BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
OCONOMOWOC PROFESSIONAL POLICE ASSOCIATION	Case 52 No. 44229 MA-6216
and	
CITY OF OCONOMOWOC	

Appearances:

Mr. Steven Urso, Representative, Wisconsin Professional Police Association, Law Enforcement/Employee Relations Division, 7 North Pinckney Street, Suite 200, Madison, Wisconsin 53703, appearing on behalf of the Association.

Mr. Roger Walsh, Esq. and Ms. Jane M. Knasinski, Esq., Davis and Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Milwaukee, Wiscon

ARBITRATION AWARD

On June 25, 1990 the Oconomowoc Professional Police Association and the City of Oconomowoc jointly requested the Wisconsin Employment Relations Commission to appoint William C. Houlihan, a member of its staff, as arbitrator to hear and issue a final and binding award on a pending grievance. A hearing was conducted on October 10, 1990 in Oconomowoc, Wisconsin. The proceedings were not transcribed. Briefs were submitted and exchanged by December 5, 1990.

This case addresses minimum pay for court time.

BACKGROUND AND FACTS:

The facts giving rise to this grievance are brief and straightforward. On March 9, 1990 the grievants, Officers James Callaghan, David Miller and Garilyn Truttschel were scheduled for a court appearance. The grievants each reported to the police station and were then informed that court had been cancelled. This cancellation was brought about because the presiding judge was out of town and unable to return because of the weather. No one had contacted any of the officers prior to their arrival at the station to advise them of the cancellation.

The officers remained at their work site for approximately 15-20 minutes and thereafter went home. Each had been scheduled during what would otherwise have been personal time (i.e. not work time). All these officers filled out and turned in expense vouchers requesting two hours pay at double time. Captain Harold Lemke reviewed the overtime requests, asked the officers how long they had actually worked, rounded the time up to 30 minutes and paid for 30 minutes at double time.

The subsequent Monday, March 12, Officer Truttschel talked with the Chief, Leonard Schacht, about the incident. According to Truttschel she explained the circumstances and indicated that the officers were going to put in for a 2 hour minimum. She described the Chief's reaction as receptive and indicated that he replied, "fine". According to Chief Schacht, the two never discussed the two hour minimum nor did they discuss the amount of time the officers spent in court. Schacht later talked with Lemke who advised that the actual time worked was 20 minutes, and the two men agreed that 30 minutes at double time was appropriate.

A grievance was filed, leading to this proceeding.

At the hearing, Captain Lemke testified at length as to the Departmental practice relative to court time and the two hour minimum. According to Lemke, who has administered departmental overtime for twelve years, court time is not subject to the two hour minimum. If actual court time spent is less than two hours, the individual is paid two times actual hours spent. Lemke presented 43 cases of officers being paid only double time for actual court hours worked during the two year period preceding the grievance. In each of the 43 incidents, individuals were paid less than four hours, which would be the minimum argued by the Union. In a number of these instances, officers had requested and been denied application of the minimum, without having grieved. Grievants Callaghan and Truttschel have previously worked less than two hours court time and been paid for actual hours worked.

ISSUE:

The parties could not agree upon an issue. The City believes the issue to be:

> Did the City violate the collective bargaining agreement by crediting the grievants each with 1 hour overtime for the court appearance on March 9, 1990?

If so, what is the remedy?

The Association views the following to describe the issue:

Did the Employer violate the collective bargaining agreement by denying a minimum two (2) hour double time pay for court appearance?

If so, what should the remedy be?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT:

ARTICLE VII - WORKWEEK - OVERTIME AND COMPENSATORY TIME - HOLIDAYS

Workweek.

Section 1. The normal work schedule shall be four (4) days on and two (2) days off and then five (5) days on and two (2) days off on a rotating schedule. Eight (8) hours and fifteen (15) minutes shall constitute a normal workday.

Section 2. Overtime shall be paid at time and one-half (1-1/2) the straight-time rate for all hours worked in excess of the normal scheduled workday/workweek, except duty connected court time outside the normal schedule shall be paid at double the straight-time rate for all such hours.

