

**In the Matter of the Arbitration
Between**

International Association of Fire
Fighters, Local 2665 ,
Union

—and—

City of Webster Groves,
Employer.

FMCS Case Number: 210929-10444

SUBJECT: SALVO PARENTI GRIEVANCE

Arbitrator Diego J. Peña

SUMMARY & AWARD

SUMMARIZED ISSUE

Did the City violate Article 1.09 of the Collective Bargaining Agreement when it refused to provide the Grievant military leave pay differential for not more than six months as allegedly promised by former City Manager Steven Wylie in 2016?

DECISION SUMMARY

The Union's grievance is denied.

ADVOCATES

FOR THE UNION: Mr. Rick Barry, Law Offices of Rick Barry, P.C., St. Louis, Missouri.

FOR EMPLOYER: Mr. Neil J. Bruntrager, Bruntrager & Billings, P.C., St. Louis, Missouri.

BACKGROUND

This grievance concerns the payment of military pay differential under the City of Webster Groves Military Leave of Absence Policy. The City's Military Leave of Absence Policy supplements military pay with City pay for one hundred twenty (120) hours. Grievant, Captain Salvo Parenti of the City of Webster Groves Fire Department ("Grievant" or "Captain

Parenti”), claims that the City of Webster Groves (“City”) changed its Military Leave of Absence Policy in 2016 to provide employees deployed on active duty to have their military pay supplemented for six (6) months. Captain Parenti claims that the City Manager in 2016, Mr. Steven Wylie, promised to change the policy and in 2017 paid him military differential pay for 6 months. The City claims that it never approved any such change to its Military Leave of Absence Policy, and that Captain Parenti is entitled to a pay differential for a period not to exceed 120 hours for his 2022 deployment. The Grievant is represented by the International Association of Firefighters, Local 2665 (“the Union”). The City and the Union are parties to a collective bargaining agreement (“CBA”).

The parties selected Diego J. Peña through the Federal Mediation and Conciliation Service to serve as the Arbitrator. An evidentiary hearing was conducted virtually on December 16, 2021. The parties represented that the grievance was properly before the Arbitrator. Both parties had full opportunity to present testimony and documentary evidence.¹ Both parties also submitted post-hearing briefs.²

ISSUE

The parties were unable to agree on a statement of the issue.³ The Arbitrator has framed the issue as follows:

¹ Ms. Greta C. Cairatti, a certified court reporter in the State of Missouri (CCR number 790) transcribed the testimony. References to the record will be identified as Tr. ____ Exhibits offered by the Company will be identified as CX-____. Exhibits offered by the Union will be identified as UX-____. Joint Exhibits will be identified as JX-____.

² All arguments raised by the parties at the evidentiary hearing and in post-hearing briefs were considered, however only those deemed determinative will be addressed. All other arguments not specifically addressed in this opinion and award should be treated as denied.

³ The Union’s proposed statement of the Issue: “The grievant has asserted that the City violated the CBA by refusing to pay the grievant the difference between military pay and department pay for a period of up to six (6) months while grievant was deployed. Does this decision violate the CBA?”

The City’s proposed statement of the Issue: “The grievant has asserted that the City has violated the CBA Section 1.09 by refusing to pay the grievant the difference between military pay and departmental pay. Does this decision violate the CBA?”

The Grievant claims that former City Manager Steven Wylie in 2016 promised to change the City of Webster Groves' Military Leave of Absence Policy (4.10 of the City of Webster Groves Personnel Policies) to pay the difference between military pay and departmental pay from 120 hours to not more than 6 months. Although City Manager Wylie authorized the Grievant to receive 6 months of military pay differential in 2017, the City never formally amended the Military Leave of Absence Policy. In 2019, the City and the Union entered into a Collective Bargaining Agreement and adopted the unmodified Military Leave of Absence Policy (Section 4.10). The Grievant seeks to receive the military leave differential pay he claims City Manager Wylie promised in 2016, to cover his 2022 military leave. Did the City violate Article 1.09 of the CBA when it refused to provide the Grievant military leave differential pay for not more than six months as allegedly promised by former City Manager Wylie in 2016?

EVIDENTIARY FINDINGS⁴

A. Relevant Provisions from Collective Bargaining Agreement⁵

COLLECTIVE BARGAINING AGREEMENT

BETWEEN:

**THE CITY OF WEBSTER GROVES, MISSOURI
AND**

**THE WEBSTER GROVES FIRE DEPARTMENT SHOP OF
I.A.F.F. LOCAL 2665**

EFFECTIVE DATE :

JUNE 1, 2019 THRU JUNE 30, 2022

ARTICLE 1

LABOR AND MANAGEMENT RELATIONS

Section 1.01. Joint Labor- Management Committee

1.) General Provisions

The City of Webster Groves Fire Department is committed to ensure that the City of Webster Groves Fire Department Shop of IAFF Local 2665 and the Administration of the City of Webster Groves address issues within the Department.

⁴ This is a summary of the credible evidence offered by the parties and admitted by the Arbitrator. Only facts relevant to the issuance of this award are included in this summary.

