BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

EAU CLAIRE PROFESSIONAL POLICE OFFICER'S ASSOCIATION

and

CITY OF EAU CLAIRE

Case 268
No. 64799
MA-13020

Appearances:

Gary Gravesen, Bargaining Consultant, WPPA/LEER, 16708 South Lee Road, Danbury, Wisconsin 54830, for Eau Claire Professional Police Officer's Association, referred to below as the Association.

Stephen L. Weld and **Ryan J. Steffes,** Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, for the City of Eau Claire, referred to below as the City or as the Employer.

ARBITRATION AWARD

The Association and the City are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint Richard B. McLaughlin, a member of its staff, as Arbitrator to resolve a grievance filed on behalf of "Local #9." Hearing on the matter was held on August 23, 2005, in Eau Claire, Wisconsin. The hearing was not transcribed. The parties filed briefs by October 3, 2005.

ISSUES

The parties did not stipulate the issues for decision. The Association states the issue thus:

> Did the City of Eau Claire violate the existing labor agreement in force and effect as well as mutually accepted past practice when it refused to compensate officers called in to report for work from the time of the call-in?

If so, what is the remedy?

The City states the issues thus:

Is the City violating Article VI of the agreement by not compensating officers for travel time when said officers are called in to work outside of their regular hours?

If so, what is the remedy?

I adopt the Association's statement of the issues as that appropriate to the record.

RELEVANT CONTRACT PROVISIONS

. . .

ARTICLE V – HOURS OF WORK

. . .

Section 5.06 – Team Vacancies/Call-in Procedure – Patrol

The following steps shall be taken by team commanders to fill sudden and unexpected vacancies . . .

Section 5.07 – Team Vacancies/Call-In Procedure Detective Division

A. Overtime within the Detective Division shall be administered as specified in Section 5.06 with the following exceptions:

. . .

2. Call-In – Non-anticipated investigative assignments that arise in off-duty hours.

Detective Division investigators shall be called in, by seniority, according to Division assignments as the case(s) dictate (general, white collar/evidence, youth aid).
If the overtime call-in relates to an investigation already assigned to a Detective Division investigator(s), or to a matter in which the investigator has special knowledge or expertise, that investigator(s) shall be the first officer(s) called. If additional Detective Division investigators are needed, they shall be called in according to departmental seniority.

B. Call-in and weekend duty assignments are subject to the two (2) hour minimum as specified in Section 6.02. . . .

ARTICLE VI – OVERTIME/PREMIUM PAY

Section 6.01 – Beyond Regular Work Hours

All officers shall receive overtime pay, at the rate of time-and-one-half for all hours worked in excess of their normal workday, as specified in Article V.

Section 6.02 – Call-In Pay

Any officer who is ordered to report for duty at a time other than his/her regular tour of duty including court time by the Chief of Police or his/her designee and more than one (1) hour prior to and contiguous with the officer's regularly scheduled shift shall be compensated at a minimum of two (2) hours at time-and-one-half for the performance of that assignment. . . .

BACKGROUND

Todd Trapp filed the grievance, dated February 18, 2005 (references to dates are to 2005, unless otherwise noted), concerning a call-in on February 9. The grievance form alleges, "Members of the local have been recently told that unlike the past practice followed for over the last 12 years, the call in time would not start until the officer arrived at headquarters." The grievance questions the change of practice, and specifically "the 22 minutes it took (Trapp) to get to the department" on February 9. The form alleges that "all of (Trapp's) supervisors in the past – Sturgal, Kassing, Page and Golden" informed Trapp that overtime starts when the officer "received the telephone call requesting" the officer to report.

The "have been recently told" reference from the grievance relates to a morning meeting in the Detective Division on February 1. Gary Foster, the Deputy Chief, told officers that overtime for a call-in starts when the officer reports to the department or to the scene requiring police presence. Foster made this announcement because he understood that Trapp took the position, on behalf of the Association, that an officer should claim overtime from the time of receiving the phone call summoning the officer in from off-duty status. Foster's announcement is referred to below as the Directive.

The evidence concerning the asserted practice is best set forth as an overview of witness testimony.

