

IN THE MATTER OF THE ARBITRATION

BETWEEN

INTERNATIONAL ASSOCIATION OF	)	<u>OPINION AND ORDER</u>
FIREFIGHTERS, LOCAL 3387,	)	
	)	
ASSOCIATION,	)	Re: Grievance of
	)	Fred Franklin - -
and	)	Written Reprimand
	)	
LAPINE RURAL FIRE PROTECTION	)	
DISTRICT,	)	
	)	
DISTRICT.	)	

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BEFORE

ERIC B. LINDAUER

ARBITRATOR

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October 26, 2004

REPRESENTATION

FOR THE ASSOCIATION:

Michael J. Tedesco  
Attorney at Law  
15050 SW 150<sup>th</sup> Court  
Beaverton, Oregon 97007

FOR THE DISTRICT:

Bruce Bischof  
Attorney at Law  
747 SW Industrial  
Bend, OR 97702

## NATURE OF PROCEEDING

The International Association of Firefighters, Local 3387 and LaPine Rural Fire Protection District are parties to a Collective Bargaining Agreement which provides that the District retains the right to discipline, suspend, demote or discharge an employee so long as such action is not arbitrary, in bad faith or without just cause. On January 16, 2004, the District issued a written reprimand to a firefighter for insubordination. The Association, on behalf of the employee, filed this grievance contending the District did not have just cause to issue the reprimand. The District denied the grievance and the issue was submitted to arbitration. The arbitration hearing was held in Bend, Oregon on August 20, 2004. At the commencement of the hearing, the parties stipulated the procedural steps of the Agreement had been complied with and the matter was properly before the Arbitrator. During the course of the hearing, each party had an opportunity to make opening statements, introduce exhibits, and examine and cross-examine witnesses on all matters relevant to the issues in dispute. At the conclusion of the hearing, the parties waived oral argument and agreed to submit their respective positions to the Arbitrator in the form of written post-hearing briefs. Upon receipt of the post-hearing briefs, the hearing record was closed and the Arbitrator took the matter under advisement. The Arbitrator now renders this Opinion and Order in response to the issue in dispute.

**ISSUE**

At the commencement of the hearing, the parties stipulated that the issue to be decided in this matter is as follows:

Did the District have just cause to issue a written reprimand to Fred Franklin on January 16, 2004? If not, what is the appropriate remedy?

**RELEVANT CONTRACTUAL PROVISIONS**

In the opinion of the Arbitrator, the following provisions of the parties= Collective Bargaining Agreement and provisions from the Standard Operating Guidelines are relevant in determining the issue in dispute.

**ARTICLE 4.0 - MANAGEMENT RIGHTS**

4.1 \* \* \*

Without limitation and by way of illustration, the exclusive prerogatives, functions, and rights of the District shall include the following:

\* \* \*

To discipline, suspend, demote, or discharge an employee, so long as such action is not arbitrary, in bad faith, or without just cause.

**ARTICLE 15.0 - UNIFORMS**

\* \* \*

15.6 Use and configuration of the uniform will be as per Fire District policy. Only issued uniforms or uniforms specifically mentioned in this Agreement, shall be worn while on duty. Union members may wear navy colored apparel bearing IAFF logo, "Local 3387", and "LaPine Fire Fighters" after 5:00 p.m. and on weekends.

**ARTICLE 27.0 - GRIEVANCE PROCEDURE**

\* \* \*

Arbitration shall be conducted in the following manner:

\* \* \* The arbitrator shall conduct arbitration according to current rules of arbitration and shall render a decision within thirty (30) days. The decision of the arbitrator shall be binding on both parties.

\* \* \*

The cost of the arbitration hearing shall be shared equally by both the District and the Union.

**STANDARD OPERATING GUIDELINES  
SOG #300.03 DISCIPLINE  
NOVEMBER 2002**

**SUBJECT:** Discipline

**PURPOSE:** Discipline involves relationships between all individuals and groups of individuals, and relationships of each individual to his/her associates as well as to his/her officers and to the District. It encompasses all aspects of supervision that correct, mold, strengthen, or guide District members toward greater productivity and satisfactory adjustment to working relationships. An atmosphere of discipline is achieved through instruction, good example, and practice which influences employees to abide by rules, regulations and procedures, and aid them in controlling their emotions and developing correct habits of conduct.

