STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WATERFORD POLICEMEN'S ASSOCIATION, Complainant, vs. VILLAGE OF WATERFORD, Respondent.	Case III No. 19583 MP-507 Decision No. 14192-E

Appearances:
Schwartz, Weber and Tofte, Attorneys at Law, by Jay Schwartz, and Thomas Bilski and Hugh Mainella, appearing on behalf of Complainant.
Honeck, Mantyh and Arndt, Attorneys at Law, by William R. Mantyh and James Bremer, Village Attorney, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Waterford Policemen's Association filed a complaint on September 16, 1975 and an amended complaint on January 21, 1976 with the Wisconsin Employment Relations Commission, alleging that the Village of Waterford had committed a prohibited practice within the meaning of sec. 111.70 (3)(a)5 of the Municipal Employment Relations Act. A hearing was held on February 23, 1976 in Waterford, Wisconsin, before Ellen J. Henningsen, a member of the Commission's staff. On April 27, 1977 the Commission appointed Henningsen to make and issue Findings of Fact, Conclusions of Law and Order as provided in sec. 111.07(5), Stats. The Examiner has considered the evidence and arguments and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Complainant Waterford Policemen's Association, referred to as Complainant or Association, is a labor organization with offices in care of Schwartz, Weber and Tofte, 704 Park Avenue, Racine, Wisconsin, 53403 and is the exclusive collective bargaining representative of all regular full-time non-supervisory law enforcement personnel employed by Respondent Village of Waterford.

2. Thomas Bilski, Hugh Mainella and John Schanning are full-time non-supervisory law enforcement personnel employed by Respondent Village of Waterford and are represented for collective bargaining purposes by Complainant.

3. Respondent Village of Waterford, referred to as Respondent, is a municipal employer with offices at 123 North River Street, Waterford, Wisconsin. Respondent operates a police department and, at all times pertinent to this action, has employed two or three full-time police officers, in addition to the Chief of Police, to staff said department. At all times pertinent to this action, Chester A. Schroeder has served as Chief of Police and, as such, has acted as an agent of Respondent. The Chief is responsible for scheduling his work and the work of the officers.

4. At all times pertinent to this action, Complainant and Respondent were parties to a collective bargaining agreement effective January 1, 1974 through at least 1975. The agreement, which does not contain a provision for final and binding arbitration, contains the following pertinent provisions:

ARTICLE 3
MANAGEMENT RIGHTS

The management of the Village and the direction of the employees in the bargaining unit, including, but not limited to, the right to hire, the right to assign employees to jobs and equipment in accordance with the provisions of this Agreement, the right to assign overtime work, the right to schedule work, and the right to relieve employees from duty because of lack of work or for other legitimate reasons, except as otherwise provided in this Agreement, shall be strictly a function of the Village.

. . .

ARTICLE 6
HOURS OF WORK

The standard work day shall be 8 1/2 hours. Commencement and ending of the work week and shifts for individual employees shall be as designated by the Chief. The standard work month shall be 185 hours.

In cases of extreme emergency, all police officers shall be subject to twenty-four (24) hours of continous duty.

ARTICLE 7
OVERTIME

The Village shall pay one and one-half (1 1/2) times the regular hourly rate for each hour worked over one hundred eighty five (185) hours per month. Commencing July 1, 1974, such payment for such overtime hours shall be made to the employees in connection with his second pay check in the succeeding month.

Court time, whether County, Municipal, or Civil Court, shall be paid at the rate of the regular hourly rate for each employee. Further, that any schools attended by any officer outside of his regular duty hours [shall] be paid at the regular hourly rate of the employee.

. . .

ARTICLE 9
WAGES

The Village will pay the rates as set forth in Schedule "A" attached hereto and made a part hereof.

. . .

ARTICLE 17
DURATION

This agreement shall become effective January 1, 1974, and shall continue in effect from year to year unless either

party gives written notice to the other party to terminate or amend or re-negotiate, such agreement on or befcre September 1st of the proceding [sic] year.

. . .

ARTICLE 20
THIRTY DAY NOTICE

The date upon which this agreement is signed shall be the date which commences a thirty day notice period to the Village prior to the initiation of any bargaining regarding a 1975 agreement.

The provisions of this agreement shall extend through [the] 1975 calender [sic] year, except Articles 9 [wages], 12 [Insurance], 13 [Retirement] which may be reopened.

ARTICLE 21
GRIEVANCE PROCEDURE

The Association shall have the right to file a grievance concerning alleged violations of this agreement.