Alec Christianson

Christianson has served as a City patrol officer for fourteen and one-half years. He has served in the Detective Division, on the Tactical Response Team (TRT), and on the Special Response Group (SOS). He "was told" to claim compensation from the time he received a telephone call summoning him to duty from off-duty status. He stated on direct examination that he has uniformly filled out time sheets based on that understanding, although when asked on cross examination if that practice governed call-ins for detectives, he responded "Generally, yes." He was not sure who initially informed him of the practice, although he believes it occurred when he asked a supervisor how to complete a time sheet, which included a call-in. Such time sheets state total hours worked, broken down to the nearest one-tenth. They do not specifically state start and end times. He does not claim travel time from a call-in. Rather, the compensable time ends with the debriefing at the close of a call-in.

Donn Adams

Adams has been a patrol officer for twenty-seven years. He has filled a number of assignments, including his current assignment in the Detective Division, the TRT, the Drug Unit and the SOS. Prior to the Directive, he had submitted time sheets that assumed compensation starts from the time an officer receives a phone call to report for duty from off-duty status. Adams has shared this view with other Detectives. None have disputed it.

He noted he "has no idea" if all unit officers claim travel time when they fill-out time sheets including an overtime call-in. "Several" officers have informed him that they do. He believed supervisors have affirmed this practice, including Al Spindler and Dave Backstrom, but he could not recall specifically who first informed him to include travel time to headquarters as compensable time. He did not include travel from the station after an overtime call-in as compensable time.

Paul Becker

Becker, currently a Detective, has been with the City for nine years. He has filled a number of assignments, including the TRT and the Evidence Team. He has been called in on overtime as a Detective and as a TRT member. When this happens, he fills out a time sheet, which typically treats his receipt of the phone call summoning him to duty as the point at which compensation starts. He could not recall how he was first informed to fill out time sheets in that fashion. He does not include travel from the station to his home after a call-in as compensable time. Because he has had to complete personal activities before leaving home on a call-in, he may claim compensable time from the time he leaves his home.

Todd Tollefson

Tollefson was hired by the City on January 10, 1983. He has filled a number of assignments, including Detective, the SOS, and Crisis Negotiator, a position associated with

the TRT. He believed he was called in from off-duty status perhaps twenty-five times over a four year period as a Detective. He could not recall specifically how he filled out his time sheets while a detective, but did recall that on the first night of the first Gulf War, Sergeant Sturgal called him in from off-duty to report to a death scene. Sturgal informed him that Sturgal would pick him up at his home. When Sturgal came to Tollefson's home, and Tollefson got into the squad car, Sturgal told him "Come on, we're on the clock, let's get going." This experience was unique to Tollefson's experience, and the balance of his call-ins resulted from a telephone call from a superior officer asking Tollefson to report to the station or to the scene demanding police presence.

Tollefson served on the bargaining team which negotiated the current labor agreement. At no point in the negotiation process did the City seek to establish the point at which compensable time starts when an officer is called in from off-duty status. He noted that the City has never taken any action to disavow the practice noted in the grievance form. He could not, however, recall if detectives as a group claimed overtime from the time they left their residence to respond to a call-in.

Roughly one and one-half years ago, Tollefson was called in early with the TRT. He filled out a time sheet claiming compensation from the time he received the phone call to report. A supervisor informed him that this was not correct, since he could not claim overtime until he came "through the door" of the department. Tollefson asked TRT members if they agreed, and when informed they did not, he resubmitted his time sheet, which was then approved. The approval did not come from the supervisor who had originally denied the time sheet. Tollefson, however, consulted the supervisor who had originally denied his request, and the supervisor relented when informed of the response of TRT members and the other supervisor. When Tollefson discussed the matter with TRT members, they asserted this practice differed between divisions.

Todd Trapp

Trapp has served as a City patrol officer for twenty-one years. He currently serves as a Detective, but has filled a number of assignments including the SOS, the Evidence Team and the Accident Reconstruction Team. He is President of Local 9.

In his view, the practice asserted in the grievance began no later than 1994, the year he came to the Detective Division. In his view, members of the Detective Division, the TRT, the Evidence Team, and the Accident Reconstruction Team all received overtime from the time of the phone call summoning them to report from off-duty status. Patrol officers would receive such overtime only to the degree they filled those assignments. He believed hundreds of instances preceded the change noted by the Directive. Trapp served on the bargaining team which created the current agreement, and the City never made a proposal to disavow the practice. Neither party discussed it at the table. He did not know when the City dropped its residency requirement, but believed no more than twelve of the unit's seventy-nine officers live outside of the City. One of those officers lives roughly forty-five minutes from the City.

