

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF PHILLIPS (POLICE DEPARTMENT)

and

**PHILLIPS PROFESSIONAL POLICE ASSOCIATION
LOCAL 231, LABOR ASSOCIATION OF WISCONSIN, INC.**

Case 6

No. 62203

MA-12197

Appearances:

David Deda, Phillips City Attorney, P.O. Box 7, Phillips, Wisconsin, appearing on behalf of the City.

Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 Arlington Street, Appleton, Wisconsin, appearing on behalf of the Union.

ARBITRATION AWARD

The City of Phillips (Police Department), hereinafter referred to as the City, and the Phillips Professional Police Association, Local 231, Labor Association of Wisconsin, Inc., hereinafter referred to as the Union, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. Pursuant to a Request for Arbitration, the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr. to arbitrate a dispute over the assignment of shift hours to part-time employees. Hearing on the matter was held in Phillips, Wisconsin on October 2nd, 2003. Post-hearing written arguments and reply briefs were received by the Arbitrator by December 22nd, 2003. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties where unable to agree upon the framing of the issue and agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

“Did the City violate the collective bargaining agreement when commencing with January 1, 2003 it began assigning part-time police officers to work eight (8) hour shifts?”

"If yes, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE V – MANAGEMENT RIGHTS

Section 5.01 – Management Rights: It is agreed that the management of the City and the City’s right and authority to direct its operations and affairs is vested exclusively in the City, and the City reserves and retains all of its constitutional, statutory and common law rights to direct its work force and manage its operations except as expressly bargained away in this agreement. [Emphasis added].

Section 5.02 – Exercise of Rights: The rights retained exclusively by and solely to the City shall include, but are not limited to: the determination of the existence or nonexistence of facts which are the basis of the City decisions; to determine the number, location, and types of its operations, and the methods, processes, practices, materials and manpower to be employed; to determine to what extent any operation, service or activities of any nature shall be added, modified, eliminated, or obtained by contract, provided that no bargaining unit employees are laid off or reduced in benefits; to determine and from time to time redetermine the number of hours per day or week operations shall be engaged in; to select and determine and from time to time redetermine the number and qualifications of employees to be hired, to assign work and determine the amount and quality of work to be performed by employees in accordance with requirements determined by the City; to establish and change assignments; to transfer, promote and reclassify employees, and to layoff, terminate or otherwise relieve employees from duty; to make and enforce

reasonable rules; to suspend, discharge or otherwise discipline employees for just cause and to take such measures as the City may determine to be in the City's best interests.

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ARTICLE XV – WAGES AND HOURS OF WORK

Section 15.01 – Wage Schedule: The classification and wage schedule shall be made a part of this agreement and is attached hereto as Appendix “A”.

Section 15.02 – Regular Hours: The normal work day shall be eight and one-half (8-1/2) consecutive hours including a thirty (30) minute paid lunch period, which may be taken provided that the employee is subject to call. All employees shall receive a thirty (30) minute paid lunch break during the employee's tour of duty, which will be taken at staggered times.

Section 15.03 – Work Week Schedule: Employees will work a repetitive schedule as follows: Four (4) days on duty followed by two (2) days off duty, then repeating the cycle.

The normal shift hours shall be as follows:

Day shift	6:30 a.m. to 3:00 p.m.
Second shift	2:30 p.m. to 11:00 p.m.
Third Shift	10:30 p.m. to 7:00 a.m.

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ARTICLE XVI – OVERTIME

Section 16.01 – Daily and Weekly Overtime: All work performed outside the normal work day of eight and one-half (8-1/2) consecutive hours and all work performed outside of the regularly scheduled work week of four (4) consecutive work days shall constitute overtime and shall be paid at the rate of time and one-half (1-1/2X). Shift trades by two officers shall be approved by the Chief of Police or his designee and shall not create overtime.

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BACKGROUND

The City and the Union have been parties to a series of collective bargaining agreements. The City employs both full time and part-time employees. Prior to January 1, 2003, whenever the City called in part-time employees to work a full shift they were scheduled to work eight and one-half (8½) hours. When the City called in part-time employees to work special events or special assignments such events or assignments may have been for less than eight and one-half (8½) hours. During the latter part of 2002 the City established a budget for the Police Department that eliminated a vacant full time police officer position. The City also directed Police Chief Craig Moore to maintain twenty-four (24) hours, seven (7) days a week law enforcement coverage of the City. To accomplish this the City directed Chief Craig to commence on January 1, 2003 scheduling part-time Police Officer Kevin Rose and part-time Police Officer Scott Wildberg to work eight (8) hour shifts. Thereafter, the instant grievance was filed and processed to arbitration in compliance with the parties' grievance procedure. The City acknowledged in its reply brief that the instant grievance is timely.