A grievance shall mean a complaint that there has been an alleged violation, misinterpretation or misapplication of any negotiated provision of this agreement.

A grievance cannot be filed more than ten days from the time of the alleged violation.

PROCEDURE

The Association shall have the right to file a grievance concerning alleged violations of this agreement.

An aggrieved employee may present the grievance to the Chief. The employee may have his authorized Association Representative with him if he so desires.

If the grievance is not satisfactorily resolved in paragraph two of procedure, the grievance shall be reduced to writing by either the aggrieved employee or his authorized Association Representative and presented to the Chairman of the Fire and Police Commission.

If the grievance is not settled by paragraph three of procedure, the aggrieved employee, accompanied by the Association, may appeal in writing to the Village Board. Any such appeal must be made within ten (10) days after receipt of the decision of the Fire and Police Commission in paragraph three of procedure.

The Village Board shall notify the aggrieved employee and the Association in writing, [sic] the decision of the Fire and Police Commission within ten (10) working days after receipt of the said appeal. This period of time may be extended by mutual agreement of the parties involved.

The Village Board shall confer with the Aggrieved employee and the Association before making their recommendation to the Fire and Police Commission.

That [sic] the Village and the Association will bargain in good faith at all bargaining sessions and each shall have the right to have counsel present.

. . .

1975 Contract

SCHEDULE "A"

Sergeant	$877.00
Patrolman	$817.00
Patrolman on Probation for Six Months	$793.00 1/

5. Since at least 1953, police officers have been scheduled on a staggered basis to work six consecutive days followed by two consecutive days off. Since at least December, 1974, the regular work day has been eight consecutive hours, although officers occassionally work in excess of eight hours a day. In some months, the "6-2" schedule, if followed, amounts to more than 185 scheduled work hours in that month.

6. Immediately prior to December, 1974, the Chief was ordered by the Fire and Police Commission and the Finance Committee of Respondent to schedule officers so that they would not work in excess of 185 hours in a calendar month, thus avoiding the need to pay compensation at overtime rates. The Chief told the officers about this new policy in December, 1974.

7. Approximately two weeks prior to the beginning of each month, the Chief issues to each officer one work schedule for all officers and the Chief which reflects the "6-2" schedule. During each month, the Chief keeps track of the hours that each officer is actually working. If it appears likely that an officer will work more than 185 hours in that month, either because an officer has worked in excess of eight hours a day or because the "6-2" schedule would result in more than 185 hours of work, the Chief modifies the previously issued schedule and orders the particular officer to take time off. Thus, since December, 1974, the Chief, pursuant to the above-mentioned order, has on occassion modified the "6-2" schedule to avoid having officers work more than 185 hours in one month.

8. On behalf of the Complainant, Bilski filed a written grievance with the Chief on April 1, 1975. That grievance, in relevant portion, reads as follows:

> The Waterford Police Association pursuant to Article 21 of the Labor Contract between the village of Waterford [and] the Waterford Policeman's Association covering Grievance Procedure alleges and claims the following grievance under Article 7, Paragraph 1, Overtime Pay.
>
> The association requests that further evaluation and definition be given to the aforementioned Article, and Paragraph. The reasons for this request are as follows:

1/ Schedule "A" is shown for 1975 only.

1. Article 7, Paragraph 1, clearly states that the Village shall pay one and one-half (1 1/2) times the regular hourly rate for each hour worked over one hundred eighty five (185) hours per month.

2. That officers have been informed by the Chief of Police that any overtime must be taken as Compensatory time off for the Village will not pay for this overtime.

3. Further, the Village is in direct violation of the Provision of Article 7, Paragraph 1, as of December, 1974 and that further officers have not received any pay for overtime worked only have been forced to take Compensatory time off or lose all overtime.

4. Further, that the Village is in direct violation of the Labor Contract that was signed on July 11, 1974, by the Village President and also in direct violation of Article 20, Paragraph 2, which clearly states that the only Articles which would be negotiated would be Articles 9, 12, 13, which may be reopened in 1975.

5. Further, the Village is in direct violation of Wisconsin Statute 111.70, Sub. 3, Prohibited Practices with respects [sic] to its Provisions.

6. Further, that the Village pay all officers moneys for overtime worked in December, 1974, and January, February, & March, 1975, no later than May 1, 1975, and stop all violations of the 1975 Labor Contract.

This was the only grievance filed by or on behalf of the Complainant concerning any alleged contractual violation relating to the issues raised by the pleadings occurring in and after December, 1974. Following receipt of the grievance, the Chief rejected the grievance and Complainant appealed to the Fire and Police Commission. After a meeting with Complainant, the Commission rejected the grievance. Complainant then had a meeting with the Village Board which rejected the grievance subsequent to May 21, 1975.

9. The complaint, filed on September 6, 1975, stated, in relevant part:

3. That Respondent, Village of Waterford, has failed to pay any overtime compensation to members of Waterford Policemen's Association, Complainant herein, as agreed to in the collective bargaining agreement, contrary to Wisconsin Statutes, Sec. 111.70(3)5. [sic]

4. Wherefore, complainant prays for an Order from the Wisconsin Employment Relations Commission to said Respondent ordering respondent to pay all overtime due and owing members of Waterford Policemen's Association due to respondent's scheduling practices and an Order demanding respondent cease and desist from not paying overtime compensation in the future.

10. The amended complaint, filed on January 21, 1976, set forth the following allegations:

3. That Respondent, Village of Waterford, has failed to pay overtime compensation to members of the Complainant, Waterford Policemen's Association, as agreed to in Article VII of the 1975 collective bargaining agreement between Complainant and Respondent.

4. That John R. Schanning, Hugh Mainella, and Thomas Bilsky [sic], members of Complainant Union, were denied overtime compensation throughout the calendar year; that attached hereto and made a part of this complaint are Complainant's Exhibit A, the posted work schedule for said Union members and Complainant's Exhibit B, a copy of the actual work schedules; that Exhibit B shows the dates, times and hours worked by each of said members of the Complainant and the overtime compensation due and owing to said members.

5. That when said Complainant's Union members called in sick, Respondent figured out said member's paycheck by first charging the hours missed on sick time against said members' accumulated hours of overtime, and only secondarily charging any excess hours against said member's accumulated sick time. Respondent thereby failed to meet its contractual duties of paying time and one-half for overtime hours worked, and is in violation of Sec. 111.70(3)(a)5, Wisconsin Statutes.

The attachment to the amended complaint entitled Exhibit B included statements which indicated that Complainant was alleging that Respondent violated the parties' collective bargaining agreement by not considering hours taken as vacation leave or sick leave to be hours worked for purposes of computing overtime compensation and by changing the work schedule to avoid the payment of overtime compensation rates. Exhibit B set forth, among other things, the dates and hours worked and the overtime compensation allegedly due Mainella from December, 1974 through July, 1975 and due Schanning and Bilski from December, 1974 through November, 1975.

11. The complaint was further amended at the hearing to specifically allege similar violations of the parties' 1974 collective bargaining agreement in December, 1974.

12. Complainant's claims concerning sick leave and vacation leave constituted grievances within the meaning of the collective bargaining agreement. Complainant failed to file or otherwise present grievances with respect to those allegations.

On the basis of the above Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. The allegations of prohibited practices committed in December, 1974 were timely filed within the meaning of sec. 111.07(14), Stats.

2. Complainant failed to exhaust the available contractual grievance procedure with respect to its allegations that Respondent violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by first charging hours taken as sick leave against accumulated hours of overtime and then charging excess hours against accumulated sick leave and by failing to consider vacation leave and sick leave as hours worked for purposes of computing overtime compensation and, therefore, the Examiner is precluded from asserting the Wisconsin

Employment Relations Commission's jurisdiction to consider the merits of those allegations.

3. Complainant exhausted the available contractual grievance procedure with respect to its allegation that Respondent violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by rescheduling employes to avoid compensation at overtime rates and thus the Examiner will assert the Wisconsin Employment Relations Commission's jurisdiction to determine the merits of that allegation.

4. Respondent, by rescheduling Thomas Bilski, Hugh Mainella and John Schanning to avoid having them work more than 185 hours in a calendar month in order to avoid the payment of compensation at overtime rates, did not violate the parties' collective bargaining agreement and thus has not committed a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

On the basis of the above Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

It is ordered that the complaint be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 29th day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint herein was filed on September 16, 1975 and the hearing was thereafter scheduled for December 3, 1975. On November 24, 1975 the Commission issued a notice of postponement of the hearing. On November 25, 1975 the Respondent filed a motion to make the complaint more definite and certain. The Commission's order granting in part and denying in part Respondent's motion was issued on December 18, 1975. Complainant filed its amended complaint on January 21, 1976 and the hearing was then rescheduled for February 23, 1976. Respondent filed a motion to dismiss on January 29, 1976 which the Commission denied on February 12, 1976. The hearing was held on February 23, 1976, before Ellen J. Henningsen, a member of the Commission's staff. On April 27, 1977 the Commission appointed Henningsen to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes.