\* \* \*

**POLICY:**

Primary emphasis will be placed on preventing situations requiring disciplinary actions through effective-management relations. When the responsible supervising officer determines that disciplinary action becomes necessary, s/he will inform the member concerned to the reasons that justify the action against him/her. The officer will keep in mind that the primary objective of discipline is to correct personnel behavior, not punish

or penalize.

**Penalties:**

1. In conformity with provisions of the Standard Operating Guidelines and Civil Service Rules as adopted by the LaPine Rural Fire Protection District, the Fire Chief shall determine and enforce the following penalties:

- 1.1 Oral Admonishment
- 1.2 Official Reprimand
- 1.3 Suspension Without Pay
- 1.4 Demotion
- 1.5 Dismissal
- 1.6 Denial of Special Privileges

\* \* \*

2. Disciplinary Probation and Denial of Special Privileges:

3.1 Disciplinary Probation shall be assessed in conjunction with discipline beyond Oral Admonishment. Probation shall be assessed in increments of six months for minor offenses and twelve months for major offenses. A record of such probation shall be maintained both in the supervisor's file and in the employee's personnel file.

3.2 Denial of Special Privileges may be used at the supervisor's discretion in addition to other disciplinary action beyond Oral Admonishment if warranted. One or more of the listed privileges may be denied. Being "denied special privileges" shall mean:

3.2.1. Members may not be allowed to trade time or make other shift changes for personal reasons during the disciplinary probationary period.

3.2.2. Members may not be afforded

opportunities for outside training during the disciplinary probationary period.

3.2.3. Members may not be considered for call shifts for vacations or illness during the disciplinary probationary period, but may respond on Personnel Callbacks and be considered in other emergency staffing situations such as conflagrations.

\* \* \*

3.4 Every imposition of denial of special privileges as outlined in the Appendix automatically places the offender on probation. Sustained charges for the same offense during this probationary period shall be caused for imposition of the corresponding penalty for the next offense.

\* \* \*

#### **Authority and Responsibility**

\* \* \*

7. The Fire Chief. The Fire Chief will administer fair, impartial, and uniform disciplinary actions within all units of the District.

\* \* \*

#### **Administration of Discipline**

9. Oral Admonishment. An oral admonishment is an interview between a supervising officer and the offending member of the subject of the member's conduct and performance, or his/her failure to observe a rule, regulation, or administrative instruction. It is intended to increase the member's efficiency and value to the District by effecting a change in his/her

conduct, attitude, habits or work methods. When the need for an oral admonishment arises, the supervising officer will:

\* \* \*

9.1.7. Written reports of individual incidents or oral admonishments will not be forwarded to Chief Officers and will not be entered in the offending member's official personnel file but shall be maintained in member's supervisory file for a period of 90 days, after which it will be removed from file and destroyed.

10. Official Reprimand.

10.1. An Official Reprimand is a formal letter to a member concerning significant misconduct, inadequate performance, or repeated infractions of a lesser nature. Official reprimands will be filed in members' personnel files.

10.1.1. An Official Reprimand may result from specific formal changes submitted by a supervising officer or as the result of an accumulation of minor infractions that are on record, which in the opinion of a supervising officer indicates more severe disciplinary action than an oral admonishment.

\* \* \*

10.1.3. Every official reprimand automatically places the offender on probation.

10-28-02

**SUMMARY OF FACTS**

**1. Background**

The LaPine Rural Fire Protection District provides fire protection and emergency medical services to a large geographic area in Central Oregon, south of Bend. The District has two stations, Station 101 located in LaPine and Station 102 located north of LaPine on Highway 97 near Sun River. The Stations are manned on a twenty-four hour basis by sixteen fire-fighters who are represented by the International Association of Fire Fighters Local 2287. Both Stations operate on a three shift basis, with leadership being provided by a Lieutenant and Battalion Chief for each shift, who are supervised by Division Chief and the Fire Chief for the District. The Division Chief for the LaPine Rural Fire Protection District is Scott Baldwin and the Fire Chief for the District is Jim Court.

The Grievant, Fred Franklin, is a Lieutenant assigned to Station 102. Franklin has who also served as a Battalion Chief on an intermittent basis, has received above average performance appraisals and has been employed by the District for seven years. Franklin currently serves as the President of the Local Union representing the District's firefighters.

**2. The January 15, 2004, Incident**

On the morning of January 15, 2004, Union and District representatives were meeting at Station 101 to bargain over the terms of the District's Drug and Alcohol policy. At the end of the meeting, Franklin requested a meeting with the Fire Chief to discuss an issue that had arisen over Franklin being out of uniform at an earlier bargaining session held on January 13, 2004. Following the meeting, Franklin and the Fire Chief went to the Fire Chief's office and held a closed door meeting. According to Franklin, he asked the Fire Chief if they could discuss issues relating to his being out of uniform, as well as a concern that he had, as Union President, regarding the deterioration of the relationship between the Union and the Fire Chief. Within a relatively short period of time, the discussion between the Fire Chief and Franklin deteriorated to a point, according to the Fire Chief, that it became a "yelling match." Franklin and the Fire Chief have somewhat different accounts of the exchange, but ultimately the Fire Chief ordered Franklin to get out of his office.

**3. The January 16, 2004, Official Reprimand for Insubordination**

The day after the incident with Franklin, the Fire Chief issued a written Official Reprimand for insubordination to Franklin. In the reprimand, the Fire Chief set out the basis for his decision to issue the reprimand and concluded by stating:

I find your anger and accusations insubordinate and will

not tolerate these actions from you or any member of this fire district, regardless of your status in a union.

(Jt. Exh. 11)

In accordance with Section 10.1.3 of the District's Standard Operating Guidelines (SOG), the issuance of an Official Reprimand automatically placed Franklin on disciplinary probation. The District's policy provides that the length of the probationary period shall be assessed in increments of six (6) months for minor offenses and twelve (12) months for major offenses. The Fire Chief elected to place Franklin on a disciplinary probation for a period of twelve (12) months for his conduct on January 15, 2004. Section 3.2 of the SOG provides there may be a denial of special privileges that may be imposed at the supervisor's discretion. In his official reprimand, Fire Chief Court stated:

You are placed on Disciplinary Probation for one year as of this date and shall be denied all special privileges as outlined in SOG #300.05, Section 3.2.

(Jt. Exh. 11)

Section 3.2 of the SOG refers to denial of special privileges and states:

Denial of Special Privileges may be used at the supervisor's discretion in addition to other disciplinary action beyond Oral Admonishment if warranted. One or more of the listed privileges may be denied. Being "denied special privileges" shall mean:

3.2.1. Members may not be allowed to trade time or make other shift changes for personal reasons during the disciplinary probationary period.

3.2.2. Members may not be afforded opportunities for outside training during the disciplinary probationary period.

3.2.3. Members may not be considered for call shifts for vacations or illness during the disciplinary probationary period, but may respond on Personnel Callbacks and be considered in other emergency staffing situations such as conflagrations.

#### **4. The Union's Grievance**

On January 23, 2004, the Union, on behalf of Franklin, filed this grievance contending the issuance of the official reprimand was without just cause. As a remedy, the Union requested that the official reprimand be removed from Franklin's file and that Franklin be restored all lost benefits that resulted from the denial of special privileges.

#### **CONTENTIONS OF THE PARTIES**

##### **The District:**

The District contends it had just cause to reprimand Franklin for insubordination on January 16, 2004. Franklin's attitude and statements during his meeting with the Fire Chief demonstrated disrespect for the Fire Chief and constituted insubordination. Franklin failed to seek a meeting with the Chief in his capacity as Union President and ignored the chain of command necessary to address personal behavioral issues. The Union's claims that the

Fire Chief singled out Franklin lacks merit. The Fire Chief was simply carrying out the directive of the Board to enhance the professionalism of the Fire Department. Furthermore, Article 15.6 of the Agreement clearly outlines the rule that uniforms "shall be worn while on duty." Finally, the Fire Chief did not discipline Franklin for being out of uniform during his shift. Rather, the Fire Chief simply asked Franklin's supervisor to inquire as to why Franklin was not in uniform. Thus, Franklin's confrontation of the Fire Chief and his accusations of unfair treatment and referring to the Chief as a tyrant was disrespectful and therefore, insubordinate.