Trapp stated that Sergeant Page once called his home to summon him to report from off-duty status. Because Trapp's wife sets their clocks to reflect child care needs rather than the exact time, Trapp asked Page to tell him what the accurate time was. Page did so, affirming that Trapp was on the clock from that point. Although time sheets are generic in their designation of total overtime hours, unit officers list case numbers that permit a supervisor to check claimed hours against the CAD system or Radio Logs. From his perspective, supervisors have long understood that the TRT treats the receipt of the telephone call summoning an off-duty officer in as the start of compensable time. He could not recall specific discussions with his supervisors on this point, but believed such discussions had occurred. He thought that Sturgal may have been the first supervisor to inform him of the practice. From his perspective, compensable time ended when an officer left the department after a call-in, to return home. This reflected that an officer was obligated to report directly to the department when summoned, but could attend to personal errands on the way home.

Gary Foster

Foster has supervised the Detective Division for roughly twenty years. He has worked more than thirty-two years in the City's police force. Supervisors call-in Detectives from off-duty status based on seniority. A Detective can decline the call-in, but if there is insufficient response, the supervisor will fill the need in reverse order of seniority. A Detective rarely reports directly to the scene of an incident, does so only on the order of a supervisor, and for the typical call-in first reports to the department.

It is difficult for a supervisor to determine when an officer initially reports to the police station on a call-in. Call-ins typically reflect a crisis situation, which permits a supervisor little time to attend to time recording issues. Thus, the time reporting system is an honor system, in which supervisors rely on the accuracy of the time sheets submitted by officers. In his view, departmental policy has, throughout his tenure, been that overtime starts from the time the employee arrives at the department in response to a call-in. That policy has never been put in writing and is so well-established that it has never been addressed at a management meeting. The grievance prompted discussions between Foster and sergeants regarding the practice asserted by the Association. None of the sergeants Foster spoke to was aware it. Foster discussed the matter with Sturgal, who advised Foster that he had never advised an officer to claim overtime from the time of receiving a phone call summoning the officer in from off-duty status. While a unit member, Foster claimed overtime from when he arrived at the department or at the scene requiring police presence.

Supervisors are required to approve time sheets, but rely on the honesty of the reporting officer. Call-ins are frequent, numbering perhaps two hundred per year. Time sheets flow from the reporting officer to an immediate supervisor, then to the Chief's Administrative Secretary, then to City payroll. Time sheets may wait a shift or a couple of work days before being signed by a supervisor.

He acknowledged that supervisors can be paid from the time they receive a call-in to work. They can call-in overtime and often do so from home. They also have the discretion to report directly to a scene requiring police presence. In his view, however, the Directive changed that and, in any event, such overtime should not include travel time.

Steve Page

Page replaced Sturgal, and has served as a Sergeant in the Detective Division for about three years. He has also served the City as a Patrol Sergeant and as a unit member. While a unit member, he claimed overtime on a call-in from when he arrived at the department or the scene requiring police presence. No other unit member advised him that they followed a different practice. Page could not recall ever telling an officer that the officer was "on the clock" from the time Page phoned the officer. Officers did ask him the correct time when he called them, but Page did not view this as a request for the time when pay status began. He relies on the honesty of officers in submitting time sheets, and would check a time sheet against the CAD System or Radio Log only if he had a reason to. He had no knowledge of any employee, either a unit member or a supervisor, claiming overtime from the time of the phone call initiating the call-in.

Jerry Matysik

Matysik has served as the City Police Chief for roughly two years. He started in the department as a patrol officer on January 10, 1983. Neither as an officer nor as Chief was he aware of any claim for travel time until the filing of the grievance. He did not doubt that the City had paid officers for such travel time. To the extent the City did so, it was without realizing that the underlying time sheet reflected a claim for travel time or any time other than that at the department or at a scene requiring police presence. He did not think such time sheets reflected fraud or malice, but a fundamental misunderstanding of the compensation system. From his perspective, such misunderstanding grows within a work group and can live a life of its own before command staff learns of it.

Steve Kassing

Kassing served in the City police force for thirty-one years, prior to his retirement in June of 2002. At his retirement, he was a Sergeant in the Detective Division. Kassing believed as a supervisor and as a unit member that overtime starts when an officer arrives at the department or at a scene requiring police presence. He claimed overtime from his home while a supervisor, but only when he called in officers on overtime from his home phone. He thought it might be possible that he had approved overtime from the time he phoned an officer to report in from off-duty status. He acknowledged an officer must report directly into the department in response to a call-in, and that the officer could attend to personal business on his return home from the department after the call-in.