POSITIONS OF THE PARTIES

Complainant contends that Respondent violated the parties' 1974 and 1975 collective bargaining agreements in December, 1974 through 1975, thus violating sec. 111.70(3)(a)5 of the Municipal Employment Relations Act, hereafter MERA. Complainant argues that Respondent has in effect forced employes to take compensatory time-off by deviating from the "6-2" schedule in order to avoid the payment of wages at overtime rates. No contract clause authorizes a change in the standard work schedule for that reason. The Complainant further argues that paid sick leave should be used to calculate the number of hours worked in a calendar month for purposes of computing overtime compensation. 2/

Respondent answers that the claim of a violation of the 1974 agreement is barred by the one-year statute of limitations set forth in Section 111.07(14), Stats., and denies that Article 7 of the 1974 and 1975 agreements have been violated. 3/ It also alleges that Complainant has failed to exhaust the contractual grievance procedure prior to filing the complaint and amended complaint in this matter.

2/ Although the attachments to the amended complaint indicate that Complainant is raising a similar issue concerning paid vacation leave, no allegation was mentioned in the body of the amended complaint and no argument was offered on this point.

3/ Respondent had not filed or verbally offered an answer concerning the 1974 allegations by the end of the hearing and moved for leave to file an answer after the hearing. The Examiner, then acting as a Hearing Officer, reserved ruling on that motion. Thereafter, Respondent wrote the Examiner (then Hearing Officer) and indicated that it still wished to file an answer and that its answer to the 1974 allegations was as mentioned above. Inasmuch as the Examiner has concluded that the 1974 allegations are not barred by the statute of limitations, no harm is caused Complainant by granting Respondent's motion at this time and by treating Respondent's letter as its answer.

STATUTE OF LIMITATIONS

Respondent claims that the amendment permitted at the hearing on February 23, 1976 which specifically alleges a violation of the parties' 1974 collective bargaining agreement in December, 1974 is time barred.

Sec. 111.07(14), Stats., which is incorporated into MERA by sec. 111.70(4)(a), provides that:

> The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or [prohibited practice] alleged.

Sec. 893.48, Stats., provides that:

> The periods of limitation, unless otherwise specifically provided by law, must be computed from the time of the accruing of the right to relief by action, special proceedings, defense or otherwise, as the case requires, to the time when the claim to that relief is actually interposed by the party as plaintiff . . . .

In determining whether the amendment is barred by the statute of limitations, it is necessary to decide whether it states a new cause of action or merely restates in different form the cause of action stated in the original pleading. 4/

The complaint was filed on September 16, 1975 and, as shown in Findings of Fact 9, alleged a violation of the parties' collective bargaining agreement without specifying which agreement was involved or during which time period the alleged violation had occurred. Since during the calendar years 1974 and 1975, the parties were signatories to at least a two year agreement with a limited reopener, rather than two one year agreements, it is reasonable to infer that Complainant, however obliquely, was alleging a violation of that one agreement. In response to the Commission's order granting, in part, Respondent's motion to make the complaint more definite and certain, the amended complaint was filed on January 21, 1976. The amended complaint specifically stated that the collective bargaining agreement allegedly violated was the 1975 agreement, referred to the 1975 calendar year and made no mention in the body of the amended complaint to 1974. The body of the amended complaint mentioned that an attachment, Exhibit B, showed the overtime compensation due the police officers; that attachment stated, among other things, that overtime compensation was due the officers in December, 1974. The reference to the collective bargaining agreement as the 1975 agreement, although perhaps confusing, does not limit the cause of action as the collective bargaining agreement was actually the 1974-1975 collective bargaining agreement. And even though the body of the amended complaint refers only to 1975, the attachments clearly show that an alleged violation in December of 1974 was being raised. Thus, the amendment at the hearing was merely a restatement of the original pleading as well as the amended complaint and dates back to the date of the filing of the complaint. Accordingly, the allegations concerning the "1974" collective bargaining agreement and December, 1974 are not barred by the statute of limitations.

4/ Wurtzler v. Miller 31 Wis. 2d 310, 143 N.W. 2d 27 (1966); Fredrickson v. Kabat 264 Wis. 2d 545, 59 N.W. 2d 484 (1953).

