

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**HARTFORD POLICE EMPLOYEES UNION, LOCAL 1432A,  
AFSCME, AFL-CIO**

and

**CITY OF HARTFORD**

Case 60  
No. 63876  
MA-12736

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**Appearances:**

**Lee Gierke**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 727, Thiensville, Wisconsin 53092, on behalf of the Union.

VonBriesen & Roper, S.C., by **James R. Korom**, 411 East Wisconsin Avenue, Suite 700, P.O. Box 3262, Milwaukee, Wisconsin 53201-3262, on behalf of the City.

**ARBITRATION AWARD**

Hartford Police Employees Union, Local 1432A, AFSCME, AFL-CIO (herein the Union) and the City of Hartford (herein the City) were at all times pertinent hereto parties to a collective bargaining agreement covering the period from January 1, 2004 through December 31, 2006. On August 3, 2004, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration concerning an allegation that the City had violated the collective bargaining agreement by moving Officer Russell Wegner to second shift on June 7, 2004 instead of a less senior officer. Pursuant to the contract, the grievance was submitted to a Board of Arbitration, consisting of one member appointed by each party and a third member selected from a panel of arbitrators provided by the WERC. The Union selected Ms. Mary Scoon, Staff Representative, Wisconsin Council 40, AFSCME, as its representative on the panel. The City selected Mr. Gary Koppelberger, Hartford City Administrator, as its representative. John R. Emery, a member of the WERC's staff, was jointly selected by the parties as the third panel member. A hearing was conducted on April 6, 2005. The proceedings were not transcribed. The parties' briefs were filed by

June 13, 2005, and their reply briefs were filed by July 5, 2005, whereupon the record was closed. A draft of the proposed award was circulated by Arbitrator Emery to the other panel members on October 6, 2005.

### ISSUES

The parties did not agree to a statement of the issues.

The Union would frame the issue as follows:

Did the City of Hartford violate the Collective Bargaining Agreement when it moved Officer Russ Wegner to second shift on June 7, 2004?

If so, what is the remedy?

The City would frame the issues as follows:

Did the Employer violate the Collective Bargaining Agreement as alleged in the grievance?

If so, what is the appropriate remedy?

The Arbitrator frames the issues as follows:

Did the City of Hartford violate Section 21.04 of the Collective Bargaining Agreement when it moved Officer Russ Wegner to second shift on June 7, 2004?

If so, what is the remedy?

### PERTINENT CONTRACT LANGUAGE

#### **ARTICLE III – MANAGEMENT RIGHTS**

3.01 The Union recognizes the prerogatives of the Employer to operate and manage its affairs in all respects in accordance with its responsibility, and the powers or authority which the Employer has not specifically abridged, delegated or modified by other provisions of this Agreement are retained exclusively by the Employer. Such powers and authority, in general, include, but are not limited to the following:

A. To determine its general business practices and policies and to utilize personnel, methods and means in the most appropriate and efficient manner possible;

...

D. To establish work schedules, methods and processes;

...

#### **ARTICLE IV – WORK DAY AND WORK WEEK**

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4.02 Patrol Officers, Communications Officers:

B. Shifts: The normal schedule of shifts is as follows:

Patrol Officers and	6:00 a.m. to 2:30 p.m. (1 <sup>st</sup> shift)
Communications Officers	2:00 p.m. to 10:30 p.m. (2 <sup>nd</sup> shift)
	10:00 p.m. to 6:30 a.m. (3 <sup>rd</sup> shift)
	7:00 p.m. to 3:30 a.m. (4 <sup>th</sup> shift)

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#### **ARTICLE XXI – SENIORITY**

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21.04 Application: Seniority shall apply in promotions, transfer, shift schedules, layoffs, recall from layoff and vacation scheduling as provided in other articles of this Agreement.

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#### **ARTICLE XXVI – GRIEVANCE PROCEDURE**

26.03 Information: When a grievance is required to be in writing, it shall state the specific provision or provisions of the Agreement alleged to have been violated.

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#### **OTHER RELEVANT PROVISIONS**

##### **CITY PROPOSAL**

**DESCRIPTION:** The Position of Police School Liaison Officer (PSLO) is considered an assignment of an employee classified as a Patrol Officer.

**WORK CYCLE:** The work period for employees assigned as PSLO shall be fourteen (14) days. Their normal work cycle shall be five (5) consecutive duty days, Monday through Friday, two (2) consecutive days off, five (5) consecutive duty days, two (2) consecutive days off, then repeat cycle. This cycle results in an average work week of 40.0 hours.

**NORMAL WORK HOURS:** The normal hours of work for employees assigned as PSLO shall be determined by the Chief of Police to most effectively fulfill the function of the position.

**SHIFT FLEXIBILITY:** Basic core hours for this position will be 8:00 A.M. to 4:00 P.M. coinciding with normal school hours. The officer assigned to this position will be expected to adjust his/her normal working hours to meet outside demands as they relate strictly to the assigned position. Any PSLO required to work in excess of eight (8) hours per day, or required to work on a regularly scheduled day off, shall be compensated at the rate of one and one-half (1-1/2) times his or her regular rate of pay for such hours worked.

It shall be understood that such flexibility of hours applies only to duties as they relate to the position of School Liaison Officer, and shall not be utilized to circumvent the normal application of the overtime process.

**CLOTHING ALLOWANCE** – Effective January 1, 1995, the Police School Liaison Officer shall be entitled to clothing allowance in the amount of \$255 per year for the maintenance and replacement of civilian clothing. The Police Liaison Officer shall also be entitled to uniform replacement under the established Quarter Master System.

**HOLIDAYS:** The Police Liaison Officer shall be given the eight (8) established holidays off:

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|---------------------|---------------------|
| 1) New Year's Day   | 5) Labor Day        |
| 2) Easter           | 6) Thanksgiving Day |
| 3) Memorial Day     | 7) Christmas Eve    |
| 4) Independence Day | 8) Christmas Day    |

and be paid as defined in Article 8.01 (Days Granted) to include the Officer assigned as the Police School Liaison Officer. The Police Liaison Officer shall be entitled to four floating holidays, to be taken upon approval of the Chief of Police.

## **BACKGROUND**

Officer Russell Wegner, the Grievant herein, has been employed by the City of Hartford Police Department since 1989. At the time of the arbitration hearing he held the position of Patrol Officer and was also serving as Vice President of the bargaining unit. Prior to 1993, Wegner had been a Sergeant, but voluntarily sought a demotion at that time in order to be able to work the first or day shift, which goes from 6:00 a.m. until 2:30 p.m., on a 15 day repeating cycle of 5 days on, 2 days off, 5 days on, 3 days off. Shift selections are made according to seniority and Wegner had sufficient seniority to obtain his preferred shift as a Patrol Officer, but not as a Sergeant. Wegner has continued to work the first shift up to the present.

Since 1993, the Hartford Police Department has designated a Patrol Officer to serve as Police School Liaison Officer (PSLO). The PSLO is selected by a committee consisting of police officials, school district officials, students and parents and is appointed by the Chief of Police. In 1994, the City and the Union entered into an agreement specifying the status and working conditions of the PSLO. The designated officer is considered a Patrol Officer for purposes of the contract, but is specifically assigned to work in the Hartford public schools, interacting with students, administrators and teachers. The PSLO works a normal Monday-Friday schedule from 8:00 a.m. until 4:00 p.m., but his normal work hours are subject to change by the Chief to effectively perform the duties of the position. The incumbent PSLO when the events at issue here took place was Officer (now Detective) Scott MacFarlan. MacFarlan has been employed by the Police Department since 1996.

At some point in late May 2004, Wegner was informed that he would be moved to second shift on June 7, 2004 due to a staffing shortage on that day, rather than MacFarlan, who had less seniority than he. Second shift goes from 2:00 p.m. until 10:30 p.m. and Wegner did not want to move due to a previous commitment to umpire his son's baseball game that evening. Wegner talked to MacFarlan to determine whether he had any responsibilities that day that would preclude him from changing his shift and MacFarlan told him it would be problematic, but not impossible, for him to change. Wegner then approached department management and requested that MacFarlan be switched on the day in question instead of himself. He was told that due to the importance of the PSLO presence in the schools the Department did not wish to reschedule MacFarlan and that it had authority to circumvent seniority in these circumstances under its management rights. Wegner's request was denied.

On May 21, 2004, Wegner filed a grievance, alleging that the schedule change for June 7 would violate Section 21.04, the provision of the collective bargaining agreement that specifies that seniority applies to shift schedules, which was denied. On May 28, 2004, Wegner requested to use 4½ hours of vacation during the last part of his shift on June 7 to permit him to attend the baseball game, which was granted. As a consequence, the Department ended up moving McFarlan to second shift, as well, on June 7, to cover the hours when Wegner would be gone. After McFarlan was rescheduled, Wegner sought to rescind his vacation request and be reassigned to first shift, which was denied. Meanwhile, the grievance

moved through the contractual steps without resolution, culminating in this arbitration. Additional facts will be referenced, as necessary, in the discussion section of the award.

### **POSITIONS OF THE PARTIES**

#### **The Union**

The Union asserts that the language of Sec. 21.04 is clear and unambiguous in establishing seniority as the basis for transferring employees to different shifts. The arbitrator is confined to interpreting and applying the contract, not to rewrite it. Therefore, when language is clear it must be applied according to its terms. (citations omitted) Shift preference is an important benefit which is to be allotted by seniority. The PSLO is classified as a patrol officer, is not entitled to special privileges and is subject to the terms of the contract. Further, the record reveals there was no particular reason why Officer MacFarlan could not have been reassigned on June 7. Thus, seniority should have determined that Officer MacFarlan be moved, not Officer Wegner.

Management has broad authority to direct the workforce under Article III, but its rights are restricted by other provisions in the contract. Thus Sec. 21.04 restricts management's ability to switch officers from one shift to another, so that while the Employer may move an officer from one shift to another, it must do so based on seniority.

Contrary to the City's assertion, past practice supports the Union's position. The City cited nine incidents which it claims support its position because more senior officers were shifted ahead of a less senior officer. In each instance the move occurred because the less senior officer had DARE duties, the more senior officer was needed to perform Field Training Officer duties for which the less senior officer wasn't qualified, or the more senior officer preferred to move to a different shift. None of these incidents support the City's proposition that it may arbitrarily and involuntarily move a more senior officer to another shift ahead of a less senior officer. The City attempted to argue that Officer Wegner, as a Union officer, should have objected to these occurrences if they violated the contract, but in reality he didn't object because the senior officers wanted to move.

The Union's position would maintain the status quo with respect to the parties' ongoing practice. In no case since the PSLO position was created in 1993 has a more senior officer been involuntarily switched instead of the PSLO. A more senior officer held the PSLO position until 2000, but thereafter more junior officers have held it, yet this circumstance has never before occurred. Here, after the Grievant used vacation on June 7 the City then moved Officer MacFarlan to second shift to cover the open hours. This suggests that MacFarlan could have been moved initially because clearly there were no pressing PSLO duties that day that required his presence. MacFarlan also testified that he did not anticipate there would have been any problems had he been switched.

The City presented evidence on the importance of the PSLO, which the Union concedes, but the patrol officer's work is also extremely important, as evidenced by the minimum staffing requirements set for the position. There is no such requirement for the PSLO and, in fact, when there are manpower shortages, minimum staffing for patrol officers takes precedence over the PSLO position. The record shows that this has occurred on 9 occasions with Officer MacFarlan alone. When MacFarlan has been sick or on vacation, however, the PSLO has not been replaced. MacFarlan testified that his PSLO duties can usually be shifted or rescheduled, making it possible for him to change shifts if need be. When the work schedule is made out, the PSLO's particular duties are only taken into account when he has DARE responsibilities.

After being told of his shift change, the Grievant asked MacFarlan if he had anything pressing happening that day. Only after MacFarlan told him he did not did the Grievant approach management about a change. Had there been an emergency or some necessary activity occurring, there would not have been a grievance. It is the fact that there was no justification for not moving MacFarlan that caused the problem.

It is a great advantage to the City that it can switch officers' shifts on 24 hours' notice without having to pay overtime or premium pay despite the inconvenience to the officers involved. The only restriction on this power is that the shifting must be done according to seniority. Had the Chief not wanted to move MacFarlan, he also had the option of offering overtime to other officers to cover the shift, which he did not do. If having the PSLO on duty was of critical importance, this is what the Department should have done.

### **The City**

The City asserts that the panel's authority is limited to strict interpretation of the contract and that the burden of proof as to any violation is on the Union. The contract contains a broad reservation of rights clause, so the Union must clearly show that the City's authority was otherwise abridged in the contract in order to prevail. Ambiguity in the language requires that the grievance be denied. The grievance refers to Section 21.04, which indicates that seniority applies to shift schedules, among other things, "...as provided in other articles of this Agreement." The grievance does not refer to Article IV, dealing with work schedules and Section 21.04 conveys no independent rights, so the grievance is fatally flawed and should be dismissed.

Even were Article IV to be considered the grievance should fail because Section 4.04 contemplates that the PSLO will work flexible schedules to carry out their assigned duties to avoid overtime. Further, Section 4.04 is expressly stated to not take precedence over Section 4.01(b), which sets the schedules of the Detectives, Police Administrative Assistant and Clerk-Typist. Nothing is mentioned about Section 4.02, which refers to Patrol Officers. Therefore, under the doctrine that "expressing one thing excludes all others," it should be concluded that Section 4.04 is not subordinate to Section 4.02.

Section 33.01 provides for written amendments to the contract. The parties amended this contract in writing by a side letter which states that the schedule of the PSLO shall be set by the Chief "...to most effectively fulfill the function of the position." Thus, the Chief was permitted to conclude that the PSLO should not have been rescheduled on June 7, 2004.

The Grievant acknowledged that there are circumstances that take precedence over seniority in handling schedule changes, such as training. Thus the concept of "seniority prevails" is conceded to have exceptions and that until the contract is amended to state otherwise, it should be construed as written.

Past practice also supports the City. Assuming that the language is deemed to be ambiguous, past practice of the parties can be used to determine its intended meaning as long as it is 1) unequivocal, 2) clearly stated and acted upon and 3) readily ascertainable over time as a fixed and established practice of the parties. (citations omitted) Both Sgt Lehl and Lt. Horvath testified that the practice here has been applied by the parties without exception for over a decade. Officer MacFarlan also testified that he was aware of the practice and that it had always been so. The City produced nine examples of the practice since 2001, alone. The schedules were published for everyone to clearly see. The Grievant, as a Union officer, should be aware of the scheduling and might well wonder why no complaints were ever raised over the circumventing of seniority in shifting schedules. Thus, the practice demonstrably meets the criteria set forth above and should be acknowledged as binding.

The City also cites equitable considerations in its favor. To counter any emotional appeal based on the Grievant's motivations in wishing to be at his son's baseball game, the City points out that the PSLO is a very important position and the community's welfare will not be served if the PSLO cannot perform his duties because other officers don't want their shifts altered. Students face many crises on a day to day basis and the presence of the PSLO may be critical to a young person, which is why specific language was placed in the contract reserving scheduling authority over the position. Here, the Grievant has consistently put his own interests ahead of the Department. He gave up his sergeant rank, after the City had made a significant investment in his training, because he did not want to work second shift. However, he will work second shift if he is paid overtime, indicating his motivation is monetary. Here, after he was switched he took vacation in order to force the City to move the PSLO to avoid a shift shortage. These factors should not be lost on the panel.

### **The Union in Reply**

The Union denies that there is a practice as stated by the City. The examples cited by the City do not support its argument. In the cases where more senior officers were moved over less senior it was because they preferred the other shift, not because they were involuntarily forced, as asserted by Sgt. Lehl. As the evidence indicates, schedule shifts are handled by seniority and the less senior PSLO is moved before more senior officers unless he has DARE officer responsibilities.



The Union also denied the City's assertion that Section 21.04 does not convey any rights simply because it refers to other provisions of the contract. Section 21.04 clearly indicates that seniority applies to shift schedules, meaning that where shifts are to be changed seniority will control. The reference to other sections merely directs the reader to the specific sections where shift schedules are set forth. Shift schedules are important rights, which is why they are protected by seniority, and the City erred in not assigning the junior PSLO to second shift on June 7.

The City mischaracterized the testimony of Officer MacFarlan. He testified that he expected to be moved on June 7 and wondered why he wasn't, which is consistent with the fact that he has been switched 7 or 8 other times while working as PSLO. The only thing the scheduler ever asked him about was DARE duties, Not PSLO duties.

Finally, the Union does not dispute the importance of the PSLO position and supports its role in the community. Historically, however, the PSLO has been moved when there are necessary shift changes. Further, there were no special circumstances that day that would have prevented the PSLO from being moved. The City attempts to paint a picture of dire consequences if the PSLO is not present at the schools, but the record does not support this. Further, the attempt to paint the Grievant as being a bad employee is untrue and he should not be maligned for exercising his contract rights.

### **The City in Reply**

The Union is wrong in asserting that Section 21.04 clearly states that seniority controls in shift change decisions. Section 21.04, standing alone, confers no rights on employees without reference to other sections. Further, it refers to "shift schedules," which means the normal schedules set forth in Article IV and has no bearing on temporary assignment changes.

There is also no evidence to support the Union's argument that in the past when senior officers were moved it was voluntary. The Union states that the officers preferred to move, but there was no testimony to that effect. The Union could have called the officers in question to testify, but did not. The testimony of the supervisors who made the changes was that they did not inquire about the officers' preferences in making the changes, but simply assigned the officers as needed. Additionally, in no case was the PSLO moved, regardless of seniority, indicating the past practice that the PSLO is not considered in making shift changes.

Finally, the Union argues for the application of strict seniority in this case, but then acknowledges exceptions to seniority for emergencies, heavy demand, or training. There is no reference to any exceptions in the contract, nor is there any rule that employees cannot be moved off their shifts temporarily. Further, in addition to the reasons cited above, preserving the PSLO in the schools is another good justification for shifting other officers. The PSLO position is important and it is not a sufficient counter to simply say the taxpayers should bear the additional financial burden of paying overtime. The City's action was justified and the grievance should be denied.

## DISCUSSION

The Union's position is fundamentally that Section 21.04 of the contract specifies that seniority applies to shift schedules, that on June 7, 2004 the Grievant had his shift involuntarily changed instead of a less senior Patrol Officer (who happens also to be the Police School Liaison Officer) and that this action on the City's part was, therefore, a violation of contract. It asserts that this event was anomalous and that in the past no senior officer has ever been involuntarily moved instead of a less senior officer, except in unusual circumstances, such as training or the need for a Field Training Officer on another shift. Thus, the Union further asserts that the practice of the parties supports its interpretation of the language.

The City maintains that the grievance is procedurally flawed in that the contract requires grievances to state with specificity the contract provision allegedly violated and that Section 21.04 does not create any seniority rights except by reference to other sections not referenced in the grievance. Substantively, the City asserts that the seniority language deals with normal work schedules, not temporary assignments, and argues on its own part that the past practice supports its position. It also cites other contract language and an attached side letter to bolster its position that the PSLO position was intended to be exempt from the regular shift assignment procedures and that the City was within its management rights in acting as it did.

The procedural argument is based on Section 26.03, which states: "When a grievance is required to be in writing, it shall state the specific provision or provisions of the Agreement alleged to have been violated." Section 21.04, cited in the grievance, states: "Seniority shall apply in promotions, transfer, shift schedules, layoffs, recall from layoff and vacation scheduling as provided in other articles of this Agreement." The City points out that shift schedules are set forth in Article IV, which is not referenced in the grievance and asserts that the omission requires that the grievance be dismissed. Technically speaking, the City is correct that the grievance should have referenced Article IV, but under the circumstances, this oversight does not require dismissal of the grievance.

Section 26.03 is essentially a notice requirement. That is to say, its purpose is to make sure that the grievance spells out the alleged violation with sufficient detail that the City, as well as the Union, clearly understands the basis for the grievance. So, in this case, the grievance being about seniority and shift preference, the grievance should have referenced those provisions addressing seniority and shift scheduling. In this way the City would know that it needed to defend its actions based on the language of those provisions. It does not automatically follow, however, that an omission of such a reference in a grievance requires its dismissal. As a general proposition, this provision puts the Grievant on notice that he is required to state his claim with sufficient clarity to adequately inform the Employer of the contractual basis for the alleged violation. If he fails to do so, he is at risk that the benighted Employer may raise the defense of surprise at the arbitration and claim prejudice. Thus, such a remedy might be appropriate in the rare circumstance where the omission truly left the Employer in the dark about the basis for the grievance and thus unable to mount an effective

defense, but that is not this case. Here, the record shows that the parties were all well aware of the relevant contract provisions bearing on this matter and there was no surprise. While the oversight was a technical violation of the grievance procedure, therefore, it was a harmless error and not one warranting the dismissal of the grievance.

Substantively, the relevant provisions are found in Article IV and Section 21.04 of the contract. Article IV sets forth the work day and work week for all bargaining unit personnel. Section 4.01 addresses the schedule of Detectives, Police Administrative Assistants and Clerk-Typists. Section 4.02 addresses the schedule of Patrol Officers and Communication Officers, including the PSLO, who is classified as a Patrol Officer. Additionally, Section 4.04 provides for flexible scheduling for Detectives and the PSLO, but limits its application by subordinating the provision to Section 4.01B., which states that Detectives schedules are determined by the Chief in order to most effectively perform the position functions. There is no corresponding reference to Section 4.02B., which sets forth the shift schedules for Patrol Officers. Section 21.04, as previously stated, specifies that seniority shall apply to shift schedules.

Language is ambiguous when it is susceptible of more than one reasonable interpretation, which is the case with Section 21.04. It states: "Seniority shall apply in promotions, transfer, shift schedules, layoffs, recall and vacation scheduling as provided in other Articles of this Agreement." The promotion and transfer language is contained in Article XXIII, which provides that the filling of vacancies between employees posting for the position shall be based on qualifications and seniority, with seniority prevailing in cases of relatively equally qualified candidates. The layoff and recall language is found in Article XXII, which provides for layoff by inverse seniority, provided the remaining employees can do the necessary work, and recall in reverse order of layoff. The vacation language, found in Article IX, states that vacation schedules are subject to approval by the Chief, but that seniority "will be respected in the selection of time for vacations." The work schedule language in Article IV describes no process for determining shift assignments and makes no reference to seniority whatsoever.

What emerges is a hodgepodge where seniority is but one factor of varying significance depending upon the situation. With promotions and transfer, qualifications apparently control and seniority is the tie breaker where qualifications are relatively equal. In layoffs, seniority is the primary consideration, but may be circumvented depending on the ability of the remaining employees to do the necessary work. In recalls, seniority controls. In vacation selection, seniority is to be "respected," but the ultimate discretion lies with the Chief, depending on manpower needs. In scheduling shifts there is no guidance as to what role seniority plays, nor any indication as to whether the term "shift schedules" refers to selection of normal shifts, temporary assignments to other shifts, or both.

Faced with this ambiguity, it is necessary to refer to extrinsic evidence to determine what meaning the parties have attached to the language. One of the principle tools used by arbitrators to determine how the parties have interpreted ambiguous language is through past practice. In other words, how the parties have applied the language over time can be a strong

indicator as to the meaning they give it. To have binding effect, a past practice must have certain characteristics that make it possible to define with specificity and provide sufficient assurance that the practice is one that has been recognized and accepted by both parties. Thus, it must be possible to clearly identify what the practice is and there must be indicia that it has been understood, acknowledged and consistently applied over time by the parties.

Here, Sgt. Rodney Lehl, who handles Department scheduling, testified that second shift vacancies are filled through the following progression: the least senior Patrol Officer on third shift is moved to second shift, unless third shift is at minimum staffing level; if so, then the least senior Patrol Officer on first shift is moved to second shift, unless first shift is at minimum staffing level; if first shift is at minimum staffing level, the PSLO is placed on Patrol Officer duty and works either first or second shift, depending on whether or not he is more or less senior than the least senior first shift Patrol Officer. He testified that he has followed this practice since he took over scheduling in 2002. Lt. Thomas Horvath testified that he was responsible for scheduling prior to 2002 and followed the same practice as Lehl. Joint Exhibit #13 represents Department records of nine instances since 2002 when more senior officers than MacFarlan were moved to different shifts to cover shortages and MacFarlan was not moved from his position as PSLO. MacFarlan testified that he has been moved from his PSLO position to shift duty in the past to cover shortages. He acknowledged, however, that when the PSLO is moved it is because there is already minimum staffing on the other shifts.

The Union argues that the nine instances can be distinguished because the PSLO, who was least senior, had DARE duties which take precedence, or was unable to perform the needed work, such as acting as Field Training Officer. In other cases, the PSLO didn't move because the more senior officer wanted the shift change. Unfortunately for the Union, the record does not support this theory. Specifically, the notion that more senior officers were moved ahead of MacFarlan because that was their preference is pure speculation. There was no testimony to this effect from the officers involved and Lehl did not indicate that individual preference played any part in his decisions regarding temporary shift changes.

The Union also suggests that the City's decision was arbitrary because it did ultimately move MacFarlan after the Grievant took vacation on June 7, indicating that there was no reason the PSLO could not have been moved in the first place and also that the PLSO is, in fact, moved to shift duty, contrary to the City's description of the practice. It appears, however, that the Grievant's move to second shift created a minimum staffing situation on first shift, so when he took vacation the PSLO had to be placed on shift duty according to the progression described by Lehl. Because MacFarlan was less senior than the least senior remaining first shift officer, he was moved to second shift.

The picture that develops, therefore, is that the City has, since 1993, placed high priority on the PSLO position and its role in the schools. This is reflected by the reference to the PSLO in the flexible scheduling language of Section 4.04, as well as the Letter of Agreement dated August 31, 1994, which established the PSLO's work day and work week as conforming to the school schedule and gave the Chief discretion to modify the PSLO's

schedule, as needed, to most effectively fulfill the requirements of the position. In order to maintain the presence of the PSLO in the schools, the Department has developed a system for filling shift vacancies that avoids moving the PSLO, except as a last resort. Seniority is used in determining which officers are moved, but, as in the other areas referred to in Section 21.04, seniority is but one criterion. Thus, in ordinary situations seniority controls, but under some circumstances (i.e., if application of seniority would reduce staffing levels below minimum, or if a Field Training Officer is needed, or if officers are in training, or if application of strict seniority would require moving the PSLO) seniority is subordinated to other factors. Here, on the day in question there was a minimum staffing situation on third shift, but not on first shift. Therefore, according to the practice as described by Sgt. Lehl, the least senior Patrol Officer on first shift, the Grievant, should have been moved to second shift, which he was. Further, since there was not a minimum staffing situation on first shift it was unnecessary to move the PSLO and the relative seniority between the Grievant and Officer MacFarlan was never an issue. What occurred on June 7, 2004, therefore, was consistent with the longstanding practice of the parties and was not a violation of the contract.

For the foregoing reasons, and based upon the record as a whole, I hereby enter the following

**AWARD**

The City of Hartford did not violate Section 21.04 of the Collective Bargaining Agreement when it moved Officer Russ Wegner to second shift on June 7, 2004. The grievance is dismissed.

Dated at Fond du Lac, Wisconsin, this 26th day of October, 2005.

John R. Emery /s/

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John R. Emery, Arbitrator