**The Union:**

The Union contends the District did not have just cause to reprimand Franklin for insubordination on January 16, 2004. The Fire Chief singled out Franklin by directing Battalion Chief Kirchner to counsel Franklin about being out of uniform while on duty at the January 13, 2004 meeting. However, the Chief said nothing to other bargaining unit members attending the same meeting, who were also out of uniform while on duty. When Franklin attempted to talk to the Fire Chief about why he was being singled out, the Chief exploded and ultimately told Franklin to "get the f-- out of my office." Franklin never raised his voice, while the Chief became irate and used foul language. There is no evidence, nor does the Employer claim, that Franklin violated any order or

directive from the Chief. Thus, Franklin's conduct did not constitute insubordination.

### OPINION

The issue in this case is whether Lieutenant Fred Franklin's conduct in the Fire Chief's office on January 15, 2004, constituted insubordination, justifying an official reprimand. After reviewing the evidence submitted by the parties in this case, as well as the arguments set forth in their post hearing briefs, the Arbitrator makes the following findings and conclusions.

#### **A. The District Has The Burden Of Proof**

Article 4.0, Management Rights, of the parties' Agreement authorizes the Employer "to discipline, suspend, demote, or discharge an employee, so long as such action is not arbitrary, in bad faith, or without just cause." (Jt. Exh. 1) In this case, the District alleges Fred Franklin committed the offense of major insubordination which justified the Fire Chief's issuance of an official reprimand to Franklin. The offense of Major insubordination, as set forth in the Table of Offenses and Penalties, is based upon an employee's "refusal to obey legitimate orders, disrespect, insolence or like behavior." (Jt. Exh. 7) The first violation could result in penalties ranging from the denial of special privileges to a suspension. In this case, as a part of the Official Reprimand, the Fire Chief ordered a disciplinary probation for one year and a denial of all special privileges

during the one year period. As a consequence of the denial of all special privileges, Franklin was unable to take advantage of overtime and shift changes which constituted a significant financial loss to Franklin.

This being a disciplinary case, the District has the burden of proving that Franklin's conduct on January 15, 2004, constituted the major offense of insubordination as alleged in the Fire Chief's January 16, 2004 Official Reprimand. This is not a traditional insubordination case in which Franklin refused to carry out an order from the Fire Chief. Rather, the alleged insubordination in this case arises out of a January 15, 2004, meeting between the Fire Chief and Franklin, during which the Chief contends Franklin's statements and actions were disrespectful. Specifically, the Fire Chief, in the official reprimand stated that "I find your anger and accusations insubordinate." (Jt. Exh. 11)

The Union contends Franklin was not insubordinate and that the Chief has arbitrarily singled Franklin out for disciplinary action. When Franklin attempted to discuss the issue of being out of uniform while on duty, the Chief became angry and ordered Franklin out of his office. In the Union's view, neither Franklin's statements nor his actions during the January 15 meeting were either disrespectful or insubordinate.

**B. The January 15, 2004 Meeting Between The Grievant  
And The Fire Chief**

The evidence as to what took place in the closed door meeting between Franklin and the Fire Chief was limited primarily to the testimony of Franklin and the Fire Chief. Not surprisingly, Franklin and the Fire Chief gave conflicting accounts of what occurred during the meeting and whether Franklin's conduct constituted insubordination. The Fire Chief contends Franklin's anger and accusations were disrespectful and therefore, insubordinate. In his Official Reprimand the Fire Chief described Franklin's conduct as follows:

On Thursday, January 15, 2004 while off duty you asked to come in and see me about [the Chief's concerns about the Grievant being out of uniform while on duty] as you thought it was petty item and that I was picking on you. You accused me of intentionally trying to set you up to get in trouble because you are the union president. You also accused me of being like a tyrant that you do not want as a boss. You state that you were out of the chain of command by coming to me this way and then told me you were coming to me as the union president. This is not acceptable. You are an employee first and can't just declare your union status any time you are out of line. In the future if you want to talk as the Union President, you shall be required to state your status prior to the meeting.

