BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

VILLAGE OF GERMANTOWN

and

LABOR ASSOCIATION OF WISCONSIN, INC.

Case 213
No. 49934
MA-8109

Appearances:

Mr. Patrick J. Coraggio and Mr. Kevin W. Naylor, Labor Consultants, 2825 North Mayfair Road, Wauwatosa, WI 53222, appearing on behalf of the Association.

Mr. James R. Korom, von Briesen & Purtell, S.C., 411 East Wisconsin Avenue, Milwaukee, WI 53202, appearing on behalf of the Employer.

ARBITRATION AWARD

At the joint request of the Village and Association noted above, the Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz as Arbitrator to hear and decide a dispute concerning the above-noted grievance arising under the parties' 1993-95 Collective Bargaining Agreement (Agreement).

A hearing was conducted at the Employer's Police Department facility in Germantown, Wisconsin on May 2, 1995. The proceedings were not transcribed. However, the parties agreed that the Arbitrator could maintain a cassette tape recording of the testimony and arguments for the Arbitrator's exclusive use in award preparation.

Following their submission of initial briefs, the parties informed the Arbitrator on June 20, 1995, that they were waiving the submission of anything further in the matter. The Arbitrator then wrote the parties that the matter was fully submitted and ready for award issuance as of that date.

STIPULATED ISSUE

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

1. Did the Village violate Secs. 3.01.B., 3.02, 5.01, 6.01 and/or 21.01 of the agreement by its denial of Officer Michael Eggers' overtime and/or mileage requests regarding in- service training in October, 1994?

2. If so, what shall the remedy be?

The parties further agreed that the award in this case would control the outcome of three other pending grievances involving employes John Culver, Donald Piotrowski and Donald Olander. The parties also agreed that the there were no procedural defenses raised by the Employer regarding the arbitrability of any of the four grievances.

PORTIONS OF THE AGREEMENT

ARTICLE III

MANAGEMENT RIGHTS

Section 3.01: The Village possesses the sole right to operate the Police Department and all management rights repose in it. These rights include, but are not limited to, the following:

. . .

B. To establish reasonable work rules and schedules of work;

. . .

Section 3.02: These rights shall be exercised consistently with Chapter 111 of the Wisconsin Statutes and the express terms of this Agreement. Nothing herein contained shall divest the Association of any of its rights under Wisconsin Statutes.

. . .

ARTICLE V

OVERTIME

Section 5.01 - Overtime: Overtime is any time worked by an employee at the direction of the Village in excess of the normally scheduled workweek or workday. Employees working overtime shall be compensated for such time at a pay rate of time and one-half (1-1/2) based on their normal hourly rate of pay. Overtime will be computed at the nearest quarter hour. Employees who are called in prior to their regularly scheduled shift shall be allowed to complete their full regular shift unless mutually agreed otherwise.

. . .

Section 5.05 - Training Overtime: All training overtime must be authorized by the Chief of Police. All training overtime that occurs on an employee's regularly scheduled off day shall be at the rate of time and one-half (1-1/2). All training of less than eight and one-half (8-1/2) hours in duration shall be at time and one-half (1-1/2). All training in duration of less than two (2) hours will be compensated at a rate of two (2) hours minimum pay at time and one-half (1-1/2). The employer has the authority to change the employee's shift so as to accommodate training and thereby avoid the payment of overtime by mutual agreement.

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ARTICLE VI

WORK DAY AND WORK WEEK

Section 6.01 - Work Day: A normal work day for all employees shall consist of working eight and one-half (8-1/2) hours in a twenty-four (24) hour period commencing at the start of the employee's normally assigned shift.

. . .

ARTICLE XVII

GRIEVANCE PROCEDURE

. . .

Section 17.05: 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 and shall have no authority to determine any other issue not so submitted to him or to submit observations or declarations of opinion which are not directly essential in reaching the determination. In any arbitration award, no right of management shall in any manner be taken away from the Employer, nor shall such right be limited or

modified in any respect excepting only to the extent that this Agreement clearly and explicitly expresses an intent and agreement to divest the Employer of such right. The decision of the arbitrator within the limits of his authority shall be final and binding on the parties.

