor Relations Act when it failed to promote James Reid the Maynard Williams, who served as the Association's Secretary/Treasurer from 1995 until 1999, because of the protected Union activities. In November, 1999 the Association filed another unfair labor practice charge with the Board, alleging that the District again violated the Act by failing to promote Reid to lieutenant. The second charge, as of the close of the instant record, is still pending. On July 7, 2000 the Board issued an Order concluding that the District violated the IPLRA when it failed to promote Reid and Williams in July 1998 because of hostility toward and in retaliation for their Union activities. The Board ordered the District to unconditionally promote Reid to lieutenant and Williams to captain, effective August 26, 1998, and to make them whole for losses they incurred as a result of the District's discrimination.

The parties engaged in ten negotiating sessions for a successor Agreement, and reached agreement on all issues except one, promotions, which is the subject of the instant proceeding.

The District opposes inclusion of any promotional provision in the Agreement.

The parties agreed to submit the dispute over said issue to interest arbitration, and stipulated that the issue is non economic. On July 13, 2000 the parties exchanged final settlement offers.

The Association's final offer follows:

#### Requirements for Testing

All personnel shall be required to have at least four (4) years of full-time service with the District to be eligible to take the Lieutenant promotional exam. To be eligible to participate in the examination process, all personnel shall be required to be a Provisional Fire Officer I or higher, as certified by the Illinois State Fire Marshall's Office, or have obtained an associate degree or higher in the field of Fire Science.

#### Total Scores for the Exams

The total score for the Lieutenant promotional exams shall be:

A) Seniority - (15%) 1/12 of 1 point for each month an employee has served with the department in a full time capacity. The total will be rounded up to the highest 1/12 of a point on the date of the written exam (15 years equals the total 15%).

B) Written test - (70%)

C) Merit Evaluations - (15%) The Chief, three (3) Shift Captains and Three (3) Shift Lieutenants will complete evaluation on all of the candidates prior to taking the written promotional exam. The evaluation forms shall be the same as those completed for the 1997 Lieutenant's promotional exam by the Chief, Captains, and Lieutenants. The highest and lowest scores on the seven (7) evaluations for each candidate shall not be counted toward the final score. The candidates' total score of the remaining evaluations shall be added together and then divided by five (5). This score shall be

the merit evaluation score and shall represent fifteen percent (15%) of the total promotional exam. Upon written request, and within seven (7) calendar days thereafter, a candidate shall receive a copy of all evaluations filled out on the candidate.

D) Total Score - Seniority, written test score, and merit evaluation shall be added together. The employee with the highest score shall be placed first and all others shall follow in order of their highest scores. In the event of a tie, the more senior member will be placed higher on the final list.

E) Military points - Military preference points shall be awarded per State statutes.

### Promotions

All Lieutenant promotions shall be in order of placement on the list starting with number one (1). This provision will apply to the current list as well as all future lists.

### Study Material

There shall be a recommended study list and all materials for studying for the exam shall be made available at least ninety (90) days prior to the exam. This list shall be supplied by the company preparing the exam. The study material shall be available at the fire station and shall be at no cost to the employees.

On July 17, 2000 the undersigned held a hearing in the matter, during the course of which the parties presented evidence and arguments in support of their respective positions. Post hearing briefs were submitted by both parties and the record was closed on August 31. Based upon a review of the foregoing record the undersigned arbitration panel renders the following arbitration award.

### ASSOCIATION POSITION:

The Association proposes as comparables twenty two fire protection districts in northern IL which have collective bargaining relationships. In contrast, it is not clear from the record on what

basis the District selected its proposed comparables, which include employer entities other than fire protection districts.

Where a party seeks to change the status quo, it bears the burden of proving that its proposed changes are reasonable responses to legitimate problems, and it has not been successful in the bargaining process in getting the other party to address the resolution of such problems in a reasonable manner. (Citations omitted) The Association has met this burden.

The record demonstrates that on several occasions in the past six years employees who have been involved in protected concerted activities have been subjected to discrimination when they applied for promotions.

In addition to blatant acts of retaliation, officers involved in the evaluation process have given Association supporters and employees involved in grievance activities disparately low merit evaluation ratings in order to diminish their chances for promotion.

In addition, the District has failed to adhere to its own rules and regulations in administering promotional examinations.

In 1997 the Commissioners disregarded their own rules and regulations in conducting an examination for promotion to the rank of captain when they eliminated a fire service education component and gave additional weight to the written exam component. In the same year they acted similarly when they conducted a promotional examination for the rank of lieutenant. In that instance they dropped the educational component and made a corresponding increase in the weight accorded the written exam. In both cases the promotional criteria were not officially adopted until 1998.