I find your anger and accusations insubordinate and will not tolerate these actions from you or any member of this fire district, regardless of your status in a union.

(Jt. Exh. 11)

The Fire Chief elaborated on these comments at the hearing as

follows:

Well, I mean, he accused me of being the tyrant that the fire district does not want here, and that - that's what set me off more than anything. I mean, he was yelling at me, and he was using - I wouldn't say screaming, but using a loud harsh voice towards me, being disrespectful.

\* \* \*

He referred to - - he also referred to me as being like Bob Kraft, which was person that we had in that fire department that we did have major concerns with, major problems with, and that did not go over well with me.

(Tr. 32)

Franklin contends he was simply trying to have a conversation with the Fire Chief about his policy pertaining to the wearing of uniforms while off duty. Franklin testified that at first he was explaining his concern that the Chief was nit-picking about his being out of uniform during the bargaining session.

As I continued to talk to him I kept, you know, asking how I could have accommodated it. I said, you know, Chief, I really feel like I've been trapped. I feel like I've been set up for failure here. I don't see any way that I could have avoided this, you know, and the only conclusion that I can come to is, it's because of negotiation and because my position as the Union president. And then that's when he really got upset and he said - he said, you know, I'm just sick and tired of you guys. You're always trying to take advantage of me. I got board members who think that you're trying to run this place. I've had it. He was truly upset at that point.

(Tr. 127)

Franklin testified that from that point on the Chief became

increasingly angry. Then, when Franklin stated "we don't want to work for a tyrant," the Chief said "you know, get the f--- out of my office." (Tr. 131) Franklin claims he tried to clarify his statement to the Chief; that he was not calling the Chief a tyrant, he was simply saying he did not want to work for a tyrant, but the Chief repeated his directive to "get the f--- out of my office." (Tr 131)

Although there is a significant amount of evidence concerning the past relationship between the Fire Chief, Franklin, and the Union over the uniform issue and whether Franklin was speaking out of his own individual concerns or on behalf of the Union, in the Arbitrator's view, this case really comes down to whether Franklin's conduct in the Chief's office constituted insubordination. On the basis of all the evidence, the Arbitrator concludes that the District has not met its burden of proof in establishing that Franklin's conduct constituted major insubordination. Even if the Arbitrator accepted the Chief's version of what Franklin said, it is difficult for the Arbitrator to conclude that Franklin's comments reached the level of major insubordination.

**C. The Grievant's Conduct Did Not Amount To Major Insubordination**

In the opinion of the Arbitrator, Franklin's conduct did not constitute the offense of "major insubordination." Appendix 300.05A: Table of Offenses and Penalties defines major insubordination as "Refusals to obey legitimate orders, disrespect, insolence, or like behavior." (Jt. Exh. 7) The District contends Franklin's comments to the Chief were disrespectful. The Arbitrator disagrees. The Arbitrator reaches this finding based on the following: 1) Franklin's explanation was found to be credible, 2) the Fire Chief, not Franklin, lost his temper during the meeting, 3) the nature of the past relationship between the Fire Chief, Franklin and the Union.

(1) The Grievant's Explanation was Credible

Although both Franklin and the Fire Chief made favorable impressions during the course of the hearing, the Arbitrator found Franklin's account of the conversation between he and the Chief to be more credible than the Fire Chief's account. For instance, the Fire Chief testified on two occasions that Franklin did not ask to meet with him at the conclusion of a bargaining session over the proposed drug and alcohol policy. However, the Union's bargaining notes clearly indicate that there was a request by Franklin to meet with the Fire Chief following the meeting regarding some misunderstanding that he wanted to resolve. The Union's bargaining

notes state the following:

Fred Franklin asked to meet with Chief Court following this negotiation meeting to discuss certain misunderstandings that arised (sic) at the last drug & alcohol policy negotiations. Chief Court agreed to meet with Mr. Franklin.

(Un. Exh. 1)

Although there is some disagreement over what was said during their meeting, there was no disagreement as to the tone of the meeting. The Arbitrator concludes that Franklin's testimony and account of the conversation between he and the Chief was consistent with that of Nick Mauti, who overheard the conversation as he was walking by the Fire Chief's office. Mauti testified that he heard the Fire Chief "yelling" at Franklin.