. . .

ARTICLE XXI

MILEAGE

Section 21.01: When an employee is required to use his/her private vehicle in the performance of official police business, a per mile mileage reimbursement will be paid to the employee in accordance with the amounts established by current and applicable Village Ordinances.

. . .

Section 25.01: Rules and Regulations will be updated and any and all proposed changes shall be submitted to the Association at least thirty (30) days prior to enactment in order to allow the Association an opportunity to make suggestions prior to their implementation. The Village shall provide each Association member with a copy of said Rules and Regulations and an up-to-date copy of the General Orders will be provided to each Association member. Whenever a rule or regulation is used to impose discipline, the reasonableness of said rule or regulation may be challenged through the grievance procedure.

. . .

BACKGROUND

The Association represents a bargaining unit of full-time patrol officers and detectives of the Employer's Police Department, excluding sergeants, supervisory, managerial and confidential employes. The parties have negotiated at least two collective bargaining agreements: the Agreement covering calendar 1993-1995 and a predecessor covering 1990-92.

The grievance giving rise to this matter was filed by Patrolman Michael J. Eggers on October 26, 1994. In it, he alleged violations of Agreement provisions relating to "Overtime payment for hours worked in excess of normal work day" and "Mileage reimbursement for employees use of personal vehicle in the performance of official police business." He stated his

grievance as follows:

> Officer Eggers was assigned to attend Police in-service training at Fox Valley Technical College in Appleton, WI during the week of October 17-20, 1994. Memorandum with Assignments issued on 8-27-94. On 9-3-94 a request was submitted by Eggers to attend in-service training at a location other than FVTC. No response received. On 10-11-94 a follow-up request was made that also requested the use of a Village vehicle for daily travel to and from Appleton. Notice was also given that OT cards would be submitted on all days that exceeded 8.5 hours, including travel time. On 10-12-94 a meeting was held with Captain Evans. He advised that the request for a Village vehicle was denied. He also advised that any OT cards submitted for travel time would be denied, except for travel time to Appleton on Monday and travel time from Appleton on Thursday. Officer Eggers did attend in-service training at FVTC in Appleton on October 17-20, 1994 as assigned. Personal vehicle of officer was used for travel to and from Appleton on a daily basis. OT cards were submitted totalling 14.5 hours for travel. 3.5 hours were approved. 11 hours were not approved. Each day of in-service training including travel was in excess of 8.5 hours. Section 6.01 states that a normal work [day] shall consist of working eight and one-half (8.5) hours in a twenty-four (24) hour period commencing at the start of the employees normally assigned shift. Section 5.01 defines overtime as any time worked by an employee at the direction of the Village in excess of the normally scheduled workweek or workday. It also states that such OT shall have the employee compensated at a pay rate of time and one-half.
>
> Section 12.01 states that an employee will be paid a per mile mileage reimbursement when required to use his/her private vehicle in the performance of official police business. Officer Eggers was required to attend in-service training at the direction of the Village. A request was made for the use of a vehicle to travel to and from Appleton. That request was denied. In-service training for a police officer is a part of his/her official police duties and is therefore official police business.
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> On October 26, 1994 at 1:40 PM officers Eggers and Steve met with Chief Blum and discussed the matter of the overtime cards that were not approved and the mileage reimbursement.
>
> On November 1, 1994 at approx 2:30 PM Chief Blum informed officer Steve that he would not overturn Captain Evans decision not to pay the overtime or the mileage.

The remedy requested in the grievance is "[p]ayment of 11 (eleven) hours of overtime to officer Eggers" and "[p]ayment of mileage reimbursement to officer Eggers."

The grievance was not resolved in the pre-arbitral steps of the Agreement, and it was ultimately submitted to arbitration as noted above.

