

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LAKE GENEVA PROFESSIONAL POLICEMEN'S
PROTECTION ASSOCIATION

and

CITY OF LAKE GENEVA

Holiday pay grievance

Case 35
No. 50846
MA-8401

Appearances:

Mr. Michael J. Rielly, Braden & Olson, Attorneys at Law, 716 Wisconsin Street, PO Box 940, Lake Geneva, WI 53147, appearing on behalf of the Association.

Mr. Henry A. Sibbing, City Attorney, City of Lake Geneva, PO Box 397, Lake Geneva, WI 53147, appearing on behalf of the City.

ARBITRATION AWARD

The parties jointly requested that the Wisconsin Employment Relations Commission designate the undersigned Arbitrator to hear and determine a dispute concerning the above-noted grievance under the grievance arbitration provisions of their 1993 collective bargaining agreement (herein Agreement).

The parties presented their evidence and arguments to the Arbitrator at a hearing held at City Hall in Lake Geneva, Wisconsin, on June 1, 1994. The hearing was not transcribed, but the parties agreed that the Arbitrator could maintain an audio tape recording of the evidence and arguments for his exclusive use in award preparation. The parties summed up their positions on the record at the conclusion of the hearing, marking the close of the record. As discussed at the hearing, given the absence of an agreement between the parties otherwise, the arbitration record consists of the ten documentary exhibits received into evidence at the hearing and the Arbitrator's recollections of the testimony and arguments presented at the hearing. Based on that record, the Arbitrator issues the following award.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Has the City violated the Agreement beginning in January of 1993 by failing to pay salary per Appendix plus 8.5 hours' pay for each holiday listed in Sec. 11.01 whether worked or not, plus straight time for each hour of work performed on a holiday?

2. If so, what shall the remedy be?

The City stated that its agreement to that statement of issues does not reflect City agreement that a salary is payable under the Agreement generally, as opposed to hourly compensation.

PORTIONS OF THE AGREEMENT

[boldface emphasis has been added to highlight references to salary, wages, pay, compensation, etc.]

ARTICLE I - PURPOSE

1.01 It is the purpose of this Agreement and the desire of both parties hereto to protect and promote the interests of the general public to whom the parties provide service, to maintain harmonious labor relations, to obtain a complete agreement covering wages, hours of work and conditions of employment, to provide for the well-being of the employees and to allow the Employer to operate and manage its affairs as efficiently and flexibly as possible.

ARTICLE II - REORGANIZATION [sic]

2.01 The Employer hereby recognizes the Association as the bargaining agent for the full-time employees of the Employer's Police Department classified as Patrolman, Sergeant, Investigator, Lieutenant, Senior Dispatcher, and Civilian Dispatcher, but excluding the Police Chief, the Captain, and supervisory, managerial and confidential employees. Full-time employees of the Police Department also include those employees on special assignment or on loan to other governmental agencies. . . .

ARTICLE III - MANAGEMENT RIGHTS

. . .

3.03 If a member of the bargaining unit terminates employment or is absent by reason of illness, leave or reduction of force for a period of thirty (30) days, and his or her duties are assigned to a

reserve officer, that reserve officer shall be paid at a rate at least equal to **the salary of a starting patrolman** after the thirty (30) days; or if the employee is a **salaried** civilian dispatcher, the reserve dispatcher shall be paid at a rate at least equal to the **salary of a starting dispatcher** after thirty (30) days.

3.04 If a new job is added or existing job changed, the parties shall meet prior to the establishment of that job to negotiate the **wage rate**.

3.05 . . . Overtime is defined as any hours worked in addition to those hours in the normal work schedule as provided in Article XXI, Sections 12.01 and 12.02.

. . .

ARTICLE IV - SENIORITY

. . .

4.02 . . . "**Pay** [of an employe displaced by reason of reduction in force] will be adjusted to the position occupied."

4.03 Employees shall lose their seniority for any of the following reasons:

. . .

d) Unexcused failure to return to work after the expiration of a vacation period, leave of absence or period for which workmen's compensation was paid, or failing to report to work within three (3) days after notice of recall from layoff.

. . .

ARTICLE VII - DISCIPLINE, DISCHARGE, RULES AND REGULATIONS

7.01 . . .

1. Suspension: Suspension is defined as a temporary removal **with or without pay** of an employee from his designated position.

2. Demotion: Demotion is defined as the movement of any

employee to a position having a **lower pay range**.