I heard Chief Court. I could hear him yelling, and I heard him say, 'God damn it, Fred.' And that caught my attention. And when that happened, I remember the ladies (clerical) stood up and one of them looked at me and she kind of went like that (indicating), put her hand over her mouth. And then Tammy was watching the window at that point, because if someone were to walk in, it would have been very, very audible. I mean, I could hear it from the ladies rest room outside the lobby in the front area.

(Tr. 90)

Mauti also testified that he heard the Chief say the f-word "in different forms more than once." (Tr. 92)

In the Arbitrator's opinion, Franklin's credibility was bolstered by his favorable performance appraisals and his past efforts to get the Fire Chief reinstated after he had been

terminated by the District Board. Franklin's last appraisal, by Deputy Chief Ken Schlegel, concluded with the following statement:

Lt. Franklin is an exceptional member of the fire District because of his commitment to making it a better place to work for the employees, his attention to community support, and his attention to the care, maintenance, and operations of the District's equipment and facilities. \* \* \*

I have found Lt. Franklin easy to work with. I appreciate his candor and feedback, as well as his historical knowledge of the District. Lt. Franklin has grown both personally and professionally in the year we have worked together. He will continue to be a good supervisor.

(Jt. Exh. 8)

Therefore, although both Franklin and the Fire Chief made favorable impressions at the hearing, the Arbitrator finds Franklin's explanation of the events which took place in the Fire Chief's office to be the more credible of the two.

(2) The Fire Chief Lost His Temper During the Meeting

The undisputed evidence indicates that the Fire Chief, during the course of the meeting with Franklin, clearly became frustrated with Franklin and lost his composure. The Chief admitted to using inappropriate language and becoming angry with Franklin.

I did, at one point, tell him to get, quote, 'get the f-- out of my office' because I was at this - but prior to that, I had told him that I had had enough of it.

(Tr. 29)

. . . And I was wrong by saying the foul language, but I was angry with him.

(Tr. 32)

The SOGs require that the Fire Chief administer discipline in a "fair, impartial and uniform" manner. That did not occur in this case. Here, the Fire Chief became frustrated with Franklin and the Union, and took his frustration out on Franklin by initiating disciplinary action. In the Arbitrator's opinion, the Fire Chief did not administer discipline in a "fair, impartial and uniform" manner.

The harsh nature of the penalty imposed by the Fire Chief in this case is evidence of the Chief's frustration with the Franklin. The Chief treated Franklin's conduct as major insubordination and issued an Official Reprimand. Placement of Franklin on Disciplinary Probation was mandatory, under SOG section 10.1.3, however the Chief had discretion to make it either a six month or twelve month probation. The Chief chose the twelve month probation. Also, it was within the Chief's discretion to issue a denial of special privileges; it was not mandatory. In the Arbitrator's view, this penalty is particularly harsh in light of the alleged misconduct and suggests the Fire Chief was venting his frustration by the issuing a harsh penalty.

(3) Nature of the Relationship Between the Fire Chief, the Grievant and the Union

The conversation which took place between Franklin and the Fire Chief did not occur in a vacuum. There were existing frustrations by the Fire Chief with the Union and specifically with

Franklin as Union President. There was evidence indicating that the Fire Chief wanted Franklin to step down as Union President. Firefighter Karrer testified that the Fire Chief, in his opinion, was trying to "strong arm" the Union and was frustrated with the Union's President.

I just pulled out my mail and I was kind of going through it and Chief Court came up to me and asked me - I had - if the Union had reviewed one of the replies that they had sent on one of the issues we had. I don't remember what issue it was. I think I had been out of town, and I said, no, I haven't talked to Fred.

I'm not sure where we stand on that. We'll have to get back to you. He said, well, who currently are the Union officers? I said, well, I'm secretary treasurer, Nick is now vice president and Fred is union president. And that's when Chief Court said, well, you know what I'd like to see is for Fred to step down, at least until we get through negotiations. The impression I got was that the Chief was trying to strong-arm the Union.

(Tr. 58)

These frustrations seemed to be magnified by the contract negotiations that were taking place at the time this incident occurred. This factor provides further support for Franklin's statement to Mauti immediately following the meeting that the January 15, 2004, discussion with the Fire Chief was the "worst meeting I have ever had with the Chief." (Tr. 132)

**D. The Employer Did Not Have Just Cause To Issue The Official Reprimand**

On the basis of all the evidence presented by the parties in this case, the Arbitrator concludes the Employer did not have just cause to issue the January 16, 2004 Official Reprimand. The Employer did not satisfy its burden of proof in establishing that Franklin committed the offense of major insubordination, as set forth in the Table of Offenses and Penalties. The Arbitrator found Franklin's and Nick Mauti's account of the January 15, 2004 conversation between Franklin and the Fire Chief to be accurate and credible. It was clear that the Fire Chief lost his composure during the discussion and overreacted to Franklin's comments. Therefore, the Arbitrator concludes the Employer did not have just cause to issue Franklin an Official Reprimand for the offense of major misconduct. Nevertheless, as discussed below, a lesser form of discipline is determined to be appropriate.

**E. The Grievant Shall Be Disciplined For Minor Insubordination**

Although the Arbitrator has concluded the Employer did not meet its burden of proof in establishing the offense of major insubordination, the evidence did establish that Franklin deserves some form of discipline for not clearly stating the purpose of his meeting with the Chief. The Fire Chief had previously advised Franklin that if he wished to speak with the Fire Chief in his capacity as Union President, he needed to inform the Chief in

advance. In this case, Franklin did not do so. At the start of his January 15 meeting with the Chief, Franklin announced that the purpose of the meeting was to discuss the Chief's singling out of Franklin regarding his being out of uniform. District policy was that personal issues were to be addressed to the employee's immediate supervisor rather than going directly to the Fire Chief. However, in this case, Franklin used his status as Union President to discuss a personal issue, his being counseled regarding his being out of uniform, with the Chief. It wasn't until the middle of the discussion when Franklin indicated that he was also there as the Union President to discuss the uniform policy and how it affected the Union. In the Arbitrator's view, this conduct, while not constituting a major offense, did violate District policy, for which Franklin should be disciplined.

(1) Franklin Failed to Notify the Fire Chief that he was Acting as Union President

The Union contends that Franklin, as Union President, should have more leeway in debating with the Fire Chief over issues affecting the Union members. The Union argues that Franklin's January 15 meeting with the Fire Chief falls within the bounds of Franklin's representation of the Union. However, after reviewing the evidence the Arbitrator finds that Franklin was not acting on behalf of the Union, but rather on his own behalf, believing he had been singled out by the Chief regarding his uniform.

Franklin acknowledges that the reason for the meeting with the Fire Chief was that he felt the Chief was picking on him regarding his uniform. Franklin simply asked the Chief if they could talk about some issues. At the hearing, when asked what "issues" he was referring to, Franklin gave the following response:

A: I was referring to the issue with my uniform and being counseled about that, feeling that I had been singled out as the Union president, as well as the general climate with the Union itself and the relationship between me and management.

Q: Now, in all fairness to Chief Court, you didn't tell him all of that?

A: No.

Q: That's what you were thinking. You said you wanted to meet, right?

A: No. I just said there was some issues at the last bargaining, can we talk.

(Tr. 121)

The Fire Chief testified that it wasn't until halfway through their conversation that Franklin stated that he was there in his capacity as Union President and not personally.

He did not come in as the Union President, he didn't come in as anything, other than stating about his concerns about his uniform. . . . he was in my office for I'd say at least five minutes, talking to me about the uniform issue before he said - he made the statement to me that I am not using the proper chain of command, but I'm the Union President so I can discuss this with you. And, at that point, he'd already started on the issue with the uniform. He was in there regarding the uniform. It wasn't until about the middle of the discussion when he started stating that he - - well, he did state that he was the Union President. . . . [A]gain, it wasn't until about

five minutes into it that he identified that he was there, out of the chain of command, but as the Union President.