The Association's opening statement at the hearing asserted that the Fair Labor Standards Act (FLSA) may apply to the driving time involved in this case. In its opening statement, the Employer objected to consideration of the FLSA for any purpose on the grounds that rendering opinions based on that law is beyond the jurisdiction of an arbitrator under the Agreement. The Arbitrator responded that he would receive and consider Association arguments that the FLSA and/or related case law provide useful guidance as to the meaning and application of provisions of the Agreement, but that he would not be deciding FLSA issues independent of their implications as to the meaning of the Agreement. By agreement of the parties, the Association reserved the right to decide whether to present any such argument in its initial brief, and the Employer reserved the right to submit additional evidence in response to any such argument the Association might choose to make. The Association did not make any such argument in its brief, and the parties waived submission of further evidence or arguments after their exchange of initial briefs, as noted above. Accordingly, the Arbitrator does not find it necessary to offer any opinion in this case concerning the FLSA.

The Union presented testimony of Eggers and Olander. The Employer presented testimony of Culver (briefly) and of Captain Craig Evans. Additional factual background is reflected in the summaries of the parties' positions and in the DISCUSSION, below.

POSITION OF THE UNION

The annual in-service training at issue in this case was mandatorily assigned to Grievant Eggers and the other affected employes by the Employer. The Employer's written directives (Exhibits 6 and 12) make it clear that the Employer unilaterally selected FVTC as the in-service training site and directed all employes to attend that training at that site. The employes were never told that they could choose to obtain the training elsewhere. Indeed, Captain Evans testified on cross-examination that he did not inform the employes that they had such a choice because the employes did not ask.

Because the annual training at FVTC was mandatorily assigned rather than merely offered and voluntarily accepted, it materially differs the situations in which bargaining unit employes voluntarily accepted training programs in Illinois and Kentucky on the condition that they would be required to stay away from home overnight and be paid only for classroom time and time traveling to and from the training site. Such voluntary out-of-state courses are not required to maintain certification by the State, and the officer is free to choose not to accept the training if the

officer finds the career-enhancement benefits outweighed by the time away from home.

The Employer's conduct in this case violates various clear and unequivocal Agreement provisions.

It constitutes an unreasonable work rule and an unreasonable work schedule violative of Sec. 3.01.B. The Employer unilaterally required employes to train at a remote site, as is its general right under the Agreement. However, the Employer's exercise of that right in this case is unreasonable in that it requires the employes either to spend the time between classes away from their families and communities and related personal commitments or to commute on their own time and at their own expense. The Employer's approach forced Eggers either to bear the costs of commuting or to bear the burden of finding a substitute to fill in for him on his previously scheduled commitments to such organizations as the Boy Scouts and Cub Scouts. The Employer's approach also forces employes who have or share responsibility for caring for a child or ailing parent either to spend their own time and money commuting or give up quality time or care-giving time with their dependents and perhaps to incur the costs and/or inconvenience of arranging for care of their dependents by others during three consecutive overnight absences from home. It is unreasonable for the Employer to force employes to choose between such undesirable and potentially burdensome alternatives.

The Employer violated Secs. 5.01 and 21.01 by failing to pay Grievant Eggers for the commuting time and mileage expense that the Employer effectively required Eggers to spend by requiring him to train in Appleton while denying his timely request for use of a Department vehicle for his daily commuting to Germantown. In-service training for a police officer is a part of his/her official police duties and is therefore official police business.

By exercising its management rights in a manner that violated the provisions noted above, the Employer also violated Sec. 3.02.

The unreasonableness of the Employer's conduct in this case is exacerbated by Captain Evans' failure to respond timely or at all to Egger's initial written request concerning in-service training. That and all other attempts made by officers who would rather attend MATC or WCTC have been either ignored or summarily denied by Captain Evans. That lack of communication severely impeded any useful discussions concerning alternative training arrangements that might otherwise have developed.

Past practice and bargaining history do not support the Employer's position. The language of the various provisions noted above is sufficiently clear and unambiguous that the Arbitrator need not and ought not consider evidence beyond the language of the Agreement itself.

If such evidence is considered, it is not sufficient to establish that the Association and Employer had a mutual understanding that the Agreement permits the Employer to refuse to compensate employes for commuting time and mileage while requiring them to attend four consecutive days of training some 87 miles from Germantown in Appleton. As noted, the treatment that the parties have given voluntary training programs is not relevant to the involuntary

training assignments involved in this case. The evidence regarding mandatory annual training is not of sufficiently long standing to be of significance either when the parties negotiated the Agreement, or when the instant grievances were filed. The parties' practice has also not been uniform because Evans admitted that when officers attended the five-day in-service training program at Milwaukee Area Technical College (MATC) in the mid-1980's, the officers were paid overtime for all time spent traveling to and from the Oak Creek campus on the fifth day of that training.

In this case, Eggers put the Employer on notice of his concerns promptly after the Employer stated its intention to continue to require employes to attend annual training at Appleton and before this matter ripened into a grievance. Eggers offered, without success, to initiate a discussion of those concerns with Evans or others in Department management.

For those reasons the grievance should be granted. The Arbitrator should declare the Employer's conduct violative of the various Sections noted and should order the Employer to pay Grievant Eggers' requests for $311.19 for the 11 hours of overtime that were requested and denied, and for $174.80 in mileage reimbursement (699.2 miles at 25 cents per mile).

POSITION OF THE EMPLOYER

Section 165.85(4)(bn) of the Wisconsin Statutes requires 24 hours of annual recertification training be taken in order for any person to continue as a law enforcement officer. However, neither State law nor the Agreement requires the Employer to provide that or any other training to its employes. Accordingly, the Employer does not require its employes to attend the training at FVTC. However, the Employer has offered to pay employes for the time spent in training and in transit to and from the training site at the beginning and end of the four days of training if, but only if, the employe accepts the training offered at the location the Employer has selected. The employes were free to obtain the State-required training at one of the other locations where such training is offered, but that would have been entirely on employe's own time and expense.

Prior to the fall of 1991, the Department assisted employes in maintaining their State-mandated certification by using the training program offered at MATC and later at Waukesha County Technical College (WCTC). In response to employee complaints regarding each of those programs, the Department searched out and found the FVTC training program in Appleton that better met the employes' needs. Since the training cycle beginning in the fall of 1991, the Employer has offered, and all employes have taken advantage of the opportunity to obtain annual training at the Appleton facility on the same terms that training was offered to Grievant Eggers in the subject case. Specifically, the Employer offered transportation in one of its vehicles from the Department's facility in Germantown to the Appleton training facility on the day the training began and transportation back in that vehicle on the day the training concluded. The Employer also offered dormitory facilities to those employes who were interested in staying in

those facilities, and a meal allowance. The Employer paid the employes for their normal hours of work and for the additional time spent in-transit to the Appleton training facility on the first day of training and from the Appleton facility on the last day of training. Throughout those years, some employes chose not to stay at the dormitory. Officer Finger commuted to his parents' home in the Appleton area, and Officers Henning and Theis chose to commute home on their own time and at their own expense. The Employer did not pay those employes or any other employes for time or mileage those employes chose to incur by turning down the residential facilities offered by the Employer.

Before the four grievances that gave rise to this arbitration, no grievance was filed about the terms on which the Employer offered those annual training opportunities in Appleton. In an intervening round of contract negotiations conducted from late-1992 through early 1994, the Association advanced no proposal on the subject even though the Employer had applied and had twice clearly outlined in writing to all employes the above-noted compensation and transportation arrangements for Appleton training. The Association bargaining team, of which Grievant Eggers was a member, considered and rejected Officer Culver's request that the Association submit proposals addressing employe concerns regarding the annual training offered by the Employer at FVTC.

In late spring or early summer of 1994, without any idea that Grievant Eggers or the Association had a problem with the Employer's FVTC training arrangements, the Department again made arrangements for all of its police officers to attend in-service training at FVTC. This included developing a schedule to allow for absences caused by the training, the payment of money to FVTC, the selection of classes for each employe by Captain Evans, and then, on August 27, the posting of the schedule of dates on which each employe would be trained.

A few days later Grievant Eggers sent Evans his September 3, 1994 memo raising only general concerns about FVTC as an in-service training site. Evans gets a great many memos each day (quite a few from Eggers) and he prioritizes them to the best of his ability. Evans reasonably put that memo on the back burner because the Department was already committed to FVTC for the 1994 training cycle and because the memo did not raise any claim of Agreement violation or ask for any immediate change in training site or any other immediate action by the Department.

Then, just six days before in-service was to start, Grievant Eggers submitted his October 11 memo in which, among other things, he demanded overtime pay for all commuting time every day of the training and requested use of a Department car for commuting on a daily basis. Evans met with Eggers the next day and offered Eggers the opportunity to trade slots with another employe on the schedule or to seek FVTC's permission to change the schedule to move Eggers to another of the eight weeks during the fall and winter of 1994-95 covered by the Employer's schedule. Eggers said a change to another week would not help him because many of the commitments on his busy personal schedule could not be changed. Evans denied Eggers' requests for changes in the compensation and transportation arrangements that had been in effect

for the last three annual training cycles.

After being told that he would not be receiving travel time or mileage if he commuted to Appleton on a daily basis, Eggers decided to commute in his personal vehicle anyway and submitted requests for overtime and mileage which were denied.

The Arbitrator's answer to ISSUE 1 should be no. The Employer scheduled and compensated the employes in a consistent and fair manner that was fully and openly communicated to all employes. The employes understood and acquiesced in the Employer's treatment of those issues for three straight years and the Agreement was negotiated without any Association effort to alter the Employer's policy after it was known and accepted by all concerned. Because the Employer in 1994 followed that longstanding, uniform and mutually accepted practice, no contract violation can be found.

Section 3.01.B. has not been violated. The Union does not argue the Employer is prohibited from scheduling the in-service so it surely cannot be claiming that the Employer's policy constitutes an unreasonable "schedule of work." The payroll policies at issue here are not clearly "work rules" in the normal sense of the word. Even if they were, Sec. 25.01 implies that, except in discipline cases, the Association must challenge the reasonableness of a rule when it is initially issued, which in this case was in 1991.

In any event, the Employer's policy is reasonable in light of the parties' practices and the doctrine of laches and waiver. The Department's treatment of the issue has been consistent and clearly enunciated in writing to all employes since 1991 and hence known to the Association, and unequivocally acquiesced in by some employes who have commuted daily to their homes or their parents' homes without compensation and without the filing of a grievance, complaint or bargaining table proposal. Rather, the Association and Eggers led the Employer to arrange a schedule and pay money to FVTC in reasonable reliance on the absence of any protest regarding the prior years' compensation arrangements. Had Eggers or the Union raised this issue before the Employer had committed itself to FVTC for 1994, the Employer would have had ample opportunity to modify its behavior in accordance with the issues raised by Grievant Eggers and the Association. Therefore the Association has either waived its right to claim that the Employer's actions violated the Agreement or at a minimum is barred by the doctrine of laches from benefiting from its own failure to bring the matter forward in a timely fashion.

Similarly, the parties' practice and bargaining history make it clear that time spent on activities of the employe's choice between training sessions in Appleton is not "time worked" as that term is used in Sec. 5.01. The employes are free to go to a movie, go bowling, read a book in the dorm, visit relatives in Appleton or Shawano, or commute home. While they may prefer to be doing something else during that time, it is the clear and consistent practice in this relationship not to consider time spent between classes as time worked merely because the employe has the inconvenience of being located in Appleton at the conclusion of the class rather than being located

in Germantown. The fact that some employes decided to use their own time to drive back to Germantown does not covert this otherwise personal time to "time worked" under Sec. 5.01. The Association's effort in this case to obtain something for which it consciously chose not ask at the bargaining table and hence did not obtain through the bargaining process must be rejected. If the Association chooses to rely on the FLSA, as to which the Arbitrator is, in the Employer's view, without jurisdiction, that law (29 CFR Secs. 785.30 and 785.40, read together) would also support the Employer's position in this case.

The Employer has met its Sec. 6.01 obligations, as well. It paid Grievant for all hours during his normal work day even though the FVTC classes often did not last the full 8.5 hours, and he was paid time and one-half for hours spent commuting to FVTC on Monday and driving back on Thursday. Moreover, Sec. 5.05 states that "all training overtime must be authorized by the Chief of Police." Grievant Eggers asked the Chief to authorize the additional overtime he is now claiming for daily commuting, and that request was denied the next day by Captain Evans. Once it was denied, Grievant could have attempted to reschedule his session at FVTC to another of the eight weekly sessions more convenient to his personal commitments or he could have asked to attend MATC or WCTC on his own time. He did neither and, instead, grieves for overtime he knew in advance would not be paid because it was not authorized by the Chief under Sec. 5.05.

Section 21.01 was not violated because Grievant was not "required" to use his private vehicle for the commuting at issue and because he did not use it "in the performance of official police business." The Employer did not require Grievant Eggers to return to Germantown daily during the training, his personal calendar commitments did. Meeting Eggers' personal commitments is not "the performance of official police business."

Finally, granting the grievance would inequitably expose the Employer to substantial costs if all twenty Department employes decided to commute daily from and to Germantown. Because there is no Agreement language specifically addressing these issues, and because there is a clear practice supportive of the Employer's actions in this case, the monetary concerns underlying the instant grievance should be dealt with by the parties in the next round of bargaining rather than inequitably remedied through grievance arbitration.

For all of those reasons, the grievance should be denied in all respects.

DISCUSSION

In this DISCUSSION, as required by Sec. 17.05, the Arbitrator will "expressly confine himself to the precise issue(s) submitted for arbitration" and will not "submit observations or declarations of opinion which are not directly essential to reaching the determination."

ISSUE 1 asks whether the Employer violated various Agreement provisions by its denial of Officer Eggers' overtime and/or mileage requests regarding in-service training in October, 1994.

In reaching his determination regarding that issue, the Arbitrator finds it essential to resolve a factual dispute regarding whether the Appleton training was required or voluntary in nature and to resolve the various disputes regarding interpretation and application of each of the Agreement provisions noted in ISSUE 1.

Dispute About Whether the Employer
Required Grievant to Attend Training in Appleton

All of the Association's claims in this case are based on the factual assertion, disputed by the Employer in its brief, that the Employer required Grievant Eggers to attend training at Fox Valley Technical College in Appleton.

The record evidence supports the Association's factual assertion in that regard. Evans' August 27 Memorandum to "All Police Personnel" stated unequivocally, "[o]fficers listed below will be attending Inservice Training on the indicated dates. Inservice Training will again be held at Fox Valley Technical College in Appleton, Wisconsin." That memo and those scheduling training at Appleton in the three preceding years offered no option to take training elsewhere on any basis, and there is no contention or showing that the Employer ever informed the employes that they were not required to take four days of training at FVTC in Appleton.

Evans testified that he had not told the employes they had that option. He stated that he had not told them about that option because none of them had asked. However, Eggers' September 3, 1994 memo to Evans with copies to Chief Blum and to a Sgt. Fitzwilliams dated September 3, 1994 opened with, "I am requesting to attend an in-service program other than the ones held at Fox Valley Technical College in Appleton. I would much rather attend the in-service programs held at MATC or WCTC." Evans' failure to respond to that document and his ultimate admitted failure to inform Eggers or any other employe that they could opt to take their annual training elsewhere on their own time and at their own expense, or on any other basis satisfy the Arbitrator that the employes had every reason to believe and understand that they were being directed by the Employer to take four consecutive days of annual training at Appleton and that they did not have the option on any basis not to do so. The only option the Employer offered Eggers involved possibly changing the week Eggers was being required to train in Appleton to one of the eight other blocks on the Employer's training schedule.

Accordingly, any practices that may have arisen regarding training programs that were offered to employes by the Employer on a voluntary basis, such as those in Illinois and Kentucky, have no bearing on the parties' rights and obligations as regards the annual training between October 3, 1994 and February 23, 1995 which the Employer directed Grievant Eggers and the other employes to attend at FVTC in Appleton.

Claimed Violation of Sec. 3.01.B.

Section 3.01.B. expressly limits the Employer's right to establish work rules by requiring that work rules must be "reasonable." The Association has not persuasively established that any work rules are involved in this case. Accordingly, no violation of that aspect of Sec. 3.01.B. is implicated.

Section 3.01.B. also expressly limits the Employer's right to establish schedules of work for bargaining unit employes by requiring that such schedules must be "reasonable." The Arbitrator interprets the term "schedule of work" to include both when and where the Employer schedules employes to work. It is therefore appropriate for the Arbitrator to determine whether it was reasonable for the Employer to schedule Grievant Eggers to work four consecutive days in Appleton without paying him for daily commuting time and without providing a vehicle or mileage reimbursement for daily commuting.

While the past practice and bargaining history relating to prior years' annual training in Appleton is worthy of consideration along with other relevant facts bearing on the appropriate interpretations of the Agreement provisions at issue, that evidence is not an overwhelming or conclusive factor. The instant grievances were preceded by only a very limited number of instances in which a bargaining unit employe chose to commute from and to Germantown during the period of annual training at the Appleton site, and by no instances in which the employes doing so requested and were denied travel time pay, transportation and/or mileage reimbursement. (Officer Theis commuted daily to Germantown in one or two prior years, did not request pay or transportation from the Employer, and did not grieve the Employer's policy or its application to him. Officer Henning was a Sergeant and hence not a bargaining unit employe. Officer Finger did not commute daily to Germantown but rather stayed with a relative who lived in Appleton.)

The evidence does show that beginning in 1991 the employes all had reason to know that Employer intended not to pay for daily commuting time and not to provide a vehicle or mileage reimbursement for personal vehicle commuting to the annual training activities in Appleton. The Association has also been shown to have known of the Employer's intentions in that regard. However, given the absence of any prior denial of a request for daily commuting pay or transportation or mileage and given the very limited number of instances in which a bargaining unit employe had commuted to Germantown on the Employer's terms, the Association's decision not to burden its bargaining agenda with an attempt to change the existing language regarding training arrangements amounts to neither an implicit Association acknowledgement that the Employer's conduct was reasonable and within the Employer's rights under the existing Agreement language nor a waiver of the right to grieve the Employer's policy based on existing contract language if and when it was again implemented. (Whether the time at which the Association and Grievant Eggers first made known their objections to the training arrangements posted by the Employer since 1991 should bar retroactive monetary relief in this case will be a question for determination if but only if a violation of the Agreement is found.)

The reasonableness of the schedule of work the Employer imposed in this case Arbitrator turns on consideration of all of the conditions and circumstances of record relating to the Employer's conduct of training at FVTC.

In that regard, the Association's arguments persuasively establish that the Employer's arrangements not only require the employes to be in Appleton on each of four consecutive days, but they also present the employes with the potentially costly and/or burdensome choices outlined in the POSITION OF THE ASSOCIATION, above. The Arbitrator therefore finds that the Employer's arrangements constitute a significant imposition on the employe's off-duty time generally, and not on the basis of any special circumstances involved in Eggers' individual situation. The Association has also shown that the Employer inappropriately failed to respond to Eggers' September 3, 1994 memorandum in which he requested permission to attend training elsewhere, raised concerns about the Appleton training site and arrangements, and sought a response from and/or discussion with management about those concerns.

On the other hand, the training at issue benefits not only the Employer but also the affected employes. It enables the employes to receive training that meets the State's annual 24-hour training requirement for maintaining certification. It also enables the employes to receive such training on paid status and, for the most part, without requiring them to train on what would have been a scheduled off day.