⁵ JX-1.

2.) Members and Meetings

The city of Webster Groves Fire Department Joint Management Committee (JLM) shall be comprised of the First Chief and Shop Steward. The JLM will meet upon mutually agreeable dates to discuss and endeavor to resolve all matters of mutual concern and to promote harmonious and productive relationships between the Union and the City.

3.) Consensus

The JLM Committee shall endeavor to achieve consensus amongst its members regarding the decisions made arising from the matters discussed.

4.) Open Door

The Joint-Labor Management process shall not prevent member of the City of Webster Groves Fire Department from bringing topics of concern and suggestions to the Fire Chief and Battalion Chiefs for consideration at any time. However, the City and the Department shall not contract with or make any agreements with any individual or group of the Bargaining Unit Members in matters of pay, hours of work, or other terms and conditions of employment unless such has been agreed to in writing and in advance by the Union.

5.) Department Committees

As need arises the City may establish additional committees or consolidate current committees to meet the organizational needs of the WGFD, and shall strive to have at least one Member from each crew.

Section 1.02. Management Rights

The parties agree that the goal of any fire protection service or emergency operation requires clear management authority and freedom to make rapid decisions and to operate in an efficient manner. It is further understood and agreed that this Collective Bargaining Agreement constitutes the whole agreement of the parties concerning wages, hours and working conditions and that all decisions are matters not expressly provided for in this Collective Bargaining Agreement are reserved exclusively to the City.

Unless otherwise expressly modified by this Agreement, prominent, but might no means inclusive, among such rights and responsibilities belonging solely to the City are the rights to:

- a. decide the number, location and character of its job assignments or any party thereof;
- b. alter, rearrange, combine, transfer, assign or cease any job, operations, or service;
- ...
- d. decide and/or change the method of pay and the pay periods;

e. decide the required schedules and duties to be performed;

...

j. decide financial policies including accounting procedures and the determination of every aspect of the organization of all internal reporting procedures and maintenance of records;

k. set and reset rates of pay, rate changes, and premium rates not in conflict with the provisions of this Collective Bargaining Agreement;

...

l. Decide upon the amount of supervision necessary; and

m. determine whether and to what extent the work performed in its Fire Protection services, disaster preparedness, emergency medical and other services shall be performed by employees covered by this Collective Bargaining Agreement.

Unless otherwise modified by this Agreement, it is further recognized that it is the sole responsibility of the management of the City to select, direct, determine the makeup of the workforce including the right to hire, layoff, demote, assign, reassign, or transfer; charge, disciplined and suspend for just cause and with due process; to relieve employees from duty and assignments because of a lack of work; to combine and eliminate jobs, to determine the appropriate labor grades and number of employees within a given number of classifications; to set shift schedules and hours of work; to set the standards for training, quantity and quality of work; to determine from time to time to predetermine the number of classes of employees to be employed; to establish jobs; to readjust or eliminate existing jobs; to establish and maintain job requirements or job content in the stands of service, production and inspection; to make and apply rules and regulations of service, maintenance of the facility, inspection, efficiency, safety, cleanliness and other working conditions. It is agreed that management maintains or retains all of its managerial rights and that they are all vested solely and exclusively in the City unless specifically contracted away by this Collective Bargaining Agreement; And further, that the numbering of certain management rights shall not be deemed to exclude any other management rights.

It is further agreed that this agreement shall not bind the City from, in its sole discretion, exceeding the terms set forth herein provided that the exercising of such discretion is in the benefit of the Member(s) affected thereby. The Union agrees that the City's exercising of such discretion shall only apply to that specific circumstance, and shall not be construed as a precedent setting.

...

Section 1.09. Personnel Manual and Employee Compliance

Except as expressly provided by this Agreement, the Union agrees that the bargaining unit employees will comply with all rules, regulations and ordinances of the City as follows:

- 1.) The "Personnel Policies and Procedures Manual" or "Personnel Manual" as referenced in this Agreement means the City of Webster Groves Personnel Policies and Procedures Manual that are in effect at the time this Agreement is enacted by the Parties, or as may be modified or amended from time to time by the City. The City retains the exclusive authority and discretion to amend any provision of the Personnel Manual as it deems necessary or desirable, except to the extent that any such change or amendment is in conflict with any express provision of this Agreement. To the extent changes the City makes to the Personnel Manual conflict with provisions of this Agreement, the Union reserves the right to accept such changes in its sole discretion.

Section 1.10. Fire Department Policies and Procedures

1.) General Provisions

WGFD policies and procedures are established by Standard Operating Guidelines (SOGs), Standard Operating Procedures (SOPs), and/or written departmental policies, hereinafter referred to as "Policy or Policies." The Fire Chief or the Union may propose changes to any existing Policy, or propose the creation of a new Policy, in accordance with this Section.

2.) Compliance

Except as expressly modified by this Agreement, the Union agrees that the bargaining unit employees will comply with all Fire Department policies and procedures.

3.) Modifications to SOGs, Policies, and Procedures

1. In the event the parties desire to modify SOGs, SOPs, policies, and procedures expressly referenced in this Agreement, said modifications shall require a consensus being reached by the JLM prior to implementation.
2. In the event the City desires to modify any SOGs, SOPs, policies or procedures not reference in this Agreement or create new SOGs, SOPs, policies or procedures, the Fire Chief shall present any proposed changes or additions to the JLM for discussion. Should the Union determine that said changes may negatively impact the Members of the bargaining unit, the Union shall upon request be given a hiatus not to exceed fourteen (14) days to consult with its membership over such changes prior to reconvening with the Fire Chief over the proposed changes. After the Fire Chief has met and conferred with the JLM as provided by this subsection, the Fire Chief may implement any such proposed change.

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Section 2.06. Grievance Procedure

1.) General Provisions

All Grievances arising under this Agreement shall be filed and processed in accordance with Policy 6.01 of the Personnel Policies of Webster Groves, except as modified by the provisions of this Section.

2.) Definition of a Grievance

A Grievance shall be defined as a dispute arising between the Union and the City over the application or interpretation of any specific provision of this Agreement, including but not limited to a dispute over whether just cause exists for any disciplinary action issued to an employee covered by this Agreement.

...

8.) Arbitration Procedure

1. If a Type I grievance is not settled to their satisfaction based on the decision of the City Manager, the Union may file an appeal with an arbitrator to be selected in accordance with the Federal Mediation and Conciliation Services (FMCS) Procedures for Requesting Arbitration Lists and Panels. The geographical local of the eligible arbitrators to be selected shall be the St. Louis Missouri region. Such an appeal shall be requested in writing and directed to the City Manager within five (5) working days after the issuance of the City Manager's decision.
2. Upon such appeal, the Union and the City shall have the right to be heard and to present evidence. At the hearing of such appeals, technical rules of evidence shall not apply. After the hearing and consideration of the evidence, the Arbitrator shall either confirm the action of the City Manager, award the relief required in the grievance, or recommend an alternative course of action. The Arbitrator shall file a written statement of findings and award with the City Manager within thirty (30) days following the close of the hearing or submission of briefs, whichever is later, and such decision shall be binding and final. The grievance, all written documents that may have been considered in the hearing, the findings and the award issued by the Arbitrator in the binding Arbitration Hearing shall be promptly filed in the Human Resources Department.
3. Type I grievance arbitrations shall be conducted in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association (AAA) dated November 1, 2009.

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ARTICLE 4
LEAVE TIME

Section 4.01. Leave Time

The City shall provide for the Members Leave Time as outline in Section 4 of the Webster Groves Personnel Policies which is in effect at the execution of this Agreement.

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ARTICLE 5
CONDITIONS OF THE AGREEMENT

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Section 5.02. Duration

This Collective Bargaining Agreement shall be effective as of the day after this Collective Bargaining Agreement is executed by both parties and shall remain in full force and effect until June 30, 2022 but shall automatically renew itself unless either party hereto shall give notice to the other party of a desire to revise, amend or terminate this Agreement no less than sixty (60) days before the expiration date hereto. The parties agree to meet as soon as administratively feasible following such notice. Either party may request non-binding mediation that shall result in both parties participating in non-binding mediation through the Federal Mediation and Conciliation Services (FMCS) or a mutually agreeable mediator. This Agreement shall remain in effect during good faith negotiations and shall continue to remain in full force and effect until such time as a new Agreement is agreed upon.

B. Relevant Provisions from Webster Groves Personnel Policies⁶

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Policy 4.10: Military Leave of Absence

Purpose: To articulate the manner in which the City will handle leaves of absence for military service

Scope: All City Employees

- A. **Military Leave:** Employees who serve in the uniformed services of the United States or the National Guard will be granted a military leave of absence for a cumulative period of up to five (5) years, pursuant to the Uniformed Services Employment and Reemployment

⁶ JX-2. Last revised on 03-15-2016.

Rights Act (USERRA) of 1994. This policy shall be construed and applied in accordance with the provisions of USERRA and Section 105.270, RSMo. Except as provided in Section C, Military leave be without pay and benefits.

...

- C. **Paid Military Leave:** A member of the National Guard or any reserve component of the Armed Forces of the United States is entitled to Military Leave of Absence with pay and benefits on regularly scheduled workdays such member is ordered to military duty or training not to exceed one hundred twenty (120) hours in any one federal fiscal year (October 1 through September 30). This limitation does not apply to members of the National Guard engaged in performance of duty or training in the service of the state at the call of the governor and as ordered by the adjutant general, who shall be entitled to pay and benefits for the duration of any such service. Employees who have exhausted their entitlement to paid Military Leave may elect to use any accrued vacation leave or compensatory leave to which the employee is eligible at the start of the period of military service, without reduction for any military pay received by the employee. Employees will be entitled to accrue vacation and sick leave during any portion of a Military Leave that is paid, including any portion of such leave for which an employee elects to use accrued vacation or compensatory leave.

...

C. Relevant Provisions from the City of Clayton, Missouri Military Leave Policy⁷

Military Leave

- A. Employees who serve in the uniformed services of the United States will be granted a military leave of absence for a cumulative period of up to five (5) years pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.
- B. For all period of military service during which employees are engaged in the performance of duty or training in the service of the State of Missouri at the call of the Governor and as ordered by the Adjutant General, the leave period with pay shall be indefinite.
- C. For all period of military service during which employees are engaged in the performance of duty in the service of the United States under competent orders, the leave period with pay shall be up to 120 hours per federal fiscal year (October 1 through September 20) for training or activation.
- D. After expiration of 120 hours of paid leave for federal service, for any additional times of compulsory service due to activation but not training, employees shall have their military pay supplemented by the City in an amount not to exceed their regular City pay, for a period

⁷ JX-3.

up to six (6) months. Additional military leave shall be unpaid unless the employee chooses to utilize accumulated vacation or compensatory leave.

...

D. Witnesses

The following witnesses testified:

- Captain Salvo Parenti - Grievant
- Mr. Michael Peters - Union - Firefighter/Union Shop Steward
- Dr. Marie Peoples - City of Webster Groves City Manager
- Steven Wylie - Former City Manager for the City of Webster Groves⁸

E. Relevant Factual Findings

1. The Union is the exclusive bargaining representative for the employees of the City of Webster Groves Fire Department. The City operates under a City Manager-Council form of government. Prior to the enactment of the 2019 CBA, the City Manager possessed considerable discretion in revising and establishing existing personnel policies.

2. The Grievant, Captain Parenti has been employed by the City as a firefighter since February 2009 and has also been a member of the Missouri Air Force National Guard since 2006. During the relevant time of this grievance, Captain Parenti is the only firefighter employed by the City who also serves in the military. He also served as an elected Union assistant shop steward from 2012 until the end of 2019.

3. Prior to the enactment of the CBA in 2019, the Webster Groves Personnel Policies Manual ("Personnel Policies Manual") governed operations between the City and its

⁸ Witness testified by deposition. JX-13.

employees.⁹ The City revised the Personnel Policies Manual several times between 1955 and 2014 with the latest revision having occurred on March 15, 2016.

4. Section 4.10 of the Personnel Policies Manual sets forth the Military Leave of Absence Policy which had been in effect prior to June 1, 2019, the effective date of the CBA.¹⁰ Section 4.10(C) of the Military Leave of Absence Policy authorized the City to pay a firefighter deployed on military duty as follows:

A member of the National Guard or any reserve component of the Armed Forces of the United States is entitled to Military Leave of Absence with pay and benefits on regularly scheduled workdays when such member is ordered to military duty or training *not to exceed one hundred twenty (120) hours* in any one federal fiscal year (October 1 through September 30).¹¹ [Emphasis added.]

There is no other provision in the parties' CBA or the Personnel Policies Manual that authorizes military pay differential for more than 120 hours.¹²

5. In late 2016, the Grievant learned that his Missouri Air Force National Guard unit was to be deployed overseas for 6 months. Around November 2016, the Grievant, along with Shop Steward Jason Simpson, met with the then City Manager, Mr. Steven Wylie. The Grievant notified City Manager Wylie that he was being deployed and was concerned because the City's Military Leave of Absence Policy limited military differential pay to 120 hours. During the meeting, the Grievant asked City Manager Wylie to consider amending the Military Leave of Absence Policy by extending the time for military differential pay from 120 hours to 6 months.¹³

⁹ JX-2.

¹⁰ JX-2, at p. 43.

¹¹ *Id.*

¹² The City's military pay benefit will be referred to throughout this Award as "military differential pay." This because the City pays the difference between the employee's City pay and his military pay.

¹³ Tr. 33-35.

To support his request, the Grievant provided Mr. Wylie with a copy of the Military Leave of Absence policy used by the City of Clayton, Missouri:

After expiration of 120 hours of paid leave for federal service, for any additional times of compulsory service due to activation but not training, *employees shall have their military pay supplemented by the City in an amount not to exceed their regular City pay, for a period up to six (6) months.* Additional military leave shall be unpaid unless the employee chooses to utilize accumulated vacation or compensatory leave.¹⁴ [Emphasis added.]

Mr. Wylie agreed to supplement the Grievant's military pay for 6 months and not the 120 hours contained in Section 4.10(C) of the City's Personnel Policies Manual.¹⁵ The Grievant recalled handing a copy of the City of Clayton's Military Leave of Absence Policy to Mr. Wylie, and that he "thumbed through it" and waved off the Grievant, telling him "Hey we're going to do it don't worry about it."¹⁶ When the Grievant left the meeting, he assumed that Mr. Wylie agreed to amend the City's Military Leave of Absence Policy:

Q. [By Union Counsel] At some point, after you provided him [the Clayton Military Leave of Absence Policy] did [Mr. Wylie] indicate to you that he would be revising the City of Webster Groves military leave policy to track the language in the City of Clayton policy, specifically provision D?

A. [Captain Parenti] That was my understanding because [Mr. Wylie] said, "We'll do it."¹⁷

Contrary to the Grievant's recollection, Mr. Wylie did not recall agreeing to amend the City's Military Leave of Absence policy, but he did recall agreeing to pay the Grievant the military differential pay for 6 months.¹⁸ There is no evidence that the City Council adopted any change

¹⁴ JX-3.

¹⁵ JX-13, at pp. 24-25, 34-35.

¹⁶ Tr. 35.

¹⁷ Tr. 38.

¹⁸ See JX-13, at 17 (Mr. Wylie does not recall agreeing to amend the existing City Military Leave of Absence Policy) and *Id.*, at pp. 24-25 and 33-35 (Mr. Wylie decides to pay the Grievant 6 months of military pay differential).

to the Military Leave of Absence Policy at any time after Mr. Wylie's 2016 meeting with the Grievant.

6. In October 2017, the Grievant was deployed to Al Dhafia Air Force Base in the United Arab Emirates for 6 months. The City paid the Grievant military differential pay for the six months between October 2017 and May 2018.¹⁹ Upon returning from his deployment in 2018, the Grievant re-enlisted in the National Guard, assuming any future deployment would include the six months differential pay Mr. Wylie approved for him in 2017.²⁰ The City places current copies of its personnel policies on an internal internet drive that fire department employees can access.²¹ This internal internet drive is referred to as the "J-Drive." At no time after returning from his deployment in 2018 did the Grievant access the J-Drive to confirm if the City had changed the Military Leave of Absence Policy.²²

7. On June 1, 2019, the CBA between the City and the Union became effective. Section 1.01 of the CBA provides for a Joint Labor Management Committee ("JLM") consisting of the elected Union Shop Steward and the Fire Chief.²³ The JLM meets on mutually acceptable dates to discuss and attempt to resolve "all matters of mutual concern and to promote harmonious and productive relationships between the Union and the City."²⁴ The JLM process does not prevent any firefighter from bringing suggestions to the Fire Chief for consideration at any time.²⁵ Section 4.01 of the CBA adopted the City's Military Leave of Absence Policy contained in the Personnel Policies Manual. The Military Leave of Absence Policy in effect

¹⁹ Tr. 40.

²⁰ Tr. 120-21.

²¹ Tr. 77-78.

²² Tr. 80-82.

²³ JX-1.

²⁴ JX-1, Article 1.01, Section 2.

²⁵ *Id.*

when the CBA was finalized stated that a City employee would not receive more than 120 hours of military pay differential.²⁶ With the implementation of the CBA in 2019, the City Manager retained the limited discretion to change existing personnel policies “in order to meet the operational needs of the City, or to implement changes in federal, state or local law.”²⁷

8. On July 17, 2020, Mr. Wylie retired as City Manager. The City named Director of Finance, Ms. Joan Jadali, as the Interim City Manager.²⁸ Approximately three days after Mr. Wylie retired, Ms. Dawn Cole, a City HR Specialist, sent Ms. Dorothy McFerrin an inquiry regarding the City’s Military Leave of Absence Policy.²⁹ She asked Ms. McFerrin if the City had adopted Clayton’s policy because she believed that Mr. Wylie had approved changing the City’s Military Leave of Absence Policy.³⁰ On September 14, 2020, Ms. Cole sent an email to Ms. Elizabeth Johnson, the City’s labor & employment attorney, stating she wanted to update the Personnel Policy Manual—including the Military Leave of Absence policy.³¹ Ms. Johnson responded, telling Ms. Cole she had concerns about the proposed changes to the military leave policy and she suggested several revisions.³² Interim City Manager Jadali did not adopt the amendments proposed by the Grievant to Mr. Wylie in 2017 or the revisions suggested by Ms. Johnson.³³ Mr. Michael Harris, outside counsel for the City, confirmed that no changes or revisions were made to any of the City’s personnel policies.³⁴ There is also no evidence that any revised Military Leave of Absence Policy allowing for a 6 month payment of differential pay was

²⁶ JX-2, at p. 43.

²⁷ JX-13, p. 14.

²⁸ JX-13, at p. 8.

²⁹ JX-4.

³⁰ *Id.*

³¹ JX-17 at p. 42.

³² *Id.*, at pp. 40-41.

³³ Tr. 156.

³⁴ JX-15.

ever shared with the Union or the JMT after the CBA became effective in 2019. On January 11, 2021, the City named Dr. Marie Peoples as the new City Manager.

9. In March 2021, Captain Parenti notified City Fire Chief Tom Yohe that he would be deployed in 2022 to Al Udeid Air Base in Qatar and was seeking military differential pay for 6 months.³⁵ At the time he notified Chief Yohe, Captain Parenti assumed the City had changed the Military Leave of Absence Policy.³⁶ Chief Yohe reached out to the City Administration, asking about the Grievant's 2017 deployment. Ms. Cole confirmed that in 2017 the City paid the Grievant military differential pay for 6 months.³⁷ Eventually, the City Administration confirmed that the City's Military Leave of Absence Policy remained unchanged—the City was only required to pay military differential for 120 hours.³⁸ On July 26, 2021, Chief Yohe notified Captain Parenti that the City would only pay him military differential pay for 120 hours. The Grievant accessed the J-Drive and realized that the City's policy had not been changed as he initially believed.³⁹ He arranged to meet with City Manager Peoples in August 2019. In their meeting, the Grievant told City Manager Peoples that Mr. Wylie had promised to change the policy.⁴⁰ Captain Parenti followed up his meeting with City Manager Peoples with an email stressing the following two points:

- Emails between Ms. Jadali and Ms. Cole confirmed that the City paid the Grievant the full difference between his military pay and City pay for 6 months;
- Ms. Cole was working with the City's outside attorneys to finalize a revised Military Leave of Absence Policy.⁴¹

³⁵ Tr. 41-43.

³⁶ *Id.*

³⁷ JX-3, 3/10/2021 email from Ms. Jadali to Ms. Dawn Cole.

³⁸ Tr. 46-47.

³⁹ Tr. 48.

⁴⁰ Tr. 51-54.

⁴¹ JX-6.

City Manager Peoples responded to Captain Parenti with the following message:

I appreciate your reaching out with me and taking the time to meet with me. As a follow-up to your request, I have researched every document that is available and I am unable to grant your request. As I shared, the personnel policy is direct in the language related to military leave. *While I trust your recollection that there were previous discussions about increasing the benefit, the policy did not move to Council for discussion and/or approval. As such, no changes were codified.* The previous practice was simply a practice. In practice, considering the fiscal situation of the City, it would be difficult for me to justify authorizing any additional funding that is not currently allowed in policy and was not authorized within the FY 22 budget.

I realize this may be disappointing news, and I understand that. Please know, this decision was not reached lightly. I made every effort to balance employee requests with overall priorities of the City.⁴² [Emphasis added.]

Not long after his meeting with City Manager Peoples, Captain Parenti filed this grievance.⁴³

11. Captain Parenti's grievance stressed the following points:

- Employees of the City seeking military differential pay are deprived of compensation, specifically the difference between military pay and City compensation for at least 6 months;
- The prior policy had been limited to payment of the differential for only 120 hours; former City Manager Wylie approved a change in the benefit to six months in 2016 when Captain Parenti deployed overseas in 2017;
- The City's reduction in benefit violates the CBA.⁴⁴

Chief Yohe denied Captain Parenti's grievance.⁴⁵ The Grievant appealed the denied grievance to City Manager Peoples, who also denied the grievance.⁴⁶ Following the denial of the grievances, the Union sought arbitration.

⁴² *Id.*

⁴³ JX-7.

⁴⁴ JX-6.

⁴⁵ Tr. 64-65, JX-8.

⁴⁶ Tr. 66-67, JX-9.

THE UNION'S POSITION

10. The Union maintains that the City, acting through former City Manager Wylie, changed the Military Leave of Absence Policy in 2016 when (a) he promised to change the policy and (b) when he authorized the payment of the military differential to the Grievant for 6 months. The revision Former City Manager Wylie promised and his payment to the Grievant occurred prior to the enactment of the CBA and was adopted upon the effective date of the CBA in June 2019. For these reasons, the Union argues that the City's Military Leave of Absence Policy changed and became an enforceable agreement, citing *Independence-NEA, et al v. Independence School District*, 223 S.W.3d 131 (Mo.2007)(*en banc*). The Union wants the City to comply with the revisions promised by Former City Manager Wylie, and that the City pay Captain Parenti military differential pay for the 6 months he is deployed in 2022—just as it did when he deployed in 2017.

THE CITY'S POSITION

11. The City maintains that neither the current CBA nor the current Military Leave of Absence Policy require the City to pay Captain Parenti military differential pay for more than 120 hours. The City also argues that the evidence does not support the Union's claim that the City revised the Military Leave of Absence Policy to extend paying military differential pay beyond 120 hours. The City also claims that the Union's grievance is barred by the parol evidence rule. The City also maintains: (a) there was no corroborating evidence that the meeting between Former City Manager Wylie and the Grievant actually occurred; (b) that there was no evidence Former City Manager Wylie intended or did in fact revise the City's Military Leave of Absence Policy prior to the

enactment of the CBA; and (c) that at best, the Union only proved that discussions occurred regarding the possibility of revising the City's Military Leave of Absence Policy, but there was no evidence that the proposed changes were formally approved or codified by the City. Finally, the City maintains that its payment to the Grievant of the differential for more than 120 hours in 2017 does not rise to the level of a past practice to revise or alter the clear and unambiguous meaning of the CBA or the City's current Military Leave of Absence Policy.

DISCUSSION & ANALYSIS

12. In their grievance, the Grievant and the Union maintain that the City violated Section 1.09 of the CBA by denying him 6 months military pay differential which they claim was implemented and promised by former City Manager Wylie.⁴⁷ To prevail, the Union has the burden of proving and persuading the Arbitrator that the City violated the CBA,⁴⁸ specifically, Section 1.09 when the City denied Captain Parenti 6 months military pay differential for his 2022 deployment.

13. The parties' CBA went into effect on June 1, 2019. Section 1.09, the section Captain Parenti and the Union claim the City violated, states that the Personnel Policies Manual that is in effect at the time of the effective date of the CBA "or as may be modified or amended by the City" is the operative policy. The dispute in this arbitration centers on which Military Leave of Absence Policy was in effect at the time City Manager Peoples denied Captain Parenti 6 months military pay differential in 2021: the policy

⁴⁷ JX-7 (Captain Parenti's grievance); *see also* Tr. 11-18 (Union's Opening Statement where counsel asserts that the City violated Section 1.09 of the CBA).

⁴⁸ *See* ELKOURI & ELKOURI, *How Arbitration Works*, (6th Ed. 2003), at pp. 422-24.

which limits the differential to 120 hours or the policy that limits the differential to not more than 6 months.

14. The Union and the Grievant maintain that the policy which limits the differential to not more than 6 months was in effect in 2021. They believe that former City Manager Wylie promised to amend Section 4.10 by extending paying the military pay differential from 120 hours to not more than 6 months. The City argues that there was no corroborating evidence that the Grievant met with Mr. Wylie. In support, the City argues that Shop Steward Jason Simpson, whom the Grievant testified attended the meeting, did not testify at the hearing to corroborate the 2016 meeting. The Arbitrator finds that Captain Parenti was credible when he testified that his meeting with Mr. Wylie occurred in 2016. While Mr. Wylie could not recall the specifics of the meeting, he did not deny meeting with the Grievant in 2016 to discuss his 2017 deployment. While the Arbitrator finds that the 2016 meeting occurred, it is clear the Grievant's recollection and Mr. Wylie's recollection of what was said and promised at this meeting differ.

15. The Grievant recalls that Mr. Wylie promised two things at their meeting in 2016: (a) to amend the City's Military Leave of Absence Policy in a manner identical to the policy used by the City of Clayton, and (b) to pay him the military pay differential for 6 months. Mr. Wylie, however, only recalled agreeing to pay the Grievant the military leave differential for six months—he did not recall agreeing to amend the City's Military Leave of Absence Policy to extend the benefits from 120 hours to 6 months.⁴⁹ The

⁴⁹ See JX-13 at pp. 24-25 (Mr. Wylie recalls a meeting where he "blessed" the City bridging the gap between the Grievant's military pay and City pay) and p. 17 (Mr. Wylie does not recall ever agreeing to amend the City's Military Leave of Absence policy to make it like the City of Clayton's policy.).

Arbitrator finds that while Mr. Wylie agreed to pay the Grievant the differential for six months, he did not agree to amend the City's Military Leave of Absence Policy. While the Grievant may interpret Mr. Wylie's statement saying "don't worry, we're going to do it" to mean he intended to amend the City's Military Leave of Absence Policy, the Arbitrator finds that Mr. Wylie only confirmed his intention to pay the Grievant for not more than 6 months of military pay differential for his 2017 deployment.

16. Mr. Wylie's actions after the 2016 meeting reinforce the facts that he made sure the Grievant was paid the differential for 6 months and that he did not intend to amend the City's Military Leave of Absence Policy. There is no evidence that Mr. Wylie made any effort with either the City's HR staff or the City Council to change the City's Military Leave of Absence Policy after his 2016 meeting with the Grievant. There was also no evidence that any proposed change to the City's Military Leave of Absence Policy was circulated to employees or the Union or placed on the City's J-Drive for review prior to 2019, when the City and the Union bargained the CBA. Additionally, there was no evidence that either the Union or the City during CBA bargaining proposed extending the City's Military Leave of Absence differential benefit from 120 hours to 6 months.

17. After Mr. Wylie retired as City Manager in 2020, Ms. Cole sent an email message to Ms. Jadali, the Interim City Manager, suggesting that Mr. Wylie "approved" revising the Military Leave of Absence Policy.⁵⁰ Contrary to Ms. Cole's inquiry to Ms. Jadali, Mr. Wylie testified he had no recollection approving any change to the policy.⁵¹ Ms. Cole did not testify at

⁵⁰ JX-4.

⁵¹ See JX-7 at p.2 (Captain Parenti wrote: "An email dated July 20, 2020 from the previous head of HR, Dawn Cole, states that the military leave policy was approved by Mr. Wylie. An attachment to this email is the

the hearing, so it is not clear what she meant by saying Mr. Wylie approved the policy. While there was evidence that the City explored the possibility of changing its Military Leave of Absence Policy, there is no evidence that the City changed the policy after 2019, when the CBA went into effect, and 2021, when Ms. Peoples became the new City Manager. The evidence established that at no time did the City ever amend its Military Leave of Absence Policy.⁵² Mr. Peters, the current Union Shop Steward, testified that at no time after the effective date of the CBA did the City present any proposals to the JLM to change the Military Leave of Absence Policy.⁵³ The Arbitrator finds and concludes that at no time after March 16, 2015 did the City ever change or amend its Military Leave of Absence Policy to extend the military pay differential from 120 hours to 6 month.

18. The Union and the Grievant maintain that Mr. Wylie's decision to pay the Grievant the military leave of absence differential for 6 months, rather than the 120 hours stated in the City's policy constitutes a de facto change to the policy—or even a past practice. The Arbitrator respectfully disagrees. Mr. Wylie testified that as the City Manager he had the authority to amend City policies or procedure without having to get City Council approval.⁵⁴ Generally, the City Manager's authority to make these amendments or policies or procedures was limited to meeting the operational needs of the City or to implement changes in federal, state or local law.⁵⁵ Mr. Wylie was clear that he decided to give the Grievant the military pay differential because he believed it the right thing to do and because the Grievant was the only

military policy named, 'Military Leave Revision 2017—Wylie approval.')

and JX-13, at pp. 48-49 (Mr. Wylie testifies he has no idea what this email refers too.).

⁵² Tr. 150-51.

⁵³ Tr. 131.

⁵⁴ JX-13, at p. 16.

⁵⁵ *Id.*, at p. 14.

City employee to be deployed.⁵⁶ For this reason, Mr. Wylie considered his approval of the Grievant's request for the military pay differential to be a one-time exception to the City's policy. There is no evidence Mr. Wylie unilaterally changed the City's Military Leave of Absence Policy or presented any proposed changes to the City Council for consideration. Mr. Wylie's one-time special exception to the City's Military Leave of Absence Policy prior to the enactment of the CBA does not rise to the level of a binding past practice.

19. Mr. Wylie indicated that while he was City Manager, he possessed some authority to change or amend City policies. He also testified that a subsequent City Manager could come to a different conclusion and possibly change whatever policy changes he implemented.⁵⁷ Clearly, whatever authority he had in 2016 when he met with the Grievant changed in 2019 with the implementation of the CBA. Section 1.10 (3) expressly states that after 2019, any modifications to any City policies or procedures would require consultation with the Union and JLM.⁵⁸ There is no evidence that anyone from the City Administration or Chief Yohe ever shared the proposed changes to the Military Leave of Absence Policy with the Union or the JLM after the effective date of the CBA.

20. The Union and the Grievant strongly believe that because Mr. Wylie paid the Grievant for six months in 2017, that the City is bound to pay Captain Parenti for 6 months for his 2022 deployment. For the reasons previously stated, because of the City Manager's limited authority and the enactment of the CBA in 2019, Captain Parenti cannot require the City to pay him military differential pay for more than 120 hours. As previously stated, the Arbitrator finds

⁵⁶ *Id.*, at pp. 22-26.

⁵⁷ Tr. 50.

⁵⁸ JX-1

that Mr. Wylie's action in paying the military differential to Captain Parenti in 2017 does not rise to the level of a binding past practice. Additionally, the Management Rights clause states:

It is further agreed that this agreement shall not bind the City from, in its sole discretion, exceeding the terms set forth herein provided that the exercising of such discretion is in the benefit of the Member(s) affected thereby. The Union agrees that the City's exercising of such discretion shall only apply to that specific circumstance, and shall not be construed as precedent setting.⁵⁹

In this case, former City Manager Wylie's exercise of discretion prior to the CBA in paying Captain Parenti the military pay differential cannot bind the City. His decision to pay the Grievant 6 months military differential pay was only intended to apply to the Grievant's unique circumstance in 2017.

21. The Union cites *Independence-NEA v. Independence School District, supra*, for the proposition that agreements reached by a public employee's union and a public employer are enforceable as any other contractual obligations undertaken by a public employer. While *Independence, supra*, is a correct statement of Missouri law, the Arbitrator finds that it is not applicable in this case. In *Independence*, two collective bargaining units memorialized proposals relating to compensation and working conditions into memoranda of understanding with a school district. The school board later formally approved those memoranda. The school board later unilaterally adopted new policies which differed from the agreements contained in the memoranda of understanding had previously agreed to and the school board formally adopted. The Missouri Supreme Court held that the parties' prior memoranda of understanding which the school district approved could not be unilaterally abrogated because the school board had formally approved those memoranda of understanding. In this case, there is no evidence that the

⁵⁹ *Id.*

City ever formally adopted the change to the Military Leave of Absence Policy proposed by the Grievant in 2016. Mr. Wylie testified he had no intention of approving the proposed policy change and he never submitted the proposed change for City Council approval. For this reason, *Independence, supra*, is not applicable to this case.

22. The Arbitrator finds and concludes that the changes to the Military Leave of Absence Policy proposed by the Grievant were never formally considered or approved by the City prior to the effective date of the parties' CBA. The City's Military Leave of Absence Policy, Section 4.10, effective at the time the CBA became effective, limited military pay differential to 120 hours. Contrary to the Grievant's assertion, the policy never changed. City Manager Peoples notified Captain Parenti that the City would provide him with 120 hours of military pay differential as stated in Section 4.10 of the City's Personnel Policy Manual. Her decision to provide him with 120 hours military pay differential is in line with the City's Military Leave of Absence Policy. There is no evidence that the City violated Section 1.09 of the CBA.

AWARD

The Arbitrator denies the Union's grievance.



Diego J. Peña
Arbitrator

March 6, 2022