EXHAUSTION OF GRIEVANCE PROCEDURE

In order for the Examiner to determine whether the Respondent has violated the collective bargaining agreement and, therefore, Section 111.70(3)(a)5 of MERA, it must first be determined that the Complainant has exhausted all steps of the contractual grievance procedure. 5/

Complainant filed one grievance concerning the issues presented by the pleadings. That grievance, the contents of which are set forth in Finding of Fact 8, was filed on April 1, 1975. No specific reference was made to the contention that paid sick leave and paid vacation leave should have been but were not used to calculate hours worked for purposes of determining overtime compensation. The only pertinent contractual language alleged to have been violated was Article 7, the overtime compensation article. It is possible to interpret the allegation of a violation of Article 7 to include the claims concerning sick leave and vacation leave. The Examiner declines to do so, however, because the grievance specifically states that Article 7 has allegedly been violated by Respondent's policy of requiring "compensatory time-off" to avoid the payment of overtime compensation. Had Complainants meant to grieve the sick leave and vacation leave issues, those would have been mentioned with the specificity accorded the "compensatory time-off" issue.

Thus, the Complainant did not file a grievance concerning the sick leave and vacation leave issues. Therefore, the Complainant did not exhaust its contractual remedies and the Examiner, in accord with Commission policy, will not assert the Commission's jurisdiction to determine the merits of those issues.

Another question concerning exhaustion of the grievance procedure is whether Complainant grieved the precise "compensatory time-off" issue raised by the pleadings. Respondent suggests that Complainant has not done so; the complaint and amended complaint raise the issue of the contractual propriety of changing the work schedule prior to the performance of work while the grievance, Respondent claims, involves the situation where officers have already worked more than 185 hours in a month and are then ordered to take time-off in the next month to avoid payment for hours already worked. Although the grievance does not specifically set forth the issue raised by the pleadings, it is not unreasonable to interpret the grievance as raising that issue. That issue and the issue Respondent asserts is raised by the grievance are not identical but certainly are similar as both involve a system of deviating from the "6-2" schedule to avoid the payment of wages at overtime rates. Moreover, the grievance mentions that the Chief of Police informed the officers of the policy and that the alleged contractual violation which was being grieved began in December of 1974. In fact, the Chief did directly inform the officers of the new policy which went into effect in December of 1974. These two specific comments provide a reference to the actual events from which one can reasonably infer that the grievance was raising essentially the same issue later raised by the pleadings. For the above reasons, the Examiner concludes that Complainant did exhaust the grievance procedure with respect to the allegation concerning the taking of "compensatory time-off."

A final issue concerning exhaustion is whether the grievance filed herein was timely. The policy formulated by the Fire and Police Commission whereby the Chief was directed to modify each officer's work

---

5/ Lake Mills Jt. School District No. 1 (11529-A, B) 8/73.

schedule in order to avoid officers working in excess of 185 hours a month went into effect in December, 1974. It is unclear whether or not the policy was applied in December, 1974. 6/ It was applied in January, but not in February, 1975. The record is unclear whether or not it was applied in March, 1975. 7/ The grievance was filed on April 1, 1975.

Article 21 of the collective bargaining agreement states that "a grievance cannot be filed more than ten days from the time of the alleged violation." Since the record does not clearly establish that application of the policy occurred in March 1975, it appears that the grievance was filed more than ten days from Respondent's last application of the policy. This conclusion does not render the grievance untimely, however. The alleged contractual violation does not involve an isolated occurrence but rather involves an alleged continuing violation. The policy was announced, a departure from prior practice, and went into effect in December, 1974. It had been applied at least once prior to the filing of the grievance. In all likelihood it would be applied again to the officers since the work schedule for April, 1975, which was distributed approximately two weeks before the beginning of that month, indicated that the Chief would receive one day off in addition to the days off required by the "6-2" schedule. Finally, the policy had never been rescinded. Given the above-described circumstances, Complainant could have timely filed a grievance at any time. Thus, the Examiner concludes that the grievance was timely filed. 8/ Therefore, Complainant has exhausted the grievance procedure as to the "compensatory time-off" issue and the Examiner will assert the Commission's jurisdiction to determine the merits of that issue.

VIOLATION OF CONTRACT

The basic question before the Examiner is whether it is contractually permissible for Respondent to deviate from the "6-2" schedule prior to the performance of work pursuant to that schedule in order to avoid officers working in excess of 185 hours in a calendar month and thus avoid the payment of compensation at overtime rates. Compensation at overtime rates is due officers, pursuant to Article 7, only for hours worked in excess of 185 hours a month. Hours worked in excess of eight a day are not properly called overtime hours as no contractual provision provides for compensation at overtime rates for work in excess of eight hours a day. The disputed

---

6/ No direct testimony was offered as to specific instances when the policy was applied, although both the Chief and Bilski testified that the policy had been applied on several occasions. Several exhibits indicated that two officers had been ordered to deviate from the "6-2" schedule during December, 1974 but the schedule originally issued for that month was not offered or received into evidence. Therefore, the record is not clear as to whether any time-off was actually a deviation from the original schedule.

7/ An exhibit indicated that Mainella deviated from the "6-2" schedule in March but it is unclear whether he requested time-off or whether he was ordered to take time-off due to the policy in controversy.

8/ Such a conclusion, however, does not prevent limitation of any remedy granted Complainant to the time period subsequent to the filing of the grievance.

action of Respondent does not involve the refusal to pay for hours actually worked. The Examiner is not being called on to determine whether Respondent paid the officers properly for each hour actually worked in excess of 185 hours a month or whether Respondent is authorized to order officers to take time off during one month to avoid payment for hours actually worked in a previous month.

The Chief of Police testified that the reason for the policy of rescheduling officers was to limit their monthly working hours to no more than 185, thus avoiding the payment of wages at overtime rates. In its brief, Respondent mentioned that an additional reason for the policy was to provide statutorily required periods of rest. 9/ The Chief did not testify that this was a reason for the policy and, therefore, the Examiner will review the propriety of Respondent's action in view of the only reason of record.

The contract makes no reference to a "6-2" schedule or to any requirements imposed on Respondent concerning scheduling. Article 3, the management rights clause, provides generally that Respondent has retained the right to direct the officers and specifically that Respondent has retained the right to assign overtime work and to schedule work. No other contract provision limits those rights, at least as they pertain to the specific issue before the Examiner.

The only other contractual provisions which are pertinent to this issue are Articles 6 and 7. Article 6 provides in pertinent part that:

> The standard work day shall be 8 1/2 hours. Commencement and ending of the work week and shifts for individual employees shall be as designated by the Chief. The standard work month shall be 185 hours.

9/ Respondent cites sections 62.13 (7m)(b) and 62.13(7n), Stats., which provide that:

> (7m)(b) The council of every city of the second or third class shall provide for, and the chief of the police department shall assign to, each policeman in the service of such city 2 full rest days of 24 consecutive hours each during each 192 hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that any such day of rest not be given at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department. This section shall not apply to villages to which s. 61.65 is applicable.
>
> (7n) HOURS OF LABOR. The council of every city of the second, third or fourth class, shall provide for a working day of not more than eight hours in each twenty-four except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such work day shall be extended beyond the eight-hour period at such time; and when such emergency ceases to exist, all overtime given during such emergency, shall be placed to the credit of such policeman, and additional days of rest given therefor.

This article does not guarantee a minimum number of hours of work in a month nor mandate the continuation of the "6-2" schedule. Neither does it require that Respondent schedule overtime work. Instead, it specifically permits the Chief to determine when the work week and shifts for each officer will begin and end -- precisely what the Chief has done here.

Article 7, in pertinent part, states that:

> The Village shall pay one and one-half (1 1/2) times the regular hourly rate for each hour worked over one hundred eighty five (185) hours per month.

This provision does not guarantee that officers will be scheduled so as to work overtime but merely provides that if they work overtime they will be compensated at a certain wage rate.

Complainant offered in support of its position an alleged past practice consisting of a prior grievance filed by the Association concerning failure to pay compensation at overtime rates which Respondent settled according to the Association's demand. That grievance involved non-payment of overtime hours actually worked, unlike the instant case, and did not involve the situation where "compensatory time-off" was scheduled, as does the matter before the Examiner. Thus, Respondent's actions in regard to that grievance have no bearing on this case.

Based on the contractual provisions of the parties, the Examiner concludes that Respondent has the contractual right to schedule officers so that overtime work, i.e., work in excess of 185 hours in a month, will not occur. In addition, there has been no showing by Complainant that the officers' compensation was reduced below the level of compensation agreed to in Article 9 and Schedule "A". Accordingly, Respondent did not violate section 111.70(3)(a)5 of MERA and the complaint is dismissed.

Dated at Madison, Wisconsin this 29th day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Ellen J. Henningsen
Ellen J. Henningsen, Examiner