(Tr. 29-30)

Clearly, there was confusion as to whether Franklin was approaching the Chief personally or in his capacity as Union President. This confusion is due to Franklin's failure to announce the purpose of his meeting with the Chief at the outset of their meeting. In the Arbitrator's view, Franklin was frustrated with the Chief over the uniform issue and out of this frustration, confronted the Chief. Then, realizing that he was out of the chain of command for addressing personal issues, tried to use his status as Union President to justify his position and his right to engage in such discussions with the Chief. The Arbitrator is not persuaded. Franklin acknowledged that he requested the meeting with the Chief to discuss the uniform issue. This was not a Union issue, nor was Franklin acting on behalf of the Union. Therefore, Franklin's conduct is not excused on the grounds that he was acting as Union President. Thus, Franklin's conduct is deserving of discipline.

(2) The Discipline Shall be Modified to an Oral Admonishment

For the foregoing reasons, the Arbitrator concludes the official reprimand should be set aside and Franklin should be given an oral admonishment. This penalty is consistent with the penalty

for the first offense of minor insubordination on the Table of Offenses and Penalties. Although Franklin's conduct in this case does not fit the description for minor insubordination, the Arbitrator concludes this is the most appropriate characterization under all the circumstances of this case. The penalty for the offense of minor insubordination is a more appropriate penalty than that imposed by the Fire Chief.

### CONCLUSION

On the basis of the limited amount of evidence in this case, the Arbitrator concludes the Employer did not have just cause to issue an official reprimand to Franklin for the offense of major insubordination. The Arbitrator has concluded that Franklin's conduct did not constitute the offense of major insubordination. There simply was insufficient evidence to establish that Franklin was disrespectful to the Fire Chief. The Arbitrator found Franklin's account of the conversation to be credible. The Arbitrator also found Firefighter Mauti's testimony observations of the conversation, even though he was outside of the Fire Chief's office, to be credible.

The Arbitrator further concluded that although the Franklin's conduct did not amount to major insubordination, he failed follow District policy by not making it clear at the outset that he was speaking to the Chief as Union President. The Arbitrator concluded the appropriate penalty for this conduct was an oral admonishment,

which is the proscribed penalty for the first offense of minor insubordination. Therefore, the Official Reprimand issued by the Fire Chief to Franklin shall be set aside, along with the one year disciplinary probation and the denial of special privileges, and Franklin shall be issued an oral admonishment. Accordingly, Franklin shall be made whole for any lost benefits resulting from the denial of special privileges.

IN THE MATTER OF THE ARBITRATION

BETWEEN

INTERNATIONAL ASSOCIATION OF	)	<u>ORDER</u>
FIREFIGHTERS, LOCAL 3387,	)	
	)	
ASSOCIATION,	)	Re: Grievance of
	)	Fred Franklin - -
and	)	Written Reprimand
	)	
LAPINE RURAL FIRE PROTECTION	)	
DISTRICT,	)	
	)	
DISTRICT.	)	

The Arbitrator, in arriving at this decision, has reviewed the evidence, exhibits, hearing notes and has considered the arguments of the parties as set forth in their post-hearing briefs on the issues submitted in this arbitration. In view of all the evidence and for the reasons set forth in this Opinion, it is the decision of the Arbitrator that the Employer failed to prove that Franklin committed the offense of major insubordination. The Arbitrator found Franklin's conduct to be more appropriately characterized as minor insubordination. Accordingly, the Official Reprimand issued by the Employer shall be set aside and the penalty shall be modified in accordance with the following:

1. The Official reprimand shall be removed from the Grievant's file and the Grievant shall be restored all lost benefits resulting from the denial of special privileges issued by the Fire Chief.

2. The Grievant shall be given an oral admonishment for his failure state in advance that he was speaking to the Fire Chief in his capacity as the Union President, on January 15, 2004.
3. In accordance with Article 27, Step 3, of the Parties' Collective Bargaining Agreement, the cost of the arbitration hearing shall be shared equally by both the District and the Union.
4. In accordance with the stipulation of the parties, the Arbitrator shall retain jurisdiction in this matter for a period of sixty (60) days from the date of this Order for the purpose of resolving any disputes arising out of the implementation of this Order.

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Eric B. Lindauer  
Arbitrator

October 26, 2004