. . .

ARTICLE IX - SALARIES

9.01 **Salaries** shall be paid as listed in "Appendix A," attached hereto and made a part hereof.

9.02 Employees shall be paid bi-weekly.

. . .

9.05 **Pay** will be adjusted for longevity which is defined as full-time continuous service. The adjustment for longevity shall be as provided in "Appendix A - **Annual Pay Rate**," attached hereto and made a part hereof.

ARTICLE X - OVERTIME

10.01 Overtime is defined as any hours worked in addition to those hours within the normal work schedule.

. . .

10.04 Employees shall have the option of receiving **pay** or compensatory time off at **1-1/2 times their hourly rate** for all hours worked outside of their normal duty hours [subject to stated conditions not material to the instant dispute].

10.06 An employee shall have the option of receiving compensatory time off in lieu of holiday pay, subject to the approval of the Chief of Police and the scheduling requirements of the department.

. . .

ARTICLE XI - HOLIDAYS

11.01 Each employee shall receive eight and one-half (8 1/2) hours of **pay** for each of the holidays listed below. **Those employees who are required to work on the holiday shall in addition to all other compensation receive additional compensation at their regular rate of pay for the hours worked on the holiday.**

New Year's Day
Washington's Birthday
Good Friday
Easter Sunday
Memorial Day - (Federal Recognized Day)
Independence Day
Labor Day
Columbus Day
Thanksgiving Day
Christmas Eve
Christmas Day
New Year's Eve

11.02 Any employee who terminates his employment prior to the actual date of the holidays listed in Section 11.01 above (such date being the date established by State Statutes) shall not be eligible for **holiday pay** during that month.

11.03 Since the first shift begins at 9:45 P.M. the previous night, holidays shall be considered to begin at 9:45 P.M. the day prior to the holiday date and end at 9:45 P.M. the date of the holiday (i.e., Christmas Day would begin at 9:45 P.M. the date of the holiday (i.e., Christmas Day would begin at 9:45 P.M. Christmas Eve, December 24, and end at 9:45 P.M. Christmas Day, December 25). Any employee who works on a holiday between the hours stated will receive **holiday pay** for the number of hours he so worked

ARTICLE XII - HOURS

12.01 The normal work schedule for employees shall be rotated as follows:

Five (5) consecutive duty shifts followed by consecutive duty shifts off:	two (2)
Five (5) consecutive duty shifts followed by (3) consecutive duty shifts off.	three

12.02 The normal duty shift shall be eight and one half (8 1/2) hours, including a one-half (1/2) hour paid meal period during which the employee shall be on call. The Chief of Police shall designate at the beginning of the contract year the time of the beginning and end of each shift. Changes to the time of the beginning and end of each shift may be made during the contract year upon agreement of the Employer and the Association.

. . .

12.04 Any employee called in to work (except for court appearances) shall receive a minimum of **two (2) hours pay**.

ARTICLE XIII - CLOTHING ALLOWANCE AND NECESSARY EXPENSES

. . .

13.04 Employees may be permitted to take up to forty (40) hours of police training and/or adult education courses per contract year with pay. . . . Pay while attending the classes or courses shall be at the **regular rate of pay and not at the overtime rate**.

13.05 Officers subpoenaed to a court of record for testimony may take the option of **wages** or fees. If **wages** are chosen, the fees shall be deducted from the wages for that pay period. . . .

. . .

ARTICLE XV - RETIREMENT

15.01(a) All eligible employees shall be covered under the Wisconsin Retirement System. In addition to the Employer's mandatory contribution, the Employer shall pay up to seven (7%) percent on an employees **gross earnings**.

. . .

ARTICLE XVI - VACATIONS

16.01 Vacations shall be granted to all employees and shall be taken in the year in which they accrue on the following basis:

After one (1) year	Five (5) workdays
After two (2) years	Ten (1) workdays
After seven (7) years	Fifteen (15) workdays
After twelve (12) years	Twenty (2) workdays

Vacations shall not be accumulative.

. . .

ARTICLE XVII - SICK LEAVE, FUNERAL LEAVE,

AND ADMINISTRATIVE LEAVE

17.01 Employees shall be entitled to one and one-half (1 1/2) workdays of sick leave with pay per month up to an accumulated total of one hundred (100) workdays. Sick leave may be applied only to days that the employee is regularly scheduled to work. . . .

. . .

17.04 Employees will be granted a three (3) day leave **with pay** for the attendance of funerals of

17.05 An employee may with valid reason and with the approval of the Chief of Police be granted an administrative leave for up to (90) days. Administrative leave shall be **without pay**. If the leave is thirty (30) days or less, benefits will be provided. If the leave is in excess of thirty (30) days, the employee shall pay for the benefits. . . .

17.06 Any female employee may use accumulated sick leave for any time her doctor certifies she is unable to work because of pregnancy. Additionally, she may use up to six (6) weeks of accumulated sick leave after the child is born. Additionally she may take up to ninety (90) days administrative leave **without compensation** after the birth of the child. If the employee does not have sufficient sick leave to cover all of the above periods, she may substitute non-paid administrative leave for the period.

. . .

17.08 Any employee required to take a snow day or other emergency day shall have the option of taking the day from compensatory time or vacation time. Employees will not be required to take a sick day during a snow day or emergency day.

ARTICLE XVIII - PROCEDURE

. . .

18.05 The arbitrator shall neither add to, detract from, nor modify the language of this Agreement in arriving at a determination of any issue presented that is proper for final and binding arbitration. The arbitrator shall have no authority to grant **wage increases or wage decreases**. The arbitrator shall expressly confine himself to the

precise issue(s) submitted for arbitration.

. . .

18.10 Employees (except those filing a grievance) shall be compensated **at their regular rate** by the Employer for the time spent in grievance proceedings.

ARTICLE XIX - NO STRIKE

. . .

19.03 Any or all of the employees who violate any of the provisions of this article may be discharged or disciplined by the Employer, including **loss of compensation** and benefits.

. . .

ARTICLE XXIV - ENTIRE MEMORANDUM OF AGREEMENT

24.01 This Agreement constitutes the entire agreement between the parties and no verbal statements shall supersede any of its provisions. . . .

. . .

[among appendices to the Agreement is that set forth on the following page]

BACKGROUND

The City provides a variety of public services through its several departments, including law enforcement services provided by its Police Department. The Association represents the bargaining unit of full-time Police Department employees as described in Agreement Sec. 2.01.

The Agreement, which covers calendar year 1993, bears a date of October 19, 1993 and the signatures of then Mayor Beatrice A. Dale and City Clerk Colleen Alexander on behalf of the City and of Association President Russell Carstensen and one other signer on behalf of the Association. The negotiations leading up to the Agreement began in February of 1993.

Agreement Sec. 11.01 replaced a section with the same number in the predecessor 1992 agreement, which read as follows:

11.01 In lieu of time off for the following holidays, employees shall receive additional compensation for the hours they are required to work on holidays. This additional compensation is in addition to regular pay for working. The additional compensation shall be 1-1/2 times the regular hourly rate. Additionally they will receive such compensation if they are on vacation when the holiday occurs or have been off work with sickness for more than three (3) days when the holiday occurs and would have been regularly scheduled to work on such holiday. The holidays are as follows: [same list as in Agreement quoted above.]

Under that 1992 language and identical language contained in the agreements in effect since about 1985, the total compensation received by employees who were scheduled to work and worked a full 8.5 hour shift (or who were on a sick leave of more than 3 days or who were on vacation) on a holiday was 21.75 times their regular rate. Employees were not paid anything for holidays they did not work and were not scheduled to work. On the face of the paychecks issued over the past several years, a bi-weekly "salary" amount has been specified, with other forms of compensation noted separately and added.

In calculating the back pay for 1993 following execution of the Agreement, and in its payments for pay periods including holidays that have occurred since, the City has paid employees 8.5 hours of at the employee's regular rate whether the employee worked on the holiday or not, plus an additional hour of pay at the employee's regular rate for each hour worked by the employee on the holiday. The City has not, however, paid those sums in addition to the portion of annual salary allocable to holidays worked that were a part of an employee's normal work schedule.

The Association filed a grievance challenging the City's refusal to pay the abovenoted compensation regarding holidays worked in addition to salary. That grievance has remained unresolved and was submitted to arbitration as noted above.

At the arbitration hearing, the Association presented testimony of Attorney John Olson, Association President Russell Carstensen, and rebuttal testimony from Association member Mark McClellan. The City presented testimony of Alderman Kenneth Howell, former Alderman Sheldon Shepstone, Alderman Charles Rude, and former Mayor Beatrice Dale.

All of the witnesses other than Carstensen had personally participated in some or all of the negotiation sessions leading to the Agreement. The testimony regarding bargaining history was disputed in several respects.

Olson and McClellan both testified that the Sec. 11.01 ultimately included in the Agreement was distributed by Olson to each member of both bargaining teams at the concluding meeting between the bargaining teams on September 28, 1994, and that tentative agreement to include that language was reached at that meeting. Olson denied and McClellan did not recall agreeing at any time during the bargaining that employees' total compensation for working a holiday would be 17 hours.

Olson stated that there may have been discussion to the effect that 17 additional hours of compensation would be payable for a holiday worked. Olson stated that the Association team viewed the holiday compensation the Association was proposing in both its September 14 and September 28 forms as in addition to the salary elsewhere provided for in the Agreement, and Olson says he thought everyone on the City side understood that. Olson stated that the City at no time proposed to alter the Agreement language regarding salary. Olson said the Association would not have agreed to the arrangement the City claims was agreed on because, all things considered, that arrangement would have provided slightly less total holiday-related compensation than the employees received under the 1992 language. Olson characterized the language presented by the Association on September 28 as a "belt and suspenders" proposal, which the Association members asked him to propose so that it would be perfectly clear that the compensation the Association was seeking for hours worked on a holiday was to be in addition to all other compensation including salary, the holiday compensation payable whether the employee worked the holiday or not, sick leave, etc. Olson acknowledged that there had been no specific mention of "salary" regarding the Association's September 28 proposal, but he asserted that the City Attorney cut the discussion of the revised language very short by saying that proposal appeared to have the same meaning as the Association's September 14 proposal.

Carstensen testified that on October 15, 1994, after both the Association membership and the City Council had ratified the Agreement, he presented the Agreement in the form in which it was ultimately signed, for signature by then Mayor Beatrice Dale at a meeting also attended by Alderman Charles Rude. Carstensen further testified: that Rude at that time proposed that different holidays language be inserted; that Carstensen refused; that Carstensen stated that the agreed-upon language was necessary because it clearly provided for the triple time for holidays worked that the Association membership had ratified; that the meeting concluded when the Mayor refused to sign the Agreement Carstensen was presenting; that Carstensen immediately reported the situation to Olson who advised Carstensen to sign the Agreement and who initiated immediate communications with the Mayor demanding that she sign the Agreement previously ratified by the

City Council; and that Dale ultimately signed the Agreement in the form in which Carstensen had originally presented it.

The City's witnesses all expressed the understanding that the agreement reached concerning holidays provided the employees with a total of 17 hours of compensation for a holiday worked, and that that point had been discussed on several occasions during the bargaining. Rude, the only witness who testified with the aid of notes taken at the bargaining table, said he wrote in his notes that the parties reached a tentative agreement on the basis of the Association's proposal for 8.5 hours straight time for hours worked on a holiday and 8.5 hours additional whether the holiday is worked or not. Rude acknowledged that the number "17" did not appear anywhere in his notes. Rude stated that he understood the Sec. 11.01 term "all other compensation" to refer to vacation, sick leave and holiday pay, but not to salary, and that he would not have agreed to triple time pay for a holiday worked.

In her testimony, Dale testified that it was her recollection and belief that the first time the Association presented holiday language containing the phrase "in addition to all other compensation" was on October 15, 1993, when Carstensen presented the typed contract to Alderman Rude and her for her signature. As Dale recalled it, Rude pointed out at that meeting that the holiday language in Carstensen's document was not the same as had been discussed and agreed upon in bargaining and ratified by the Council and that the parties should sign the previously-discussed version rather than the document Carstensen was presenting. According to Dale, that discussion ended promptly without signatures being affixed, without a discussion of the substance of the issue, and without any statement by Carstensen that the Association was seeking triple time for holidays worked. Dale said she was not aware that the Association expected triple time for holidays worked under the Agreement language that she ultimately signed. She understood the language, instead, to provide straight time pay for hours worked plus an additional 8.5 hours of pay whether the holiday was worked or not.

During his testimony, Alderman Rude was not specifically questioned regarding the events of October 15 about which Carstensen had testified. Rude was excused from and departed the hearing at the conclusion of his testimony, before Dale testified.

POSITION OF THE UNION

The language of Sec. 11.01 in the signed Agreement provides that employees required to work on a holiday "shall . . . receive additional compensation at their regular rate of pay for the hours worked on the holiday" which is to be "in addition to all other compensation". The "other compensation" includes the portion of the annual salary set forth in the Appendix and incorporated into the Agreement by Sec. 9.01.

The language of Sec. 9.01 and of an appendix setting forth annual salaries have been in the parties' agreements for many years, and employee bi-weekly paychecks have, for years, included a sum specifically identified as "salary."

In 1992, employees required to work on a holiday were paid time-and-one-half for the hours in addition to the "salary" denoted on their paycheck. Thus, the established past practice in this relationship has been that the compensation provided for in the holidays article is in addition to, not in lieu of, the portion of the annual salary allocable to the employee when the employee is scheduled to work on the holiday.

During the 1993 bargaining, the Association initially proposed an increase in salaries that included a measure of "catch-up." When that approach was rejected by the City, the Association proposed that the holidays language be changed. Eventually a change in the holidays language was agreed upon by the parties, and the Association settled for that instead of a catch-up in salary. The change brought the Police Department unit more into line with the treatment of holidays and pay for work on holidays in the City's other departments.

The holidays subject was discussed at length between the parties' representatives at the table. Both bargaining teams had legal counsel. At no time did the Association's representatives tell the City that the total compensation payable for work performed on a holiday would be 17 hours, only that Sec. 11.01 provided for 17 hours of additional compensation. The City's representatives never said, nor were they told, that the Association was agreeing to give up 4.75 hours of compensation for time worked on a holiday. On the contrary, to make sure that the City negotiators understood that the City would be paying the compensation specified in Sec. 11.01 for time worked on a holiday in addition to salary, the Association membership gave its attorney sample calculations to that effect and directed its attorney to draft language even more clearly to that effect than the Association's previous proposal. Accordingly, the language ultimately included in the signed form of the Agreement was that prepared by the Association's attorney stating that the straight time pay for hours worked on the holiday was "in addition to all other compensation."

The Association membership ratified the Agreement based on its understanding that triple time would be payable for holidays on which the employee was required to work a full shift. The membership would not have agreed to the bargain the City claims the parties reached because it would not have provided a catch-up salary increase or a significant improvement in holiday compensation overall. Carstensen's testimony makes it clear that Dale signed the Agreement knowing both that Carstensen rejected Rude's proposed alternative language and that the Association membership understood the Agreement language to provide triple time for holidays worked.

In citing language from Attorney Rielly's January 6, 1994, the City fails to note the sentences preceding the paragraph on which the City relies, which sentences pointed out that holiday pay has historically been in addition to annual salary. Those sentences read as follows:

For at least the past fifteen years the members of the police department who worked on holidays received 1 1/2 hours pay for each hour worked on the holiday. The annual salary was used in calculating the rate of holiday pay, but the pay was in addition to the annual salary.

The City's failure and refusal to pay salary in addition to holiday compensation in 1993 violates the clear language of the Agreement, as confirmed by past practice and bargaining history. The Arbitrator should answer "yes" to ISSUE 1 and order the City to pay the employees appropriately.

POSITION OF THE EMPLOYER

Section 11.01 describes all of the compensation due an employe as regards holidays. It provides for payment of 8.5 hours pay whether the employe works or not and for additional pay at the employe's regular rate for any hours worked on the holiday. The language "in addition to all other compensation" in the second sentence refers to the 8.5 hours of holiday pay provided in the first sentence and to any sick leave, worker's compensation, or vacation leave payable to the employe for the holiday involved.

That quoted phrase does not include salary because, under the Agreement, the employes do not receive a salary; rather they are hourly paid. The employes are paid additional compensation at a premium rate when they work more than their normal schedule of hours. They are required to work their normal schedule, and if an employe did not work a portion of his or her normal work schedule, either a leave account (such as vacation, sick leave) would be charged or the employe would be docked for the time not worked. The Sec. 9.01 and Appendix references to an annual salary are written as they are to provide a means of comparing levels of compensation and to provide a convenient basis for making uniform bi-weekly payments on checks despite the non-uniform numbers of days worked in a given bi-weekly period due to the 5-2, 5-3 work schedule.

Under the 1992 Agreement, employes received no pay for holidays on which they did not work. For holidays on which they worked, the employes were paid holiday pay consisting of 8.5 hours at time-and-one-half plus pay at their regular rate for the hours worked on the holiday. An employe working a full shift on a holiday therefore received 21.75 times his regular rate.

In the 1993 negotiations, the Association first proposed retaining the old holiday language. On September 14, 1994, the Association modified its proposal to read

11.01 Each employee shall receive eight and one-half (8 1/2) hours of pay for each of the holidays listed below. Those employes who are required to work on the holiday shall be compensated at their regular rate of pay for the hours worked in addition to the eight hours holiday pay received. [Exhibit 6 also bears a handwritten correction changing the reference to "eight hours" to "8 1/2").

After the parties had tentatively agreed on that language as part of an overall settlement, the Union proposed to further revise it to read as it now does in the Agreement ultimately signed. At no time during the negotiations did the Association's representatives state that they were seeking triple time for time worked on a holiday or that they intended the "other compensation" referred to in the

Union's redraft to include a day's salary in addition to the 8.5 hours of pay for the holiday whether or not worked and the additional pay at the employee's regular rate for hours worked on the holiday. City negotiators repeatedly asked for and received Association representatives' assurances that the Union's proposal would involve 17 hours of pay for a holiday on which an employee worked a full 8.5 hour shift.

The Association's attorney commented at one point that in the next round of bargaining the Association would ask to recoup the half-time for time worked on a holiday that it was giving up. Yet, under the Association's interpretation of the Agreement, the Union would have been giving up nothing, but rather would (for the first time) obtain pay for holidays not worked and increase the pay for a full shift worked on a holiday from 21.75 hours pay to 25.5. At no time did the Association's representatives refer to 25.5 hours or to triple time, and the language they drafted for the purpose of clarifying their earlier proposal did not specify that salary was intended to be included within the "other compensation" referred to in that language. Indeed, the evidence indicates that there was no discussion between the parties' bargaining teams about the meaning of the Association's proposed clarification of its previous offer. That previous Association offer (of September 14, 1994) clearly did not include or refer to any pay for a holiday beyond that specified in the proposed Sec. 11.01, itself.

Compared with the 1992 arrangements, the City agreed to pay 8.5 hours for holidays not worked in return for the Association's agreement that the compensation for hours worked on the holiday would be paid at straight time rather than time-and-one-half. The Association negotiators sought and attained the goal of getting pay for all holidays whether they were worked or not. Only when he learned that the Association members were unhappy with those results and wanted more, in the form of triple time for holidays worked, did Attorney Olson formulate new, ambiguous language the meaning of which was not discussed between the negotiators by which the Association could later claim that the City agreed to triple time for holidays worked. By agreeing to the Association attorney's revised language, the City did not agree that the agreed-upon pay for holidays worked was to be in addition to salary for that day. Dale's testimony shows that she was not aware that the Association expected triple time for holidays worked under the Agreement language she ultimately signed.

Moreover, in a January 6, 1994 letter, Attorney Michael J. Rielly for the Association explained "the Association position regarding the holiday pay issue" in terms the City finds appropriate, stating,

Under the 1993 contract it was agreed that each employee would receive 8 1/2 hours holiday pay whether or not the employee worked. Employees who worked on the holidays would receive the 8 1/2 hours holiday pay, and receive additional compensation at their regular rate of pay for the number of hours worked. (Sec. 11.01 1993 Contract).

For all of the foregoing reasons, the City contends that the Association's grievance seeks a

greater benefit than the City agreed to at the bargaining table. The grievance should therefore be denied, and ISSUE 1 should be answered "no" with no remedy ordered.

DISCUSSION

Under Sec. 18.05 of the Agreement, the Arbitrator's responsibility is to expressly confine himself to deciding the STIPULATED ISSUES, above, based on the evidence and arguments presented at the hearing.

The language of the Agreement in the form in which it was undisputedly signed by the parties is the obvious first and principal place to look in determining the answer to ISSUE 1. The evidence does not provide a persuasive basis on which to conclude that the City Council ratified holiday language in a different form than currently appears in Exhibit 1, the Agreement as signed by the then Mayor and by the City Clerk and by Carstensen. The City had an opportunity to produce a ratified document in some other form, and it did not do so. The Arbitrator therefore concludes, based on the record as a whole, that the language contained in Sec. 11.01 of the Agreement was presented to the City's negotiating team at a time when its meaning could have been discussed, and that the agreement ratified by the City Council contained that language. (See, for example, City Exhibit 8, Olson letter of October 15, 1993, asserting his understanding that "the Agreement was now ratified by the Council.")

The language of Sec. 11.01, in its ratified and signed form, includes the following language: "Each employee shall receive eight and one-half (8 1/2) hours of pay for each of the holidays listed below. Those employees who are required to work on the holiday shall in addition to all other compensation receive additional compensation at their regular rate of pay for the hours worked on the holiday." The first sentence provides 8.5 hours of pay for each holiday whether it is worked or not. The second sentence addresses compensation to be paid for employees who are required to work on the holiday. It calls for such employees to be paid "additional compensation" which is to be "in addition to all other compensation." The question is whether "all other compensation" includes a portion of annual salary allocable to the day worked. When the employee works the holiday as a part of his or her regular work schedule, the Arbitrator is persuaded that the employee is entitled to salary for that day (or more correctly to freedom from being docked salary for that day) in addition to the "additional compensation at their regular rate of pay for the hours worked on the holiday" provided for in the second sentence and in addition to the 8.5 hours of pay provided for in the first sentence of Sec. 11.01.

The Arbitrator so concludes for the following reasons. The Agreement expressly sets forth annual salaries in the Appendix and expressly provides in Sec. 9.01 that "Salaries shall be paid as listed in 'Appendix A,' attached hereto and made a part hereof." Section 9.05 refers to Appendix A as being entitled "Annual Pay Rate." Section 3.03 also refers to employee "salary" and to certain bargaining unit employees as "salaried." On the other hand, there are also references to "hourly rate" in Sec. 10.04 regarding overtime compensation, to "wages" in Sec. 13.05 regarding situations where an officer is subpoenaed to a court of record for testimony, and to "wage increases" or "wage decreases" in Sec. 18.05 regarding the authority of a grievance arbitrator.

Upon consideration of those and other Agreement various provisions quoted near the outset of this Award, and upon consideration of the Agreement and record as a whole, the Arbitrator is persuaded that the "salary" the employees receive on their bi-weekly paycheck is subject to being docked if the employe does not work a portion of his or her normal work schedule and is not otherwise entitled to time off without loss of compensation under the Agreement. The Agreement also expressly provides employes with additional compensation for work outside their normal duty hours. It does not follow, however, that the contractual references to a salary are merely provided for convenience. It is on the basis of Article IX (and the Appendix to which it refers) that the employes are paid the bulk of their compensation. There is no provision elsewhere in the Agreement granting the employes basic compensation for the work they perform during their normal work schedule defined in Sec. 12.01 and their normal duty shift defined in Sec. 12.02. While docking the salary of the hypothetical employe who is absent without leave or justification would be appropriate because the employe has not worked that part of his or her normal work schedule, there is no basis for docking the pay of employes who do work a holiday as a part of their normal work schedule. (By contrast, an employe who is required to work on a holiday that is not a part of his or her normal work schedule would not be entitled to a proportionate share of his or her annual salary as regards that day because it is not a part of the normal work schedule for which the annual salary is paid.)

On the foregoing basis, the Arbitrator finds that the term "other compensation" in Sec. 11.01, clearly and unambiguously means other compensation including the portion of salary allocable to a holiday worked as a part of the employe's normal work schedule. Because the meaning of the Agreement is clear and unambiguous on its face, it is unnecessary and inappropriate to seek guidance concerning that meaning by looking beyond the four corners of the signed document to evidence of bargaining history or the parties' correspondence regarding this grievance or the parties' practice under prior agreements.

While the language of Sec. 11.01 was drafted by the Association attorney, it was ultimately ratified by the City Council and signed by the City's authorized representatives. The City is therefore bound to comply with its terms even though the City's representatives may well feel that those terms, as interpreted in this Award, exceed that to which they were agreeing.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

1. Yes, the City has violated the Agreement beginning in January of 1993 by failing to pay salary per Appendix, plus 8.5 hours' pay for each holiday listed in Sec. 11.01 whether worked or not, plus straight time for each hour of work performed on a holiday.
2. By way of remedy, the City, its officers and agents, shall immediately make each affected bargaining unit employe whole, without interest, for the loss of compensation he or she experienced

by reason of the violation noted in paragraph 1., above.

3. For a period of 30 days following the date of this Award (and for any extension of that period that the Arbitrator may subsequently order), the Arbitrator retains jurisdiction for the sole purpose of resolving, at the request of either party, dispute(s) that may arise between the City and Association as to the meaning and application of this paragraph or of the remedy set forth in paragraph 2., above.

Dated at Shorewood, Wisconsin

this 4th day of June, 1994 by

Marshall L. Gratz /s/

Marshall L. Gratz, Arbitrator