The record also establishes that the Employer did not move its annual training to the more distant FVTC arbitrarily. Rather, it did so in pursuit of legitimate Employer objectives regarding training quality and flexibility of scheduling and in order to better meet expressed employe preferences about minimizing training on a scheduled off day and improving the quality of the training received. Much of the feedback the Employer received from its employes over the years about the FVTC training has been positive; however Olander testified that he has unsuccessfully submitted written requests each year since 1991 to be permitted to take his annual training at MATC or WCTC instead.

The Employer has offered dormitory accommodations and a meal allowance to permit employes who choose to stay in Appleton to do so comfortably and without incurring substantial additional expenses. (This is not a case in which the Employer has offered merely the hypothetical "camping under the stars at the nearest KOA" posited by the Association in its brief as what the Employer might do next.) The Employer has placed no limitations on the employes' use of the time between training sessions (other than the potentially costly or burdensome choices related to meeting personal commitments discussed earlier).

The Employer has also provided employes with reasonable advance notice of the dates on which their training is scheduled. The 1994 training schedule was posted on August 27 in advance of a training schedule beginning on October 3 of that year. Evans also offered Grievant Eggers

the option of trading his training slot with another employe or of seeking FVTC's permission to move his training slot to another of the eight weeks during which the employes of the employer were being trained, in efforts to better accommodate Eggers' needs. And finally, the required training in question is limited in duration, so that it involves only one four day block per year.

When all of the foregoing considerations are weighed and balanced, the Arbitrator concludes that the Association has not met its burden of persuasion that the schedule of work imposed by the Employer on Grievant Eggers in this case was unreasonable within the meaning of Sec. 3.01.B.

Therefore no violation of Sec. 3.01.B. is found on the facts of this particular case.

Claimed Violations of Secs. 5.01 and 6.01

Section 5.01 requires premium compensation for "time worked by an employee at the direction of the Village in excess of the normally scheduled workweek or workday . . . ." Section 6.01 defines "a normal work day for all employees" as "working eight and one-half (8-1/2) hours in a twenty-four (24) hour period commencing at the start of the employee's normally assigned shift." Clearly, Grievant Eggers was not actually directed by the Employer to drive between Germantown and Appleton between training sessions. Eggers chose to do so on his own. Because the evidence does not establish that the schedule of work imposed by the Employer was unreasonable in all of the relevant circumstances, it follows that the evidence also does not support the Union's theory that the Employer should be deemed to have forced -- i.e., constructively directed -- Eggers to commute to Germantown on a daily basis as he did.

The Arbitrator therefore finds no violation of either Sec. 5.01 or Sec. 6.01 in this case.

Claimed Violation of Sec. 21.01

Section 21.01 requires the Employer to reimburse employes for mileage at its established rate "[w]hen an employee is required to use his/her private vehicle in the performance of official police business." Again, Grievant Eggers clearly was not actually directed by the Employer to drive his personal vehicle between Germantown and Appleton between training sessions. Rather, he chose to do that on his own. As above, because the evidence does not establish that the schedule of work imposed by the Employer was unreasonable in the circumstances of this case, it follows that the evidence also does not support the Association's theory that the Employer should be deemed to have forced -- i.e., constructively required -- Eggers to commute to Germantown on a daily basis as he did.

The Arbitrator therefore finds no violation of Sec. 21.01 in this case.

Claimed Violation of Sec. 3.02

The Association contends that Sec. 3.02 was violated in this case because the Employer's conduct violated "the express terms of this Agreement" when it violated the various other provisions discussed above. Because the Arbitrator has found no violation of those other

provisions in this case, it follows that there has been no violation of Sec. 3.02, either.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the STIPULATED ISSUES noted above that

> 1. No. The Village did not violate Secs. 3.01.B., 3.02, 5.01, 6.01 and/or 21.01 of the Agreement by its denial of Officer Michael Eggers' overtime and/or mileage requests regarding in-service training in October, 1994.
>
> 2. A determination regarding a remedy is therefore not necessary or appropriate, and the subject grievance is denied in all respects.

Dated at Shorewood, Wisconsin this 22nd day of September, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator