

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**THE SHOREWOOD POLICE ASSOCIATION and
THE LABOR ASSOCIATION OF WISCONSIN, INC.**

and

THE VILLAGE OF SHOREWOOD

Case 47
No. 60129
MA-11531

(Court Time Minimum Grievance)

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, and **Mr. Benjamin M. Barth**, Labor Consultant, on behalf of the Association.

Davis and Kuelthau, S.C., by **Mr. Daniel G. Vliet**, and **Mr. Joel S. Aziere**, on behalf of the Village.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “Village”, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Shorewood, Wisconsin, on October 24, 2001, at which time the parties agreed that I should retain my jurisdiction if the grievance is sustained. The hearing was not transcribed and the parties thereafter filed briefs that were received by December 6, 2001.

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 issue, I have framed it as follows:

Did the Village violate Article VI of the contract when it refused to pay a minimum of 3 hours court time pay to officers Kevin Carini and Ilya Levkov for their February 28, 2001, court appearance and, if so, what is the appropriate remedy?

BACKGROUND

Officers Kevin Carini and Ilya Levkov are members of the Shorewood Police Department. On February 28, 2001 (unless otherwise stated, all dates herein refer to 2001), they were scheduled to be witnesses in circuit court in Milwaukee by 1:30 p.m. They reported in full uniform to the police station at about 1:00 p.m., picked up a patrol car, drove it to the courthouse, and returned to the police station at 2:10 p.m. Both officers were scheduled to work from 2:45 p.m. to 11:00 p.m. that day, and they did so. On March 5, they requested 3 hours minimum court time under Article VI of the contract. Their request was denied by then-Captain Michael Meehan.

Meehan previously took care of all records relating to court time between 1985-2000. He testified that the contractual overtime provision in Section 6.01 applies to “anything that connects with the shift”, either before or after; that officers on the 10:45 p.m. to 7:00 a.m. late shift have always received a minimum of 3 hours court time because they are off duty when they appear as witnesses in court; that officers on the 6:45 a.m. – 3:00 p.m. day shift do not get court time because they serve as witnesses anytime during their shift; and that officers on the 2:45 p.m. – 11:00 p.m. shift do not get court time because their court time is added to their regular shift, which is what was done here. Meehan added that while the City is willing to pay Carini and Levkov overtime for the 2 hours they worked between 1:00 p.m. and 3:00 p.m. on February 28, it is unwilling to pay them the minimum 3 hours court time they requested. He also said that Carini and Levkov were in uniform when they went to court on February 28 and that they were on duty when they returned from court and reported back to work.

On cross-examination, Meehan testified that he does not know what duties Carini and Levkov performed when they returned back from work on February 28; that no one on that day told them to report to supervision; that the City in past contract negotiations proposed to change the prior 2 hours minimum court time to 3 hours (Employer Exhibit 1); and that there is no written document stating that employees do not receive 3 hours minimum court time if that time is contiguous to a shift.

POSITIONS OF THE PARTIES

The Association contends that Article VI is clear and unequivocal in providing for a three-hour guarantee for the court time of off-duty personnel and that the testimony here supports its position. As a remedy, the Association requests that the grievants be fully compensated by paying to them three hours court time at time and one-half and that the Village pay such court time in the future.

The Village contends that the grievance is without merit because the Association has failed to meet its burden of proving that the Village has violated the contract; because Article VI is “plain and unambiguous on its face” in providing court pay only for off-duty personnel; and because the grievants here were on duty when they reported to the station house at 1:00 p.m. It also claims that past practice supports its position and that, “Nothing in the record supports the grievants’ position.”

DISCUSSION

This case mainly turns on the interpretation and application of Article VI of the contract, entitled “Overtime”, which states in pertinent part:

Section 6.01: Overtime shall be paid at the rate of time and one-half (1 ½) for all hours worked over eight (8) hours per day or forty (40) hours per week, subject to the provisions of Section 5.03 hereof. The rescheduling of a work shift to avoid payment of overtime will not be permitted unless the officer mutually agrees, and the rescheduling period is not less than thirty (30) days nor more than sixty (60) days. However, the scheduling of hours worked for a duty shift will remain under the control and discretion of the Chief of the Police Department as prescribed by the Police Department Rules and Regulations. In addition, the Police Chief may continue to reschedule employees’ hours so as to avoid any overtime payments when such employees attend the annual twenty-four (24) hour in-service training program. Subject to the provisions of Federal and State law:

- A. Employees of the department shall have the option of having overtime paid in cash or compensatory time off.
- B. Compensatory time off, if requested by the employee, shall be at the discretion of the Chief.

It is the understanding between the parties that regulation of compensatory time shall remain within the guidelines of the Fair Labor Standards Act where it applies to law enforcement personnel, and that the work period shall be twenty-eight (28) days in length. Wages received while on training will be limited to eight (8) hours of straight time per day.

Section 6.02: A recall to duty for any reason will be paid at the rate of time and one-half (1½) with a minimum guarantee of two (2) hours.

Section 6.03: A guaranteed minimum of three (3) hours at time and one-half (1½) will be paid for court time for all off-duty personnel. (Emphasis added).

The key phrase here is the one linking court time to “all off-duty personnel.”

Here, since the grievants’ regular work shift did not begin until 2:45 p.m., it can be argued that they reported for court duty before their scheduled shift, hence supporting the Union’s claim that they were not on duty when they reported to the court. On the other hand, since they reported to the station in uniform at 1:00 p.m. to pick up a squad car to drive to the court for their scheduled 1:30 p.m. appearance, it also can be argued that they were on duty at that time. Given these plausible but conflicting interpretations, it is apparent that the phrase “off-duty personnel” is not as clear as either party contends.

Moreover, that phrase and Section 6.03 as a whole must be read alongside Section 6.01 which mandates overtime for “all hours worked over eight (8) hours per day. . .” This language thus provides that officers can have their shifts extended, provided that they are paid overtime when they do so. This language, however, does not address what is to be done when officers report in before their scheduled shift so that they can pick up a squad car and go to court as witnesses.

This case also turns on whether the guaranteed three-hour minimum for court time provided for in Section 6.03 supercedes the overtime language of Section 6.01. Looking only at the face of the contract, I find that the contractual language is ambiguous and that it therefore is appropriate to consider whether any binding past practices have arisen over this issue.

As to that, Meehan testified that the Village in the past has paid court time under prior contracts only if such court time was not directly contiguous to an officer’s shift. That is why, said he, only employees on the 11:00 p.m. – 7:00 a.m. shift got the minimum guarantee when they appeared in court after their shift ended and after they no longer were on duty. Since Meehan’s testimony was uncontradicted, it must be credited. Hence, it must be concluded

that a well-developed past practice has arisen to the effect that the minimum guarantee for court time is to be paid only in those limited circumstances and not in the kind of circumstances found here involving officers on the 2:45 p.m. – 11:00 p.m. shift.

The parties, after all, must have been aware of this practice when they agreed to the present contract language. That language therefore “will be presumed to have the meaning given it by practice.” See Mittenthal, “Past Practice and the Administration of Collective Bargaining Agreements”, *Proceedings of the National Academy of Arbitrators* (BNA, 1961), p. 30, 56. Moreover, if “a particular practice is not repudiated during negotiations, it may fairly be said that the contract was entered into upon the assumption that this practice would continue in force.” *Id.*, at 49. That is the situation here.

In light of the above, it is my

AWARD

1. That the Village did not violate Article VI of the contract when it refused to pay a minimum guarantee of three (3) hours court time to officers Kevin Carini and Ilya Levkov for their February 28, 2001 court appearance.

2. That their grievance is therefore denied.

Dated at Madison, Wisconsin this 3rd day of April, 2002.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