Section 3. An officer who has worked overtime shall not be denied the right to work a full eight (8) hour and fifteen (15) minute shift on subsequent days. Overtime shall be computed to the nearest half (1/2) hour of time worked with a maximum of one-half (1/2) hour allowed for the preparation of official reports unless extended by the superior in charge at the time. The minimum overtime paid to be allowed an officer called in for extra duty shall be two (2) hours. The minimum overtime paid to be allowed an officer whose shift extended for some reason other than the preparation of reports or who is called in consecutively prior to the officer's normal shift shall be one (1) hour. An employee who has worked overtime may elect to take compensation for such overtime in pay, or in the form of time off with pay on an equal hourly basis.

An election to take time off with pay must be made at such time or times as is mutually agreed upon between the officer and the Chief of Police.

POSITIONS OF THE PARTIES:

Association:

It is the view of the Association that while the officers spent only 20 minutes in court they are also entitled to one-half hour preparation and another one hour for travel to and from home. The three officers suffered inconvenience due to the cancellation and lack of notification and should be compensated. The Association contends that the officers dealt directly with the Chief in this matter, that the Chief granted the requested relief and that his action in doing so is dispositive.

In the Association's view, there is no interpretive practice diminishing an officer's right to be paid the two hour minimum for court time. The fact that certain officers acquiesced to the City's desires in this matter should not be construed as somehow undermining the right of other officers to insist upon the contractual minimum.

The call-in to court is the same as any other call-in. Officers who are off duty were expected to commute to and from their homes to court. Additionally, they had to review their reports and prepare as necessary in order to be effective witnesses. In the view of the Union, the contract authorizes compensation for the type of inconvenience experienced by these officers and it is the task of this arbitrator to enforce the contract's provisions.

City:

It is the view of the City that the grievants are not entitled to the two hour minimum call-in for duty-connected court time because Article VII, Section 3 does not apply to such court time. In the view of the City, the contract is clear in applying Section 2 but not Section 3 to court time. Clear and unambiguous language should simply be applied, and not modified.

At most, Section 3 of the Agreement is ambiguous, and if so, Departmental practice shows that the Section has never been applied to duty-connected court time. The City points to Captain Lemke's testimony as support for this premise.

The City denies that Chief Schacht ever adjusted the grievance. The conversation between Truttschel and Schacht was brief, he was not aware of all the facts, and his response was predicated on those facts presented.

DISCUSSION:

The substantive question posed by this grievance is whether or not Section 3 applies to scheduled court time. Court time is specifically covered by Section 2, which provides for double time "for all such hours". The City has paid double time for the hours involved in this dispute.

The Association contends that Section 3 also is applicable in at least three ways. First, the Association argues that the grievants should be entitled to 1/2 hour for preparation of reports. However, nothing in the record suggests that such reports were prepared during the time period immediately preceding court time. It may well be that the officers had to review previously prepared reports, but Section 3 does not address such review.

The Association argues that one hour travel time should be paid. I find no contractual reference to travel time pay. The sole reference to one hour, as a guaranteed minimum, is in connection to an officer who is held over or called in early. Neither of those situations are applicable here.

The third application of Section 3 advanced by the Association is that the two hour minimum is applicable because the officer is "called in for extra duty". Indeed, these officers were called in for court duty which was in addition to, and outside of, normally scheduled work hours. At least arguably the sentence is applicable. However, application of this language to court time is inapt given an examination of the practice. The practice overwhelmingly supports the City's construction. The City points to a two-year period replete with incidents supporting its construction of the language. The application is consistent and involves a number of employes, including Association officers and the grievants. The benefit claimed here was requested and denied without grievance appeal.

There are no instances in the record of Section 3 having been applied to court time. The Association characterizes these incidents as individuals making individual decisions to be generous with their employer. Given the record in this case, I disagree. These various incidents represent a meeting of the minds as to the application of the contract to court time.

I do not belive the Chief adjusted the grievance. The record is ambiguous as to exactly what was said but there is not even the claim that, confronted with a grievance or potential grievance, the Chief agreed to apply the minimum to court time.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 19th day of June, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan /s/
William C. Houlihan, Arbitrator

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