The Association's offer seeks to ensure that promotions within the unit are based upon the employees' relative excellence and fitness to hold the position of lieutenant, as measured by objective, competitive promotional examinations. It is designed to ensure the openness, integrity, and fairness of the promotional procedure, and to minimize the chance that improper considerations will influence the merit evaluation process.

To these ends, the Association's proposal establishes minimum experience and educational requirements in order for individuals to

be eligible to take the lieutenant promotional exam. It also defines the criteria or components of the promotional examination and assigns the weighting of each criterion in the final examination score. It provides that each candidate's highest and lowest merit evaluation score be dropped in calculating the total merit evaluation score. It provides that, upon written request, candidates receive copies of their individual merit evaluations completed by their superiors. It mandates that candidates be selected for promotion in order of their ranking on the current eligibility roster. Lastly, it requires the District to make study materials and a reading list available at least ninety days prior to a promotional exam.

The Association's proposal to base the total promotional examination score on three factors -- seniority, written exam, and merit evaluations -- plus military points, essentially adopts the status quo. The only change proposed in this regard is to reduce the weight of merit evaluations by five percentage points, and correspondingly increase the weight of seniority. Given the District's abuses of the merit evaluation component, the Association's proposal in this regard is reasonable.

The District's assertion that the proviso would prevent it from using oral examinations or assessment centers is particularly hollow in view of the fact that in thirty years it has never used assessment centers. Likewise, it was unable to establish the last time Commissioners conducted oral interviews as part of the promotional process. Furthermore, nothing would bar the District from raising this issue in future negotiations should it wish to modify existing promotional criteria.

The Association's proposed education and experience prerequisites are consistent with the District's current job description for the position of lieutenant. In addition, historically the District has considered educational attainment, state certifications, and work experience in the promotional examination process.

There also appears to be some correlation between the Association's proposed educational requirements and the placement of individuals on the eligibility roster in the past.

Because the District has abused its discretion in choosing between the top three candidates in the past, it should not be allowed to exercise such discretion under this Agreement.

The Association's proposal to require the District to provide materials to firefighters interested in preparing for promotional exams is also consistent with the status quo.

The Association provided the District with an opportunity to resolve existing promotional problems in the collective bargaining process, but the District refused to address them.

Lastly, agreements in other fire protection districts support the Association's proposals. Eight of the Association's twenty two proposed comparables contain promotional language, many of which contain language similar to that proposed herein, including: provision of study and test preparation materials, years in service requirements, and promotional criteria and weights.

Lastly, and importantly, none of the District's comparables have abused the discretion they have in the promotion process, as has the District, which justifies the need for regulation of the promotion process in these parties' Agreement.

#### DISTRICT POSITION:

The status quo maintains the current statutory process which ensures fairness to all applicants.

Pursuant to the Board of Commissioners current rules, the only area of discretion for the Commissioners is the selection of the actual candidate from the promotional list from the top three candidates on the list. On only rare occasions has the Board of Fire Commissioners not promoted the number one individual on the list. On those rare occasions where that has occurred, the promoted individuals have had significant union involvement.

The District disagrees with the ruling of the IL Labor Relations Board which is being relied on by the Association, but it has decided not to expend additional funds on protracted litigation of that matter.

The record supports a finding that the District has always sought to promote the most qualified candidate.

The District's Board of Fire Commissioners need flexibility for future examination processes. For example, in the past the Commissioners utilized oral interviews, but recently decided not to do so and instead

fellow union members. The Association's proposal would eliminate the discretionary authority of the Commission to determine who will participate in merit and efficiency ratings. No comparable collective bargaining agreement addresses the issue as to who should conduct such evaluations, and none provide that the evaluations conducted during the promotional process be turned over to the applicants at the conclusion of the examination process.

The Department's officers have regularly used a wide range of scores to ensure that their scoring accurately reflects who they believe to be the best qualified candidates. The range of scores amongst the candidates is wide. When the differentiation between candidates is too narrow, there is insufficient differentiation between the candidates to justify the 20% weight given to this criterion.

The Association's proposed comparables do not support its proposal requiring rank order selection. The number of exceptions to rank order promotion have been rare.

Under the Association's proposal, the District would be open to challenges to the examination process should a member of the bargaining unit remove study materials from the station.