Dale Peters

Peters is the City's Director of Human Resources, Purchasing and Risk Management. To his knowledge, the City does not pay any employee for overtime except from the time the employee reports to work at the department or at a scene requiring City presence. He was unaware until the arbitration hearing that supervisory personnel claimed overtime from the time of receiving a phone call summoning them to report in from off-duty status. To his knowledge, travel time payment has never been discussed during collective bargaining.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES' POSITIONS

The Association's Brief

After a review of the evidence, the Association contends that "it has a past practice dated back to at least calendar year 1994 that once an off-duty officer is called in to report to work, the officer immediately goes on the clock pursuant to the terms of . . . Article V and Section 6.02". More specifically, the Association notes that the binding force of past practice rests on "two tests; mutuality and the test of time." Testimony of experienced officers establishes that "bargaining unit members performing work in collateral assignments of detective, evidence technician, special operations, accident reconstruction, and tactical response team" receive compensation from the time of a call out. Sixty to seventy percent of the bargaining unit perform these collateral assignments.

The testimony of supervisors underscores this. Foster's testimony that the practice has never existed flies in the face of practice regarding supervisors, who "receive compensation from time of receipt of the call out". Peters' testimony that he was unaware of the compensation has no bearing on the point, since the testimony of supervisors establishes it is accepted practice. Beyond this, consistent testimony from a variety of officers establishes that Foster's testimony contradicts it. Foster's e-mail summary of a discussion with Sturgal is hearsay, which deserves "no weight or credibility". Beyond this, uncontradicted testimony establishes that the City has never repudiated the practice and has never attempted to address it in bargaining.

That City supervisors worked their way up through the bargaining unit establishes that their testimony on when compensation begins on an off-duty call out has no credibility. The same supervisors approve the time sheets of unit members, who consistently claim overtime. That the City offered no evidence of a denial of unit members' overtime requests underscores the solidity of the Association's view of governing past practice. The time sheets include case numbers, so there is no question that the requests were clear. Trapp even testified that Page told Trapp that he was on the clock as soon as he received a supervisor's request to report in from off-duty status. There is no evidence that unit members filled in their time sheets in an

other than candid and honest fashion. Thus, the evidence establishes the mutuality of the practice of paying officers from the time of receiving a supervisor's call to report in from off-duty status. The evidence also establishes the practice has been "in place since on or before calendar year 1991."

As the remedy appropriate to the City's improper attempt to abrogate a binding practice during the term of an agreement, the Association requests "that the Arbitrator sustain the grievance and order the City . . . to compensate officers, from the time of the call out, for all call outs from ten days prior to the date of the grievance, February 9th, 2005, to the date of the award, and prospectively, until the parties collectively bargain the impact of any potential changes in the current past practice in force and effect."

The City's Brief

After an extensive review of the evidence, the City contends that the unambiguous language of Section 6.02 demands that compensation begins when an officer "reports for duty" rather than when an officer receives a phone call to report for duty. "Reports for duty" demands the officer's presence at the station or at the scene demanding police presence. The inclusion of "court time" in Section 6.02 underscores this. There is no dispute that court time is triggered by actual reporting for duty rather than receipt of a subpoena or leaving home.

Arbitral precedent makes the binding force of past practice turn on evidence of mutual agreement, which should be unequivocal, clearly enunciated and acted upon and readily ascertainable over a reasonable period of time. The evidence supports none of these criteria. Association witnesses "could not agree on how to count pre-arrival call-in time", could not "name any supervisors who had endorsed the practice, and could not agree on how wide-spread the alleged practice was." Thus, the evidence of practice is equivocal.

Nor does the evidence show a clearly enunciated practice. At best, the Association's evidence establishes that the City could have verified unit members' practices on the point. This does no more than show the City relied on the honesty of its employees' reporting practices. Nor does the evidence manifest uniformity. Trapp's testimony asserts the practice dates from 1994, but Trapp's employment began ten years earlier. Nor did any of the Association witnesses manifest certainty on how many unit members shared the Association's view. What the evidence reliably shows is that the City disavowed the asserted practice as soon as it was aware of the Association's view.

Against this background, the evidence will not support a conclusion that the practice existed over a reasonable period of time. No supervisor affirmed the Association's view, even though the grievance asserts the practice had supervisory approval. Foster disavowed the view as soon as he was aware Trapp had advised another unit member of it. Beyond this, the evidence shows no reason to believe the City would agree to the Association's view. That view rewards officers for living outside of the City, yet the Association and the City "recently negotiated elimination of a residency requirement." Nor is there any clarity on how to

compensate officers, since Association witnesses could not agree on when the compensation started or ended. Against this background, the evidence will not support any basis to sustain the grievance, either under governing contract language or relevant past practice. The grievance must, therefore, be denied.

DISCUSSION

The Association's view of the issue on the merits is broadly stated, and highlights the role of past practice. Resolution of the issue turns on the application of Articles V and VI.

Article V establishes work hours and Article VI governs premium payment for work performed outside of normal hours. Section 6.01 establishes the overtime premium "of time-and-one-half for all hours worked in excess of their normal workday", while Section 6.02 establishes a minimum pay out for hours worked outside of an officer's "regular tour of duty including court time", when the officer is "ordered to report for duty" by the Chief or his designee. The grievance straddles the two sections of Article VI, depending on the amount of time required by a call-in.

The Association's use of past practice is understandable because the governing contract language cannot be considered clear and unambiguous. Article V does not specifically establish when compensable time starts for call-in purposes. Either party's view is a plausible reading of Article VI. If the "hours worked" reference of Section 6.01 is read literally, it could exclude the Association's view, but such a view makes it difficult to understand when compensable time starts at the department, or when compensable time starts in those cases where an officer reports directly to a crime scene or cases such as that related by Tollefson, where a superior officer picked Tollefson up at home to report to a death scene.

Past practice and bargaining history are, in my view, the most persuasive guides to resolve contractual ambiguity, since each focuses on the conduct of the parties whose intent is the source and the goal of contract interpretation. With one exception, evidence of bargaining history is unhelpful. Witnesses for each party noted that the other has never disavowed the asserted practice or offered proposals to clarify the provisions noted above. These arguments, however, beg the question posed by the grievance. There was no reason for any contract proposal until it became clear that the Association and the City did not share a common view of "hours worked".

The exception to this prefaces the examination of past practice. That the parties approached the bargaining table with no reason to amend the disputed provisions of Articles V and VI explains why the Association made no proposals on the point. However, this cannot obscure that the Association's view of past practice makes the City's bargaining conduct impossible to understand. The City gave up a residency requirement during collective bargaining. If it did so knowing of the practice asserted by the Association, then it agreed to a system that rewards officers to the degree they live outside of the City.

This poses the issue of past practice. The binding force of past practice rests on the agreement manifested by the parties' conduct over time. As the parties note, arbitrators state this principle in varying fashions.

Under any statement of the criteria defining the binding force of past practice, the evidence fails to establish anything beyond the parties' conflicting positions. The Association claims that long-standing practice establishes that an officer can claim overtime from the point of receiving the telephone call summoning the officer to report from off-duty status. Support for this, however, breaks down on party lines. Association witnesses affirmed the asserted practice, while City witnesses denied it. Each testifying witness, with the exception of Peters, has experience as a unit officer. There is no reason to doubt that any witness relayed anything beyond their honest statement of personal practice. The testimony is, however, irreconcilable. Christianson, Adams, Becker, Tollefson and Trapp claim overtime from the receipt of a supervisor's summons. While in the unit, Foster, Page, Matysik and Kassing claimed overtime from the time of reporting to the department or scene requiring police presence.

Testimony fails to establish that the asserted practice has supervisory or even unit-wide support. Supervisory staff uniformly denied it. The testimony of the unit witnesses is, at best, tenuous on this point. Christianson noted that Detectives "generally" follow his practice. Adams noted that no Detective he spoke with disputed his view of a call-in, but also noted that he spoke to "several". None of the Association witnesses could recall specifically how they came to understand that overtime started from a supervisory phone call. The asserted support of supervisors rests on hearsay. The Association's objection to the City's use of hearsay to establish Sturgal's view of the matter ignores that two of its own witnesses attributed their understanding of the practice to Sturgal, and two others attributed it to supervisors who did not testify. Either party's view of hearsay on this point is less significant than that the past practice evidence, hearsay or not, mirrors the fundamental dispute on the contract. On balance, the evidence manifests conflict, not the agreement essential to the persuasive force of past practice.