Union's Position

The Union argues the City violated the terms and conditions of the collective bargaining agreement when it unilaterally changed the part-time employee work hours from eight and one-half (8½) hours per day to eight (8) hours per day. The Union argues that Section 15.02 of the collective bargaining agreement sets forth that the normal work day shall be eight and one half (8½) consecutive hours including a thirty (30) minute paid lunch period. The Union asserts that prior to January 1, 2003 Section 15.02 had been applied to both regular full-time and regular part-time employees of the Phillips Police Department if the employee was scheduled to work a full day. The Union also points out that Section 16.01 of the collective bargaining agreement provides that all work performed outside the normal work day shall constitute overtime. The Union contends the language of the collective bargaining agreement is clear and unequivocal in its definition of the normal workday for all regular full-time and regular part-time employees as being eight and one-half (8½) consecutive hours.

The Union acknowledges the City has the right to call in employees for less than a full day, however, the Union avers that such call-ins must be in compliance with Sections 15.02 and 15.03 of the collective bargaining agreement. The Union points out that shifts are defined in Section 15.03. The Union also points out that the shifts are based upon eight and one-half (8½) consecutive hours.

In support of its position the Union points to the testimony of Police Officer Rose, Police Officer Holm and Chief Craig. Both Rose and Holm testified that their regular shifts prior to January 1, 2003 had been eight and one-half (8½) consecutive hours. Chief Craig testified that prior to January 1, 2003 the shifts and schedule were applied to part-time employees. The Union

also points out the Chief Craig testified that part-time employees have worked eight and one-half (8½) consecutive hours since 1987 and that the shift language was put into the parties first collective bargaining agreement in 1998 and that the language has continued into the current collective bargaining agreement. The Union also points out that Chief Craig testified he was directed by the Phillips City Council in December 2002 to implement the eight (8) hour part-time employee schedule. The Union stresses the City did not refute the testimony of Holm, Rose or Craig. The Union concludes there has been a long standing past practice of having part-time employees work the eight and one-half (8½) consecutive hour schedule.

The Union also contends the City can not be allowed to change the collective bargaining agreement without negotiating such a change with the Union. The Union argues the City unilaterally changed the workday of part-time employees. The Union avers the City is seeking an award that will change the work hours of part time employees without bargaining the matter first.

The Union would have the Arbitrator sustain the grievance and to direct the City to cease violating the collective bargaining agreement. The Union would also have the Arbitrator direct the City to make the affected employees whole by paying them one-half hour of regular wages for all the eight (8) hour days the part-time employees were scheduled to work commencing from January 1, 2003 to the issuance of the Award.

City's Position

The City acknowledges that in the past it has scheduled the part-time employees to work eight and one-half (8½) consecutive hours. However, the City points out it has also scheduled part-time employees to work other amounts of hours. The City argues, in effect, that Section 15.02, contrary to the claim of the Union, does not apply to part-time employees. The City contends that the very nature of part-time means the employee works as needed. The City asserts there is nothing in the collective bargaining agreement or in past practice guaranteeing any set schedule or any set number of hours for part-time employees.

The City points out the Union acknowledged the City has the right to call in part-time employees for less than eight and one-half (8½) hours. The City also points out the Union conceded that if a part-time employee worked three (3) or four (4) hours there would be no challenge. Thus, the City argues, there can be no practical limit to draw the line. The City asserts there is no restriction in the collective bargaining agreement as to hours worked by part-time employees.

The City also contends that Section 15.02 and Section 15.03 do not apply to part-time employees. The City points out that due to budgetary concerns the City is attempting to maintain twenty-four (24) coverage and trying to get the most coverage for the dollars spent. The City

points out that having a part-time officer work eight and one-half (8½) hours causes overlap with other officers at the start and end of the shift.