#### DISCUSSION:

The record evidence supports a conclusion that legitimate problems exist in the District's promotion procedures and that the District has failed to address those problems through the collective bargaining process, or for that matter, in this interest arbitration proceeding. Those problems include the following: the District has at times failed to follow its own adopted rules and procedures, its merit evaluations have been tainted by unlawful animus, and the discretion it has exercised in the selection of individuals to be promoted from among the top three candidates has been tainted, based upon improper influence and improper considerations.

Based upon this conclusion the undersigned believes that the parties' Agreement should contain reasonable provisions addressing these problems, without unnecessarily restricting the discretion the District has been afforded by Statute in making promotion decisions. The following award is designed to achieve these ends.

The parties' Agreement shall include, conceptually, the following provisions related to promotions.

The District shall utilize and apply its adopted rules and procedures when promoting individuals to the position of Lieutenant. At a minimum, said rules and procedures must afford firefighters all rights provided by pertinent IL Statutes.

Individuals participating in the promotion process shall be evaluated by their shift lieutenants, captains, and the Chief. The highest and lowest scores on the evaluations shall not be counted.

Promotions to the position of Lieutenant will normally be in the order in which individuals are ranked based upon their seniority, test scores, and merit evaluations. If an individual is selected for promotion who is not the highest ranked candidate for the promotion, the Association will be provided a written explanation why the highest ranked individual was not selected. Said explanation must specify the specific reasons for the choice. The Association will thereafter be afforded an opportunity, upon request, to review all of the documents pertinent to promotion decisions, and will have the opportunity to challenge the decisions through the parties' grievance and arbitration procedure, based upon disagreements which might arise over the legitimacy and veracity of the reasons given by the District for the decision.

In the undersigned's opinion these contractual provisos should meaningfully address the problems which have been evidenced by this record, giving the Association an effective opportunity to monitor and challenge the decisions made by the District in the promotion process, while at the same time giving the District the right to exercise the discretion the statutory scheme gives it, as long as it exercises that discretion in a manner which is based upon legitimate considerations.

In the undersigned's opinion, the other proposals made by the Association herein have not been awarded primarily because they do not address the problems which have been identified herein, and also because they are not supported by the comparability evidence. While the undersigned concedes that the provisos that have been awarded herein are also not supported by the comparability evidence, it is appropriate to award these provisos in this proceeding

based upon the rather unique history regarding promotions in the District that is evidenced by this record.

Based upon the foregoing considerations the undersigned arbitration panel hereby renders the following:

#### ARBITRATION AWARD

The parties' collective bargaining agreement shall include the following promotion provisions:

##### 12A.1 General

Lieutenant promotional exams shall be given and directed by the Board of Fire Commissioners in accordance with the Board's adopted rules and regulations which must afford all firefighters their rights provided by pertinent Illinois statutes. The Board's rules must be consistent with the promotion provisions set forth in this Article.

##### 12A.2 Merit Evaluations

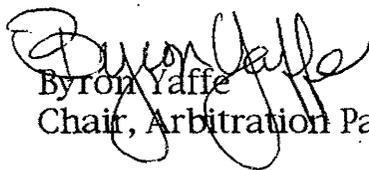
The Chief, shift captains, and shift lieutenants will complete merit evaluations on all of the candidates. The highest and lowest scores on the merit evaluations for each candidate shall not be counted toward the final score.

##### 12A.3 Promotions

Promotions to the position of lieutenant will normally be in the order in which individuals are ranked on the final eligibility list. If an individual selected for promotion is not the highest ranked candidate on the final list the bypassed employee(s) and the Association will be provided a written explanation within seven (7) calendar days of the decision why the higher ranked employee(s) were not selected. The Association will thereafter be afforded an opportunity, upon written request to the Commission filed within 10 calendar days of the date the written explanation is issued, to review all of the documents pertinent to that promotion decision. Said documents will be made available to the Association within seven (7) calendar days of the Association's request. The Association can challenge the promotion decision through the parties' grievance and arbitration procedure within ten (10) calendar days after it receives said documents based upon any alleged violation of this Article and/or disagreement over

the legitimacy and veracity of the reasons given by the Commission for its decision not to promote the highest ranked person on the lieutenants eligibility roster.

Dated this 23<sup>rd</sup> day of October, 2000 at Chicago, IL 60640

A handwritten signature in black ink, appearing to read "Byron Yaffe", written in a cursive style.

Byron Yaffe  
Chair, Arbitration Panel

The concurring opinion of James Reinke and the dissenting opinion of James Reid are attached hereto.