Beyond this, the Association's testimony is inconsistent on what the practice is. Tollefson's recall of his being paid overtime roughly one and one-half years' ago is the strongest evidence of supervisory approval in the record. His recall, however, is limited to the TRT team. Trapp asserted the practice extends beyond the TRT team to the Detective Division, the Evidence Team, and the Accident Reconstruction Team. No other testimony supports this, while Tollefson's, Christianson's and Adams' afford reason to question how widely the view is held among Detectives. Nor is the testimony on the scope of the practice consistent. Becker does not claim time from receiving the supervisor's call if he has to attend to personal business prior to leaving home. This is not reconcilable to the views of other Detectives. Beyond this, it is difficult to reconcile with the commonly expressed view among Association witnesses that travel time from a call-in is not compensable. Becker is the sole witness to acknowledge a split between personal and City business regarding time prior to the debriefing at the close of a call-in. That an employee can attend to personal business on a return from a call-in has no evident bearing on the Association's assertion of the practice. The same honor

system that leaves the split between personal and City business to an individual officer to report on a time sheet would seem to govern any time from the receipt of the phone call summoning the officer in from off-duty status. Association testimony viewed as a whole fails to show a consistent view of how much travel time can be considered compensable.

The assertion that time sheets establish that the practice has survived over time presumes supervisory knowledge which the evidence fails to establish. Each testifying supervisor noted a belief that the time sheets reflected no travel time. Their testimony fails to establish a unit-wide understanding. The Association persuasively notes this may reflect supervisors "circling the wagons." However, this cannot obscure that Association testimony fails to establish a unit-wide understanding. The difficulty is that the time sheets can be expected to reflect no more than the personal practice of an individual officer. As noted above, that practice varies. The assertion that the City could have checked the time sheets against other documentation presumes a reason to do so. Put another way, the assertion that the City should have cross checked the time sheets undercuts the assertion that the parties shared an understanding that compensable time started from the time of the telephone call summoning the officer in from off-duty status. In sum, the evidence fails to establish a past practice that compensable time starts with an officer's receipt of a supervisory phone call.

This means that resolution of the dispute must turn on the language of the agreement, unaided by past practice. The language of the governing provisions of Articles V and VI favors the City's interpretation over the Association's. While the Association's is plausible, the reference in Section 6.01 to "hours worked" favors the City's view. Section 6.02 refers to the "performance of that assignment", which also favors the City's view that the compensation is for work performed. Section 6.02 potentially provides pay for time other than work-time, but does so not through the terms "performance of that assignment" but through the terms "a minimum of two (2) hours". This favors the City's view, since it shows the parties used express language to provide payment for hours other than those spent working.

Beyond this, Section 6.02 makes "court time" eligible for call-in pay. There is no dispute that officers do not claim travel time for "court time", and there is no dispute that "court time" applies to unit officers generally. This supports the City's view, and undercuts the Association's assertion that the travel time benefit is unique to certain Divisions. Nothing in the language of Section 6.01 or Section 6.02 suggests that the parties contemplated applying the overtime and call-in provisions on anything other than a unit-wide basis. Section 5.07 indicates that certain call-in and overtime provisions vary between Patrol and the Detective Division. Section 5.07B, however, incorporates the provisions of Section 6.02. Thus, there is no reason to believe that the overtime premiums of Article VI apply on anything other than a unit-wide basis.

The Association notes that City practice regarding supervisory overtime underscores its view. The evidence regarding the asserted practice with supervisors is no clearer than that regarding unit members. Peters was unaware of any overtime payment for travel time regarding supervisors or unit members. It is impossible to tell whether supervisors have been paid a premium for travel time, and there is no parallel between unit members receiving a call

at home to report for work and the actions of supervisors calling in employees from their home phones. In any event, the link between City practice regarding supervisors and regarding represented employees is tenuous.

In sum, the language of Sections 6.01 and 6.02 favors the City's view over the Association's. Evidence of past practice and bargaining history affords less than determinative guidance regarding that language. Evidence of past practice fails to manifest a common understanding, and in fact mirrors the parties' conflicting views of Articles V and VI. There is no meaningful evidence of bargaining history, but the Association's view of past practice makes the City's bargaining conduct impossible to understand. Against this background, the City's application of Articles V and VI to the grievance is preferable to the Association's.

AWARD

The City of Eau Claire did not violate the existing labor agreement in force and effect as well as mutually accepted past practice when it refused to compensate officers called in to report for work from the time of the call-in.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 30th day of November, 2005.

Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator

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