

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

OSHKOSH PROFESSIONAL POLICE OFFICERS  
ASSOCIATION

and

CITY OF OSHKOSH (POLICE DEPARTMENT)

Case 265  
No. 53823  
MA-9466

Appearances:

Mr. Frederick J. Mohr, Attorney at Law, appearing on behalf of the Association.

Mr. William G. Bracken, Coordinator of Collective Bargaining Services, Godfrey & Kahn, S.C., appearing on behalf of the City.

ARBITRATION AWARD

Pursuant to a request by Oshkosh Professional Police Officers Association, herein the Association, and the subsequent concurrence by the City of Oshkosh, herein the City, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on April 8, 1996, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on June 5, 1996, at Oshkosh, Wisconsin. The hearing was transcribed. The parties completed their briefing schedule on August 5, 1996.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The parties stipulated to the following:

Did the City violate Policy 116 - Overtime Work when it assigned Police School Liaison Officer Steve Weyers to two YMCA Middle School Teen Night functions instead of assigning the most senior regular officer? If so, what is the appropriate remedy?

DISCUSSION:

The instant grievance arises over a dispute involving the assignment of overtime.

The assignment of overtime in the Oshkosh Police Department is governed by departmental policy. That policy, Oshkosh Police Department Directive No. 116 - Overtime Work (Revised), states in relevant part:

Objective: Standardization of Procedures for Assignment of Overtime

Events other than an unanticipated shift shortage -

The overtime must be assigned by department seniority among those willing to perform the duty unless:

- A. The function requires special training or unique characteristics which the more senior officers do not possess or,

The Oshkosh Youth Task Force sponsors Middle School Teen Nights at the YMCA. Prior to November 18, 1995, a representative of the Task Force called the Crime Prevention Officer and requested that an officer be assigned to work the event.

The Crime Prevention Officer approached Chief David Erickson about the request. The officer asked whether the overtime should be posted. Chief Erickson, upon learning of the nature of the event, decided not to post the overtime but instead had it assigned to a Police School Liaison Officer (PSLO).

A PSLO was assigned to work the Teen Nights on both November 18, 1995, and January 13, 1996. David Kumbier, who was not a PSLO, was the most senior officer at the time of both of these events.

The Association grieved the assignment of this overtime because it was not posted by seniority. The City counters that this assignment falls within the exception noted above.

The Association initially argues that the City has misapplied the standard of the aforesaid departmental policy. In this regard, the Association argues that the policy does not allow Chief Erickson to circumvent the seniority requirement in order to assign the most qualified officer to the Middle School Teen Nights at the YMCA. Instead, according to the Association, the question is

one of minimum qualifications. The Association concedes that a PSLO is arguably more qualified than an officer on the street to work the assignment but claims that this is not the issue before the arbitrator. The Association argues that instead the arbitrator must determine whether an officer on the street would have the minimum qualifications required to work this function. Only ". . . when senior officers are not qualified to perform the function," can the exception under Directive No. 116 be used, the Association opines.

However, Directive No. 116 does not state this. Nor does said policy provide, as argued by the City, that the "best" or "most" qualified bargaining unit employe shall be assigned to such an event under the exception contained therein. The parties introduced no persuasive evidence of past practice or bargaining history to support these differing interpretations. To the contrary, Directive No. 116 clearly and expressly provides that for events other than an unanticipated shift shortage overtime must be assigned by department seniority among those willing to perform the duty unless the function requires special training or unique characteristics which senior officers do not possess. (Emphasis added) This is the standard the arbitrator will apply.

The City argues that the Middle School Teen Night clearly falls under the exception of assigning overtime by seniority because the assignment requires special training and has unique characteristics that regular officers do not possess. The Union takes the opposite position. For the reasons discussed below, the arbitrator agrees with the City's position.

While it is true, as pointed out by the Association, that officers on the street have some juvenile training, a PSLO has substantial training above and beyond that expected of a regular officer. This training enables the PSLOs to deal with juveniles and juvenile issues like drug abuse and gangs in an effective, more proactive manner than regular officers.

Likewise, PSLOs deal exclusively with youth at the high school and middle school level, giving them valuable insight and expertise in dealing with students. One advantage that a PSLO holds over a regular officer as a result of this common day-to-day knowledge and experience working with students is his ability to spot troublemakers and gang members and separate them from the rest of the student body. A PSLO is also familiar with middle school students versus high school students. These abilities and characteristics enable, in the arbitrator's opinion, a PSLO to function more effectively as a chaperon for the event and to screen prospective attendees to ensure that they are middle school students and not high school students or other undesireables. The Association points out that students aid in the screening process while "an officer serves primarily in a prophylactic role." The arbitrator disagrees. Contrary to the Association's assertion, the record evidence establishes that a PSLO is uniquely qualified to perform this important screening function at the Teen Nights.

A PSLO has also built up a rapport and trust with middle school students that regular officers do not possess. In part, this is because they do not wear uniforms and are able to interact with students on a completely different basis than a regular officer. In part, this is due to the fact

unlike regular officers the principal functions of the PSLO are to provide counseling and education in addition to enforcing the laws. The Youth Task Force prefers a PSLO because it recognizes the PSLO's unique background and expertise in dealing with youth assists it in putting on a safe and successful Teen Night. Middle School Night attendance figures and student comments support the unique contribution of the PSLO to the success of the Teen Nights. For these reasons, the arbitrator rejects the Association's contention that regular officer can walk through the building, talk to kids, shoot baskets and eat pizza, just like a PSLO. In the arbitrator's opinion, the PSLO is uniquely qualified to act as a chaperon at the YMCA's Teen Night for middle school students.

The Association points out that the Department has historically allowed non-PSLOs to work high school dances. However, the YMCA Teen Night function is distinguishable from high school dances described by Officer Tom Lichtfuss. First, it is held off campus at the private YMCA building. Second, it is limited to middle school students. Finally, while Officer Lichtfuss testified that he did not believe any special training is required to adequately perform the job duties, Jeff Schneider, Youth and Camp Director for the Oshkosh YMCA, testified persuasively as to the rationale for the Youth Task Force's conclusion to request PSLOs for Teen Nights, their preference for PSLOs to be assigned to the event and their unique contribution to the success of the Middle School Teen Night event.

The Association also argues that Chief Erickson acknowledged that other officers in the Department could have done the job as well as the PSLO. However, this is not exactly what Chief Erickson said. He did testify that some officers deal better with middle school students than others do. He also testified as to the hierarchy he would use in assigning the Teen Night activity as follows:

1. Middle School Police School Liaison Officer
2. High School Police School Liaison Officer
3. D.A.R.E. Officer
4. Officer Friendly
5. Regular Patrol Officer

Chief Erickson bases this hierarchy on the officers' training and experience in dealing with youth.

In addition, Chief Erickson summarizes why it is important to have a liaison officer assigned to the YMCA Teen Night as follows:

Liaison officers interact with these kids and kids in general on a daily basis. They build a rapport with them. They build a trust with them.

The Teen Night is an extension of that. It allows them to continue that rapport. It also gives them an opportunity to interact with them outside of the school because even within the school setting there's still -- they make arrests, they counsel kids for problems and crime, and this teen dance -- or the Teen Night gives them an opportunity to interact just on a purely social basis that they don't normally have.

Finally, the City has articulated, un rebutted by the Association, several compelling policy reasons why a PSLO is uniquely qualified to assume the duties at the YMCA Middle School Teen Night. The reasons articulated by the City's witnesses can be summarized in the following categories: safety, rapport, trust, experience, proactive role and success.

Based on all of the above, the arbitrator finds that the aforesaid exception under Directive No. 116 can be used by the City to assign a PSLO to the YMCA Middle School Teen Night because the City has proven that the unique audience comprised of middle school youth attending the Teen Night makes it a special situation which requires special officers and that the Police School Liaison Officer is uniquely qualified based on training and experience to handle middle school youth.

In view of all of the foregoing, and absent any persuasive evidence or argument to the contrary, the arbitrator finds that the answer to the issue as stipulated to by the parties is NO, the City did not violate Policy 116 - Overtime Work when it assigned Police School Liaison Officer Steve Weyers to two YMCA Middle School Teen Night functions instead of assigning the most senior regular officer, and it is my

#### AWARD

That the grievance is hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin, this 7th day of October, 1996.

By Dennis P. McGilligan /s/  
Dennis P. McGilligan, Arbitrator

