

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF MONONA (POLICE DEPARTMENT)

and

TEAMSTERS UNION LOCAL NO. 695

Case 40
No. 54590
MA-9733

Appearances:

Melli, Walker, Pease & Ruhly, S.C., by Mr. Jack D. Walker, on behalf of the City.
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Mr. John J. Brennan, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein "City" and "Union", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Monona, Wisconsin, on January 17, 1997. The hearing was transcribed and both parties filed briefs which were received by March 10, 1997. Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

Since the parties were unable to jointly agree on the issues, I have framed them as follows:

1. Is the grievance arbitrable?
2. If so, did the City violate either Article 12, Article 18, or Article 32 of the contract when it allowed Detectives to bid for, and to receive, overtime work involving a special traffic program and, if so, what is the appropriate remedy?

DISCUSSION

This case centers on whether Detectives - who normally do not perform any patrol duties - are entitled to special patrol assignments on an overtime basis.

In the spring of 1996, the City implemented a special program to crack down on speeding on the local beltway. Normally, only patrol officers perform that patrol function. Detectives, however, bid for, and were given, posted overtime shifts on April 26, 1996, and June 6, 1996.

The Union claims that only patrol officers can perform such patrol work under the contractual "Maintenance of Standards" clause and it claims a past practice to that effect. The Union also asserts that management recognized this principle when it denied a Detective's request to work overtime at a January 9, 1996, staff meeting. The Union further argues the contractual overtime list referenced in Article 18, Section 3, has never included Detectives. As a remedy, it asks that the affected patrol officers be made whole.

The City counters by claiming that the contract is clear and unambiguous in providing that overtime must be offered to all bargaining unit employees including Detectives. Furthermore, it asserts that there is no clear past practice regarding this issue and that, moreover, it is necessary to offer such overtime to Detectives to ensure that there are enough volunteers for such special traffic programs.

The first issue that must be addressed here is arbitrability. While the City asserts that the grievance was filed outside the contractual time lines, it appears that the City never raised this objection in the underlying steps of the grievance procedure. Hence, I find that this issue has never been waived and that the merits of the grievance can be heard.

The resolution of this issue turns on Article 18, Section 3, of the contract, entitled "Overtime", which states:

Section 3. Overtime. All employees who work in excess of their normal regular scheduled workdays or workweek shall receive time and one-half (1-1/2) their hourly rate for all hours worked in excess of the normal day or week or compensatory time at time and one-half (1-1/2) as mutually agreed upon. Compensatory time must be taken or paid in the calendar year earned. Compensatory time shall be taken on a seniority basis if chosen six (6) days before it occurs. All overtime shall be on a rotating basis, by seniority, for off-duty employees, and said list to be maintained by the employees. (Emphasis added).

The underlined sentence is the key here because it deals with how overtime must be distributed; i.e., "on a rotating basis, by seniority, . . ." for "All overtime. . ." This use of the word "All" indicates that all bargaining unit employees are entitled to receive overtime on a rotating basis, including Detectives.

But, Section 7 of Article 18 goes on to provide: "All cash jobs will be offered by seniority department-wide when they have come through the Police Department." The phrase "department-wide" shows that the parties knew how to expressly state that certain benefits - in this case moonlighting opportunities - had to be offered to everyone in the entire department, even including

those who are not in the bargaining unit. Article 18, Section 3, by contrast, does not contain any such reference to either the entire bargaining unit or the entire department. That is why the Union argues that Section 7 of Article 18 refers to "cash jobs which the Union stipulates are open to detectives as well as patrol officers." By contrast, says the Union, Section 3 is limited to patrol officers because those are the only employees whose names appear on the overtime list referenced in that proviso.

The Union also points out that Article 32, entitled "Maintenance of Standards", provides:

The Employer agrees that all conditions of employment relating to wages, hours of work and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and such conditions of employment shall be changed only where specific provisions for improvement are made elsewhere in the Agreement.

It is agreed that the provisions of this Article shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such error is corrected within thirty (30) days from the date of such error.

The Union argues that this proviso "requires that a practice, such as reserving patrol overtime for patrol officers, be continued for the term of the agreement." The City, however, asserts that this clause has no bearing because "more specific contract provisions control overtime allocation."

In this connection, the parties at the hearing adduced evidence relating to whether a past practice has arisen to the effect that Detectives are ineligible for any patrol overtime. The City points to several examples where Detectives performed special patrol duties in 1981. The Union argues, however, that the record is unclear as to whether those Detectives bumped any patrol officers and that, furthermore, Detectives never have been included on the overtime list maintained by Union Steward Leonard Winge.

All of the foregoing has created a somewhat confusing and contrary record. Nevertheless, the following key points emerge:

One, the contract contains different provisions regarding different overtime opportunities. Thus, Article 18, Section 7, addresses moonlighting overtime opportunities offered by outside employers other than the City. That is why such overtime is department-wide and why it is even offered to supervisors outside the bargaining unit. Hence, since Section 7 only addresses those unique overtime opportunities, little weight can be given to the fact that Section 3 does not

expressly refer to Detectives.

Two, the parties themselves have recognized that different overtime opportunities are treated differently. That is why Officer Winge maintains the list referenced in Section 3 of Article 18 for, in Winge's words, "shift coverage overtime". That list, however, is not all inclusive since Winge testified that it is maintained to cover "any absence". Here, on the other hand, we are not dealing with any absences, but rather, with a new program. That is why the City has posted for other overtime opportunities without relying on Winge's list.

Three, there is no evidence that the parties in negotiations ever expressly bargained over this issue. That helps explain some of the confusion and disagreement between the parties and it also helps explain why the contract does not expressly refer to this issue.

Four, the past practice is somewhat contradictory because it is unclear under what circumstances Detectives in the past have been offered special overtime opportunities.

Five, no weight can be given to the fact that a Detective's request for overtime involving routine patrol work was turned down at a January 9, 1996, staff meeting. That overtime involved the kind of normal overtime caused by someone's absence, about which there is no dispute. Hence, it did not involve the kind of special overtime found here which has been created by a special traffic program.

We therefore come back to the all-encompassing language of Section 3 which states that "All overtime shall be on a rotating basis, by seniority. . ." Since this language on its face does not exclude the kind of special overtime found here, this language must be given its ordinary meaning. As a result, Detectives are entitled to bid for, and to receive, such special overtime opportunities, just like all other members of the bargaining unit. To do otherwise is to in effect construe Section 3 to read: "All overtime shall be on a rotating basis, by seniority, for off-duty patrol employes. . ." Since the contract at Article 10 mandates that an arbitrator cannot "change any part of this Agreement", it is improper to add the word patrol to this language -- which in essence is what the Union is seeking.

In addition, this result is more consistent with Article 12 of the contract, entitled "Seniority", which states: "The principle of length of continuous service with the Employer, with due regard for qualifications and ability, shall be controlling in employment matters." Since there is nothing in this language which excludes Detectives from its coverage, there is no valid basis for excluding them from special overtime projects.

Lastly, this result will better enable the City to obtain sufficient volunteers for such projects. For unless Detectives are so included, it is possible - as testified to by Police Chief Paul Welch - that patrol officers might not sign up for "the garbage that nobody wants", i.e., the 11:00 p.m. - 7:00 a.m. shift.

For all these reasons, the grievance is denied.

In light of the above, it is my

AWARD

1. That the grievance is arbitrable.
2. That the City has not violated either Article 12, Article 18, or Article 32 of the contract when it allowed Detectives to bid for, and to receive, overtime work involving a special traffic program.
3. That the grievance is therefore denied.

Dated at Madison, Wisconsin, this 2nd day of April, 1997.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator