

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration of a Dispute Between  
**VILLAGE OF GRAFTON (POLICE DEPARTMENT)**

and

**LABOR ASSOCIATION OF WISCONSIN, INC., LOCAL 305**

Case 31  
No. 64048  
MA-12788

(Meiller Grievance)

---

**Appearances:**

Davis & Kuelthau, S.C., by **Attorney Mary L. Hubacher**, 300 North Corporate Drive, Suite 150, Brookfield, WI 53045, on behalf of the Village.

**Mr. Benjamin Barth**, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, WI 53022, on behalf of the Association.

**ARBITRATION AWARD**

According to the terms of the 2002-03 collective bargaining agreement between the Village of Grafton Police Department (hereafter Village) and Local 305, Labor Association of Wisconsin, Inc. (hereafter Association), the parties jointly selected Arbitrator Sharon A. Gallagher through the Wisconsin Employment Relations Commission to hear and resolve a dispute between them regarding whether the Police Chief is privileged to reschedule patrol officers' off days as compensation for the officers' attendance at mandatory training on their regular off days. Hearing on the matter was held at Grafton, Wisconsin, on March 17, 2005. A stenographic transcript of the proceedings was made and received on March 25, 2005. The parties agreed to postmark their initial briefs to each other with a copy to the Arbitrator, 30 days after their receipt of the transcript and they reserved the right to file reply briefs. The Arbitrator received the last document herein on May 31, 2005, whereupon the record was closed.

### **ISSUES**

The parties were unable to stipulate to the issues for determination herein. However, they stipulated that the Arbitrator could frame the issues based upon the relevant evidence and argument as well as their suggested issues. The Association suggested the following issues:

1. Is the Employer violating the express or implied terms of the collective bargaining agreement and long-standing past practice when it compensates employees at straight time for attending training on their off-days or providing employees a different scheduled off-day as compensation for attending training?
2. If so, what is the appropriate remedy?

The Village suggested the following issues for determination:

1. Did the Department properly exercise its management right to determine the work schedule when it reassigned certain officers' days off?
2. If not, what is the appropriate remedy?

Based upon the relevant evidence and argument as well as the above suggestions, I conclude that the Village's issues fairly state the dispute between the parties and they shall be determined herein.

### **RELEVANT CONTRACT PROVISIONS**

#### **ARTICLE II – MANAGEMENT RIGHTS**

The Association recognizes the right of the Village and the Chief of Police to operate and manage its affairs in all respects. The Association recognizes the right of the Chief to establish departmental rules and procedures.

. . .

The Village shall retain all rights and authority to which, by law, they are entitled and to manage their affairs as such affairs and rights existed prior to the execution of this or any previous agreement with the Association.

The parties understand that every duty connected with the operations enumerated in job assignments or descriptions is not always specifically described, and it is intended that all duties shall be performed by the employee.

The Village has the exclusive right and authority to make assignments of jobs, to determine the size and composition of the work force, to determine work schedules and the work to be performed by the work force and each employee, to establish methods and processes by which said work is performed, to determine the competence and qualifications of the employees, to determine the location where the operations of the Village are to be conducted, to hire, promote and lay off employees and to make assignments and promotions to supervisory positions, to transfer employees within the Police Department, to suspend, demote and discharge employees, to assign and schedule overtime work, to create new positions or departments, to introduce new or improved operations or work practices, to terminate or modify existing positions, departments, operations or work practices, and to consolidate existing positions, departments or operations.

The Association pledges cooperation to the increasing of the departmental efficiency and effectiveness. Any and all rights concerning the management and direction of the Police Department and the Police Force shall be exclusively the right of the Village and the Chief of Police, unless otherwise provided by the terms of this Agreement as permitted by law.

. . .

#### **ARTICLE IV – WORKWEEK**

The normal work shift for all full-time Association employees will consist of eight (8) hours and twenty (20) minutes worked continuously on an established shift, four shifts on duty followed by two days off followed by four shifts followed by two days off then repeating. The Officer's workday shall commence ten (10) minutes before the scheduled shift and end ten (10) minutes after the scheduled shift.

For the Community Service Officer and the Juvenile Officer.

- a) The workweek will consist of eight (80) hours in a two (2) week pay period.
- b) If these positions are replacing patrol employees on a long-term basis, their regular workweek will not be more than five (5) consecutive workdays, unless mutually agreed otherwise between the Chief and the officer involved.

The Chief of Police shall designate the working shifts as per individual officer with all due consideration given to rank and seniority. Employees in November/December shall be annually allowed to choose their shifts for the following year on a seniority basis.

## **ARTICLE V – PAY POLICY**

**Section 1. Salaries.** Salaries will be paid as provided in Appendix “A” and “B” attached to this Agreement.

**Section 2. Overtime.** Each full-time member of the Association shall receive overtime pay at the rate of one and one-half (1-½) times his regular hourly rate for all work performed in excess of his assigned workweek as outlined in Article IV. At the discretion of the Chief of Police, overtime may be taken in compensatory time also at the rate of one and one-half (1-½) times for each overtime hour worked.

For the Community Service Officer and the Juvenile Officer:

- a) Overtime will consist of hours worked over eighty (80) in a two (2) week pay period and will be compensated for in time off only on a time and one-half (1-½) basis.
- b) When working on patrol work, or hours emanating from patrol work, e.g., court time, overtime consists of hours worked in excess of eight (8) hours and twenty (20) minutes per day or on an off day, and will be compensated for in time off or in cash on a time and one-half (1-½) basis.
- c) These officers are still on the list for prescheduled overtime, along with the Patrol Officers and Sergeants.

Overtime for call-out shall be a minimum of two (2) hours paid at time and one-half (1-½), provided, however, that the minimum shall not apply to any call-out which is consecutively prior or subsequent to a tour of duty.

The call-out prior to a tour of duty shall not be considered to be part of that tour, nor shall an officer work more than eight (8) hours on a shift and then have another shift reduced to less than eight (8) hours.

Overtime for court time shall be a minimum of two (2) hours paid at time and one-half (1-½), however, if the actual court time is less than the

minimum two (2) hours, the remaining time shall be spent on duty at the discretion of the shift supervisor.

Page 5  
MA-12788

Section 3. Compensatory Time Off. Officers shall be allowed to accumulate and maintain a compensatory time off bank not to exceed forty (40) hours.

Unless authorized by the Police Chief, no compensatory time off will be allowed on the following holidays: New Year's Eve, New Year's Day, Easter, July 4<sup>th</sup>, Thanksgiving, Christmas Eve, and Christmas Day.

. . .

### **BACKGROUND**

The Village employs nine police officers who work regular and repeating schedules of four days on and two days off pursuant to the labor agreement, Article IV-Workweek. Officers select their shifts (and their regular off days) in November/December each year based upon their seniority.

Prior to 1996, the parties' labor agreement contained the following language which included one specific exception to time and one-half pay for overtime:

### **ARTICLE V – PAY POLICY**

. . .

Section 2. Overtime. Each full-time member of the Association shall receive overtime pay at the rate of one and one-half (1-1/2) times his regular hourly rate for all work performed in excess of his assigned workweek as outlined in Article IV, except as provided in Section 3 below. At the discretion of the Chief of Police, overtime may be taken in compensatory time also at the rate of one and one-half (1-1/2) times for each overtime hour worked.

. . .

Section 3. Mandatory Schooling. Straight-time pay at the hourly rate of each Association member will be paid up to a maximum of eight (8) hours per day while attending schools or seminars or staff or departmental meetings as required by the Village or the Chief of Police. A full-time employee who is required to act as an instructor at a school or training session outside of the employee's assigned workweek will be paid at the rate of time and one-half (1-1/2) for such hours so worked.

(Emphasis added.)

Page 6  
MA-12788

The parties mutually agreed to delete the above-quoted, underlined language from the labor agreement during negotiations for the 1996-97 labor agreement. The subject of pay for mandatory training time has not been addressed in bargaining by the parties since 1996 and the language of Article V has remained as quoted above in the Relevant Contract Provisions Section of this Award, from 1996 to date.

From 1996 to 2003, officers were paid time and one-half pay for mandatory training they attended on their regular off days. The Chief during this time did not reschedule officers' off days to facilitate mandatory training. Grievant Meiller stated that from April 27, 1998 through September 23, 1999 and on October 18, 1999, and April 6, 2001, he attended mandatory training on his regular off days and each time he received time and one-half pay therefor.

On May 5, 2003, Charles Wenten became Village Police Chief. Within 10 days thereafter, Chief Wenten had a conversation with then-Association President Stapleton<sup>1</sup> in which Wenten explained that he was concerned about the mandatory firearms training which was scheduled for May, 2003; that the training would cost the Department 96 hours of overtime pay for officers who had to receive training on their regular off days; and the training would leave the Department short of manpower. Wenten requested that Stapleton ask officers who were scheduled to receive mandatory firearms training that month on their off days seek only comp time off, not overtime pay, for their time at mandatory training. By the end of their conversation, Chief Wenten believed that Stapleton agreed to this approach on behalf of the Association. The agreement between Wenten and Stapleton was not reduced to writing.

However, after the firearms training concluded, some of the affected officers who had received training on their regular off days submitted written requests to be paid overtime pay (at time and one-half) for the time of their firearms training. The Department paid these officers time and one-half without protest. Chief Wenten stated that also in May, 2003, Officer Cawley attended "training that was in conjunction with his assignment at the time on two of his days off" (Tr. 34). Wenten stated that he reassigned Cawley's off days to facilitate that training. No evidence was placed in this record to show that Cawley's training was mandatory training or that the Association was aware of Cawley's situation. Chief Wenten could not recall whether Cawley's training was mandatory or voluntary (preferred).

### FACTS

---

<sup>1</sup> Stapleton did not testify herein.

On August 16, 2004, Chief Wenten issued the following memo to Grievant Meiller (Association President since April, 2004) concerning "Compensation Alternatives" for training time:

Page 7  
MA-12788

. . .

The following alternatives are offered for your consideration. This document in no way diminishes or inhibits administration's management rights.

**MANDATED TRAINING:**

If mandated training results in overtime, the overtime hours would be compensated by crediting the employee's compensatory bank at a rate of 1.5 times the number of hours worked as overtime. The employee may also elect to work with administration on rescheduling the employees off day to a different time. The rescheduling of an off day is done at the mutual agreement of the employee and administration. In addition to the rescheduling of the off day to a future date, the employee would receive 4 hours of comp. time credited to their comp bank.

**EMPLOYEE PREFERRED TRAINING;**

If the employee preferred training results in overtime, the overtime hours would be compensated by crediting the employee's compensatory bank at a rate of 1.0 times the number of hours worked as overtime. The employee may also elect to work with administration on rescheduling the employee's off day to a different time. The rescheduling of an off day is done at the mutual agreement of the employee and administration.

If you have any questions or require any further information, contact me as soon as possible.

. . .

It is undisputed that in late August, 2004, Chief Wenten rescheduled the regular off days of nine officers so that the Department would not have to pay them overtime pay for mandatory training which was to occur in September, 2004. Wenten rescheduled two officers' off days within their 14-day cycle while seven officers' days off could not be rescheduled within their 14-day employment cycles and these officers received another day off outside of their 14-day work cycles. Just prior to the instant hearing, the Village credited four hours to these officers' comp time banks.

On August 30, 2004, the Association filed the instant grievance. Chief Wenten stated herein that he believes he acted reasonably, given his management rights, the great expense for overtime pay, the difficulty of scheduling mandatory training and the low levels of manpower created by such mandatory training.

Page 8  
MA-12788

## **POSITIONS OF THE PARTIES**

### **The Association**

The Association argued that the contract language is clear and unambiguous on the subject of pay for work on an officer's regular off day and the Arbitrator should give effect to the plain meaning thereof. In this regard, the Association noted that Article IV establishes the "normal" workday and work cycle; that Article V requires the Village to pay overtime at the time and one-half rate for "all work performed in excess of (the) assigned workweek." Neither Article II nor any other provision of the agreement states an exception to the clear definitions contained in Articles IV and V. Therefore, officers assigned to attend mandatory training on their regular off days are, by definition, performing work in excess of their 4/2 work cycle and they must be compensated at the time and one-half rate.

The Association asserted that Association President Meiller's testimony stands uncontradicted, that the Association and the Village agreed to delete Article V, Section 3, limiting pay for mandatory training in 1996 and that the parties intended thereby that officers would receive overtime pay if required to attend mandatory training on their regular off days. In addition, the Association observed that the evidence showed that a long-standing past practice has existed since 1996, to pay officers time and one-half pay for attending training on their off days, consistent with the (remaining) clear language of the agreement.

Furthermore, the fact that officers insisted upon receiving overtime pay for the mandatory training they received in May, 2003, despite an apparent agreement between the Chief and the then-Association President, further supports the Association's assertions herein. The Association noted that the Village paid these officers overtime pay in 2003 without objection; that the Village never attempted to negotiate a change in Article V; and that the Village never notified the Association that it would no longer abide by the contract and past practice regarding overtime pay for training conducted on an officer's off day.

The Association contended that it has proven herein that the clear language of the contract is supported by a consistent, long-standing and mutually agreeable past practice that officers should expect to be paid overtime pay for mandatory training they are required to take on their regular off days, and that there has never been a contrary practice whereby officers must suffer their regular schedules to be changed to accommodate mandatory training. The Association therefore urged that the grievance be sustained and that the Village be ordered to compensate all officers at the time and one-half rate for all hours they attended mandatory training on their regular off days.



## The Village

Pursuant to Article II of the labor agreement, the Village argued that the Chief has the management right to determine officers' work schedules. The general reference in Article IV to the "normal" work schedule is insufficiently explicit so as to constitute a guarantee of a particular shift assignment, schedule or hours. Therefore, the Chief had the right to modify normal work schedules of officers for legitimate business reasons.

Here, the Village had legitimate reasons for wishing to change the regular off days of some officers in order to accomplish mandatory training. These reasons included the limited availability of the training site, the need to have all officers trained at approximately the same time, the manpower needs of the Department and the need to minimize overtime liability. In any event, as all officers who had their off days changed received more than one week's notice thereof, the Village urged that it did not need to prove that it had legitimate business reasons for the change.

In the Village's view, officers are entitled to overtime only for shifts worked in excess of their assigned workweek, as defined in Article IV. When an officer's schedule is changed in advance so that the officer does not work in excess of his assigned workweek — in other words, when he/she works no additional shifts in a pay period — the officer is not entitled to overtime pay even if his/her regular off day is changed to another day within the pay period.

The Village also argued that the evidence of past practice submitted herein supports the Chief's authority to alter work schedules to accommodate training. In this regard, the Village noted that the Association failed to object when Officer Cawley agreed to have his off day changed to accommodate his training. The fact that no grievance was filed regarding Cawley's situation, constitutes tacit approval by the Association of the Chief's practice of reassigning off days around training.

The Village argued that the record evidence does not support the Association's asserted past practice. Meiller's testimony did not cover the case where an officer's off day is rescheduled and he/she does not work an additional shift, in excess of his/her regular workweek during the pay period in order to accommodate training. As the Village has appropriately compensated officers whose schedules were changed to accommodate mandatory training herein, granting them a combination of time and one-half pay and time off (Tr. 31-32), no remedy is due in this case and the grievance must be denied.

## **Reply Briefs**

### **The Association**

The Association observed that the case cited by the Village in its initial brief, CITY OF COQUILLE, 119 LA 762 (HOH, 2004), concerned a permanent reduction in work hours of a particular employee, not a temporary change in the normal work schedule of employees. Therefore, the Association urged that the Coquille case is not on point.

The Association did not dispute that the Chief can change officers' normal work cycles but it argued that the Chief must follow the contract and pay overtime pay pursuant to Article V, Section 1, whenever the officer works beyond his/her regular workday/week. The Association asserted that this must occur each time officers work "in excess of or outside of their normal workweek."

In this case, the specific language of Article IV, detailing work hours and work schedules, should control over the general language of Article II. The Association noted that the labor agreement specifically prohibits management from making temporary changes in officers' work schedules in order to avoid overtime pay. In these situations, several arbitrators have ruled that an employer may not change employee work schedules simply to avoid paying overtime.

In this case, the evidence showed that the parties changed the labor agreement so that overtime pay would have to be paid for training time. Also, Chief Wenton was admittedly aware of the past practice and that the contract language had been interpreted and applied in the past to require overtime pay for training on an off-day (Association Exh. 3). In these circumstances, the Association urged the Arbitrator to sustain the grievance, to order the Village to cease and desist violating the labor agreement and to make affected employees whole.

### **The Village**

The Village argued that the Association's interpretation of Article V was incorrect and contorts the meaning of that Article. The Association also cited only a portion of the Black's Law Dictionary definition of the word "normal," which was misleading. The statement of a "normal" or "standard" workweek/day in a labor agreement does not preclude the creation of new shifts or changes in existing work schedules.

In addition, the Village urged that the Association failed to prove that a binding past practice existed which was consistent with the record facts. The proof simply showed, only, that when an officer has attended training during a pay period in which the training time is beyond his/her normal workday/week, then the officer has been paid at time and one-half as

required by Article V, Section 1. The Village urged that the testimony failed to prove a past practice existed regarding the payment of overtime for training on a regular off-day “even if attending training did not result in the officer working in excess of his regular workday/week.” Therefore, the fact that the officers received overtime payments did not establish a past practice concerning training days.

Furthermore, the heart of this case is whether the Chief has the authority to reassign off-days to avoid overtime. Where, as here, the Chief has the “exclusive right and authority” to determine work schedules and to assign and schedule overtime, the Chief was privileged to reassign off-days to meet the legitimate needs of the Department. As a result, no overtime pay is due and owing and the grievance must be dismissed.

### **DISCUSSION**

The grievance in this case states that the Village “unilaterally” changed the normal annual work schedules of certain patrol officers in order to avoid overtime liability when those officers attended mandatory training on their regular off-days and then either compensated those officers at the straight time rate therefor or it changed the officers’ regular off-days within their two week work cycle to accommodate the training and did not compensate the officers. Just prior to the instant hearing, the Village, on its own motion, compensated the affected officers who had received straight time pay for the loss of their regular off-day(s) so that they received time and one-half (in time off and/or pay) for the days in question. Therefore, the issue before me is whether the Village has the right, under the effective labor agreement, to take the action described above or whether the action violates the labor agreement and/or a valid past practice.

It is significant that this is not a case where an unforeseen event such as an emergency, Act of God or a condition beyond the Village’s control existed which necessitated the unscheduled change in officers’ annually selected/assigned shifts. Furthermore, the record evidence failed to support a conclusion that the Village had a legitimate business reason, such as undisputed, significant budgetary shortfalls, which prompted the partial layoff of a non-probationary employee as in *CITY OF COQUILLE, SUPRA*. Rather, the unscheduled work shift changes made in the nine officers’ annual work shifts were of short duration, anticipated and planned from the date of the Chief’s August 16, 2004 memo on the subject, through the notice to the affected officers, given at least one week prior to the changes in the officers’ annual schedules to accommodate the training<sup>2</sup> which was to occur in September, 2004. Therefore, this case involves the Village’s assertion that its management rights are paramount and must prevail over the express language of Articles IV and V of the labor agreement as well as evidence of bargaining history and past practice.

---

<sup>2</sup> Although the Chief distinguished between mandatory and preferred training in his memo, the current contract does not make any such distinction, as it refers to neither. For purposes of this case, no distinction between types of training has been made.

The Association has argued that there was a long-established past practice of paying officers overtime whenever they were assigned to attend training on their regular off-days, and that this practice was further supported by the fact that in 1996, the parties agreed to delete Article V, Section 3, from the labor agreement. The Association is correct that the parties' agreement to delete old Article V, Section 3, from the labor agreement resulted in the removal of language contained in the 1993-95 agreement which allowed the Village to insist that officers who attended mandatory training on their regular off-days (in excess of their assigned workweek), should receive only straight time pay therefor.

Thus, the labor agreement currently contains no language addressing the rescheduling of officers' normal work shifts; nor does it contain a provision (common in labor agreements) which would allow the Village to change officers' annually selected/assigned work shifts if the officers are given a certain amount of advance notice. The fact that the labor agreement was changed in this way requires a conclusion that under the 1996-97 contract and to date, any training would have to be compensated at the time and one-half rate under Article V, as being in excess of the officer's assigned workweek. The Association has argued that any time an officer works on his/her regular off-day, the additional work would necessarily be in excess of his/her assigned workweek. Based upon the evidence herein, I agree. The Village failed to present any evidence to prove the Association was incorrect, except in the case where the Chief has rescheduled an officer's regular off-day within the 14-day work cycle.

In addition, I note, that in 1996, the parties agreed to include language in Article IV, which limited the Chief's discretion (prior to 1996) to "designate the working shifts as per individual officer with all due consideration given to rank and seniority," by adding the following sentence immediately after the above-quoted language:

. . . Employees in November/December shall be annually allowed to choose their shifts for the following year on a seniority basis.<sup>3</sup>

The addition of this sentence in the 1996-97 agreement and the submission of uncontroverted evidence that officers have selected their shifts by seniority since 1996, demonstrates that the clear language of the second sentence has been consistently applied by the parties regarding shift selections. Also, the Association submitted evidence to show that from 1996 to September, 2004, the Village has consistently paid officers who were required to attend training on their regular off-days time and one-half pay and that during this period, the Village did not reschedule officers' regular off-days to avoid overtime pay therefor.

Significantly, the Village submitted no evidence to contradict the Association's evidence on these points. The evidence submitted by the Village regarding Officer Cawley's agreement to change two of his regular off-days to accommodate his own training was insufficient to

---

<sup>3</sup> Neither party offered evidence or argument regarding the meaning of the first sentence of this paragraph or why the parties inserted the second sentence into this paragraph.

undermine the Association's past practice evidence. In this regard, I note that the Village failed to prove what type of training was involved and it failed to prove that the Association was aware of Cawley's situation/agreement to switch his regular off-days.

Even after Chief Wenton's hire in May, 2003, the Village paid officers time and one-half pay who requested same for the mandatory training they attended in May, 2003, on their regular off-days. Notably, the officers who requested overtime pay in this situation, did so despite a prior verbal agreement to the contrary reached between the Chief and then-Association President Stapleton, that officers would seek only compensatory time off, not overtime pay.<sup>4</sup> The Village paid the requesting officers time and one-half pay for the loss of their regular off-days due to their attendance at mandatory training in May, 2003 without objection. All of this evidence supports the Association's arguments herein that a binding past practice was established as it asserted and recognized by Chief Wenton and the Chief(s) before him.

However, the above analysis does no mean that there is no alternative to paying overtime pay to officers who work in excess of their assigned workweeks. Rather, there is language in Article V, Section 2, that allows the Chief, in his discretion, to compensate officers with comp time off instead of giving them overtime pay, but the rate of compensation therefor is expressly stated to be at the time and one-half rate.

The bottom line in this case is that the general language of Article II, Management Rights, is insufficient to trump the agreed-upon changes made to Articles IV and V in 1996, the supporting evidence of past practice showing the consistent administration of these Articles since 1996 (as the Association has argued herein) and the clear language of the currently existing Articles IV and V. Furthermore, the definition of the "normal"<sup>5</sup> work shift/workweek contained in Article IV is extremely specific, requiring the shifts to be "worked continuously" and "repeating," using the term "established shift." In the context of the proof in this case, these references to the normal or established shift can only be understood to mean the shifts officers "shall be allowed to choose" annually based upon their seniority. This language is mandatory — giving officers the right to choose their shifts annually based upon their seniority — and no relevant exceptions are stated thereto.<sup>6</sup> As such, the officers are entitled to rely upon the regularity of their annually chosen shifts pursuant to the terms of effective agreement.

---

<sup>4</sup> The only evidence regarding the purported agreement between the Chief and Stapleton was the Chief's testimony concerning what occurred between them. As the Association proffered no evidence to contradict the Chief and it lodged no objection that this evidence constituted hearsay, I have credited the Chief entirely on this point.

<sup>5</sup> The ordinary definition of the term "normal" is: "conforming to the standard or common type; usual; not abnormal; regular; natural." The Random House Dictionary of the English Language, College Edition, p. 907 (1968).

<sup>6</sup> The only exceptions to this work shift language is for CSO's and Juvenile Officers and those officers are not involved in this case.

Had the parties intended to allow for intermittent changes in officers' annual shifts, they could have included a provision in the labor agreement indicating same, the acceptable reasons therefor and what type of advance notice would be necessary. The parties did not do this. In addition, as the Association asserted, the Village proffered no evidence to show that it had proposed to change Articles IV or V in any informal discussions or in any negotiations after those surrounding the 1996-97 contract. In all of the circumstances of this case, I find that the Chief was not privileged to change officers' regular off-days or to compensate officers at the straight time rate for time they spent in training in September, 2004, and I issue the following

### AWARD

The Department did not properly exercise its management rights when it reassigned certain officers' days off and paid other officers at straight time, for training they attended in September, 2004, in excess of their assigned workweeks. The Department is hereby ordered to make the affected officers whole, if it has not already done so.<sup>7</sup>

In the future, the Department shall cease rescheduling officers' regular off-days to accommodate training and if an officer attends training on his regular off-day, the Department shall compensate the officer (pursuant to Article V, Section 2, at the Chief's choice) by crediting him/her with comp time at the time and one-half rate or by paying him/her overtime pay, again at the time and one-half rate.

Dated at Oshkosh, Wisconsin, this 30<sup>th</sup> day of June, 2005.

Sharon A. Gallagher /s/

---

Sharon A. Gallagher, Arbitrator

SAG/anl  
6853.doc

---

<sup>7</sup> It appears that the Village gave affected officers either time off at the time and one-half rate or it otherwise paid them at the time and one-half rate as of the date of the instant hearing. If this is so, no backpay or time off is due or owing. Simply put, my Award is not intended to give the affected officers more than they would have had had the Village followed the contract herein; if they have in fact received either time off or pay at the time and one-half rate, they are entitled to nothing more for the violation proven.

I shall retain jurisdiction for sixty (60) days after the date of this Award of the remedy only should the parties need assistance in determining the remedy herein.