In its reply brief, the City acknowledges the grievance is timely. The City also points out the Union acknowledged in its written arguments that the City has the right to call in part-time employees for less than eight and one-half (8½) hours. The City argues that it is obvious that Section 15.03 only applies to full time employees who work four (4) days on two (2) days off. The City concludes that the word “normal” in Section 15.02 only applies to full time employees. The City argues to interpret the collective bargaining agreement otherwise would prevent the City from using part-time employees for anything less than an eight and one-half (8 ½) time periods.

The City also contends the management rights provision of the collective bargaining agreement, Section 5.02, reserves to the City the rights to direct the work force and manage operations except as expressly bargained away in the collective bargaining agreement. The City points out there are many purposes to make use of part-time employees. These include special circumstances such as parades or busy periods to supplement the full time officer. The City concludes it could not exercise the rights specifically granted by Section 5.02 if the City is limited to scheduling part-time employees to eight and one-half (8½) hours at a time.

The City also argues the grievance is limited to the month of January, 2003 and does not acknowledge the Arbitrator’s decision to interpret the collective bargaining agreement for the future. The City would have the Arbitrator deny the grievance.

DISCUSSION

The Union herein has not disputed the right of the City to assign part-time employees to specific assignments less than eight and one-half (8½) hours. During the course of the hearing the Union acknowledged that the City has the right to assign part-time employees hours necessary to perform coverage at specific events, training or the transportation of prisoners. Thus, the City’s concern that an adverse award in the instant matter would prevent it from making such assignments in the future is without merit. The Arbitrator also finds there is a distinction between assigning the part-time employees as needed and establishing an eight (8) hour workday for part-time employees. Nothing herein is meant to limit the City’s capability to assign part-time employees different hours for specific events and assignments. At issue herein is solely whether the City can unilaterally establish a workday for part-time employees that is different than the agreed upon workday in Section 15.02.

The City did not refute the testimony of the Union’s witnesses that in the past part-time employees who were assigned to work other than special assignments were scheduled to work eight and one-half (8½) hours. Further, when the part-time employees were scheduled to work a normal workday the shift the part-time employee worked was in compliance with Section 15.03.

The record herein demonstrates the City, because of budgetary constraints and its desire to maintain twenty-four (24) hour coverage, directed Chief Moore to establish an eight (8) workday for part-time employees. However, Section 15.02 clearly defines the normal workday as eight and one-half (8½) consecutive hours with one-half (½) hour paid lunch. There is no provision in Section 15.02 that limits this provision to only full-time employees. Section 15.02 clearly defines the normal workday and therefore the parties have bargained the workday and Section 5.02 does not apply. The City's actions in establishing an eight (8) hour workday for part-time employees without bargaining the matter with the Union clearly violated Section 15.02. The Arbitrator notes here the parties past practice supports this conclusion. The Arbitrator also notes that the City's actions could in effect eliminate the duty free lunch and has an impact on Section 16.01, overtime. Under the City's theory it could eliminate for part-time employees the duty free lunch and not pay the part-time employees for overtime until the part-time employee had worked eight and one-half (8½) hours. There is no evidence this was ever the intent of the parties.

The parties' collective bargaining agreement in Section 15.03 also specifically defines three (3) specific work shifts. Under the City's theory Section 5.02 allows it to establish a different work shifts for part-time employees without bargaining the matter with the Union. Clearly, the parties have agreed upon three work shifts. Thus this provision is controlling, and, as provided for in Section 5.02, the City has bargained away any other shift.

The City has also argued the Arbitrator should limit any award to the January dates submitted at the time of the grievance. The Arbitrator finds no merit in this argument. The Union, in raising the grievance, had clearly sought a cease and desist action from the City and the City has denied this request. The matter is also on-going and continuing.

Therefore, based upon the above and foregoing, and the testimony, evidence and arguments presented the Arbitrator concludes the City's action of establishing an eight (8) hour workday for part-time employees violated the parties' collective bargaining agreement. The City is directed to cease this action and is directed to make the employees whole by paying the part-time employees one-half (½) hour pay for each day since January 1, 2003 the City scheduled them to work an eight (8) hour day.

AWARD

The City violated the collective bargaining agreement when commencing with January 1, 2003 it began assigning part-time police officers to work eight (8) hour shifts. The City is directed to cease such actions and to make the part-time employees whole paying them one-half

(½) hour pay for each day since January 1, 2003 the City scheduled the part-time employees to work eight (8) hour days.

Dated at Madison, Wisconsin, this 28th day of January, 2004.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator

