BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WAUKESHA PROFESSIONAL POLICE ASSOCIATION

and

CITY OF WAUKESHA

Case 161
No. 63688
MA-12676

Appearances:

Jeffrey D. Berlin, Bargaining Consultant, and **Gordon E. McQuillen**, Director of Legal Services, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 340 Coyier Lane, Madison, Wisconsin 53713, for Waukesha Professional Police Association, referred to below as the Association or as the Union.

James R. Korom, von Briesen & Roper, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Suite 700, P.O. Box 3262, Milwaukee, Wisconsin 53201-3262, for the City of Waukesha, 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 Grievance Number 03-223, filed on behalf of the "Executive Board" of "Waukesha #17" of the Association. Hearing on the matter was held on November 1, 2004, in Waukesha, Wisconsin. The hearing was not transcribed. At hearing, the parties waived the application of contractual time limits on the issuance of an arbitration award and mutually set a briefing schedule which reserved a right to discuss whether reply briefs were necessary after the submission of briefs. The parties filed briefs by January 12, 2005, but did not report whether reply briefs would be filed. I issued a series of "tickler" letters between January 28 and May 26, 2005, to determine if replies would be filed and whether the case remained active. Between July and October of 2005, the parties and I exchanged correspondence concerning the status of the case. In a letter dated November 14, 2005, I confirmed my understanding that the case was active and that the record was closed.

ISSUES

The parties stipulated the following issues for decision:

Did the Employer violate the collective bargaining agreement as alleged in the grievance?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 3 – Hours and Workweek

3.01 Employees will work a 5-2, 4-2 schedule . . . A normal workday shall consist of any eight (8) hour shift. . . .

The employee's normal work shift hours shall be distinguished as follows:

Patrol:	1st relief	11:00 p.m. to 7:00 a.m.
	2nd relief	7:00 a.m. to 3:00 p.m.
	3rd relief	3:00 p.m. to 11:00 p.m.

. . .

ARTICLE 5 – Overtime

5.01 Employees will be paid at the rate of time and one-half their normal rate of pay for all hours worked in excess of the scheduled workday . . .

5.02 Employees will be guaranteed a minimum of three (3) hours at the rate of time and one-half (1 ½) for each court appearance outside their normal duty hours . . .

ARTICLE 6 – Authorized Absence

6.01 Sick Leave. It is the intent of both parties to continue the sick leave policy which is presently in existence. . . .

ARTICLE 10 – Previous Benefits

10.01 The City agreed to maintain in substantially the same manner such present benefits which are mandatory subjects of bargaining and not specifically referred to in this Agreement. Such benefits and written policies as may now exist which are mandatory subjects of bargaining are incorporated herein by reference as though fully set forth at length. . . .

ARTICLE 12 – Grievance Procedure

. . .

12.02 Authority of Arbitrator: The Arbitrator shall not have the authority to recommend amendment, modify, nullify, ignore, add to, or subtract from any of the provisions of this Agreement. The Arbitrator shall only consider and make a decision with respect to the specific issue submitted, and shall have no authority to make a decision on any other issue not submitted. . . .

BACKGROUND

The grievance form alleges the City violated "Article 5 and any other applicable contract language" by its handling of an overtime request of Kristen Strohbusch. At the start of the arbitration hearing, the parties entered the following stipulations of fact:

1. On March 1, 2003, Officer Strohbusch was scheduled to work her normal shift from 3:00 p.m. until 11:00 p.m.

2. On March 2, 2003, Officer Strohbusch was scheduled to work her normal shift from 3:00 p.m. until 11:00 p.m.

3. Officer Strohbusch worked her normal shift on March 1, 2003 from 3:00 p.m. through 11:00 p.m., and worked from 11:00 p.m. on March 1, 2003 until 3:30 p.m. on March 2, 2003.

4. Officer Strohbusch put in for four and one-half hours' overtime for 11:00 p.m. until 3:30 a.m. on March 2, 2003.

5. The Employer granted Officer Strohbusch overtime from 11:00 p.m. until Midnight on March 1, 2003.

6. The Employer denied overtime for Officer Strohbusch from Midnight until 3:30 a.m. on March 2, 2003.

7. On March 2, 2003, Officer Strohbusch reported for her normal shift, but only worked until 7:00 p.m. She took sick leave for the hours from 7:00 p.m. until 11:00 p.m. on March 2, 2003.

8. The Union has not supplied the Employer any examples in response to James C. Payne's letter of May 29, 2003, or in response to the October 7, 2004 letter from James Korom to John Parr.

The May 29, 2003 letter referred to in Item 8 above reads thus:

> . . . The facts of the grievance are that Officer Kristen Strohbusch . . . was denied overtime pay for . . . three and one-half hours worked from Midnight until 3:30 a.m. The reason stated was that the three and one-half hour period worked on day two when combined with the four hours worked as part of the regular shift did not exceed the eight hours of straight time allowed for in a regular day.
>
> The union argued that the three and one-half hour period on day two was a continuation of the shift that ended at 11:00 p.m. the previous evening and therefore should have been paid as overtime based on continuous work time. In addition it was argued that the city had counted leave time as time worked for overtime purposes in the past. Therefore, even if the day technically ended at midnight, there was nonetheless over eight hours of "work" time accumulated in day two. The city argued that as the union speculated day one ended at midnight and therefore the three and one-half hour period worked after midnight was part of day two and not day one. This has been a long time practice of the department to use the calendar day as the definition of the "workday". Additionally, it has not been the department's practice to count sick leave as time worked since it is not an accumulated leave type. This lack of accumulation distinguishes it from other leave types such as vacation that are accumulated. Therefore Officer Strohbusch worked nine hours on day one and seven and one-half hours on day two and was paid appropriately in each case.
>
> . . . While it might be possible to dispute the definition of "scheduled workday" to the advantage of either side, it appears that the long-term practice of the department has been to define this as a 24-hour period ending at midnight. Further, it has also been the practice of the department to not define sick leave taken as time worked. The union did not counter examples of these practices that were cited by the department. The facts in this matter are somewhat unique, but examples of similar past situations were pertinent here. Insofar as it is important to uphold the past standards of the department to maintain equity and lacking definitive language to the contrary I find in favor of the department. The grievance is denied.

Payne is the City Administrator. The October 7, 2003 letter referred to in Item 8 above reads thus:

> . . . it appears the Department provided the union with specific examples of prior situations where employees who utilized sick leave on a particular work day did not receive overtime pay for other hours they may have worked on the same payroll day where sick leave was used. According to Mr. Payne's grievance denial letter, the union did not rebut any of that evidence during the grievance process.

> . . . I am requesting . . . any examples of past practice evidence you intend to rely upon in support of Ms. Strohbusch's grievance in this matter . . . I have asked my client to review their records to try to find examples where employees did receive overtime pay on payroll days where they also used sick leave, and they were unable to locate any such examples.

At the hearing, the Association rested its case-in-chief based on these stipulations. The balance of the background is best set forth as an overview of witness testimony.

Kristen Gerbensky

Gerbensky works in the payroll division of the police department. She handles various payroll and scheduling duties. Among her payroll duties, she receives the color-coded forms by which individual officers request either comp time or payment for overtime hours at the close of the shift involved. She enters the data on the forms into a database, typically on the day following the officer's completion of the color coded form. If the database returns a notation that the officer has used sick leave on the date for which overtime is requested, she questions the officer's supervisor because City policy is not to count hours taken as sick leave toward the entitlement for overtime. Her understanding is that overtime entitlement demands more than eight hours of work during a twenty-four hour period which ends each day at Midnight. Her understanding is further that sick leave is unique among paid leave regarding the overtime entitlement. Vacation hours can be applied toward overtime, but sick leave cannot. She refers questions regarding overtime entitlement back to a supervisor because she does not have the authority to grant or deny overtime. Such questions arise perhaps two to three times annually.

The payroll system covers a two week period, and lags actual hours worked by two weeks. Thus, overtime questions may not arise until several weeks after the hours were worked. The City's policy of not counting sick leave hours toward overtime entitlement has been consistent throughout her six-year experience in payroll. Frank DeFranco trained her in the City's payroll system.

The City's practice is consistent regarding the use of sick leave. She found some documentation regarding this practice in a search of City records. In November of 2002, she raised a question regarding an overtime claim of Officer Hoffman. His normal shift was from 11:00 p.m. through 7:00 a.m. He worked a full shift from 11:00 p.m. on November 10 through 7:00 a.m. on November 11. He then reported for training between 3:00 p.m. and 4:15 p.m. on November 11, submitting a request for 1.25 hours of overtime. He called in sick for the shift which ran from 11:00 p.m. on November 11 through 7:00 a.m. on November 12. He worked the shift which ran from 11:00 p.m. on November 12 through 7:00 a.m. on November 13. After an e-mail discussion with John Konkol, Hoffman's direct supervisor, and Wayne Dussault, the Deputy Chief, the City declined to pay Hoffman any overtime for November 11.

She also noted the overtime request of Officer Lichtie, who worked the 1st relief shift in May of 2003. Lichtie took sick leave on the shift which started May 21 at 11:00 p.m. and ran through 7:00 a.m. on May 22. He was called into work at 7:00 p.m. for the shift that was scheduled to begin at 11:00 p.m. on May 22. He submitted an overtime request for May 22, which the City denied. Since the overtime had been paid by the time the City learned of the incident, it deducted the amount from the following pay period.

Gerbensky also noted an e-mail exchange between her and Konkol regarding the overtime request of Officer Kermendy, who was scheduled to work from 3:00 p.m. through 11:00 p.m. on July 31, 2004. Kermendy was called in early and worked from 11:00 a.m. through 3:00 p.m. on July 31, but had to leave work to receive treatment for a non-work related injury. The City paid him four hours of straight time pay and granted him four hours of sick leave.

Although Gerbensky thought such incidents had occurred in the past, she had a reliable "paper trail" only for the incidents noted above. The Association did not grieve any of those incidents.

Frank DeFranco

DeFranco works as an Administrative Supervisor, and has overseen the police department's clerical and computer systems for the past eight years. His predecessor was Kathy Mehling. She trained him as he trained Gerbensky regarding the City's payroll system. Throughout this period, the City has consistently maintained a twenty-four hour payroll day, ending at Midnight and has consistently not counted sick leave toward overtime eligibility. He could recall no specific denials of overtime beyond those noted by Gerbensky. He did, however, query the City's database from January of 1999 through October of 2004 to determine whether the City had paid overtime on any day in which an officer had requested to use sick leave during part of a shift. The query results showed no such payments. The query could not, however, be expected to show overtime paid for hours contiguous to a shift which spanned two calendar days. He could not specifically recall if the City had ever failed to pay overtime to an officer who had worked in excess of eight hours on a single shift.

Neither DeFranco nor Gerbensky can approve or deny overtime requests of police officers. Each, however, reviews payroll records to determine when a question should be raised regarding an overtime request. In the absence of their questions, the computer system will summarily process overtime requests, which can result in improper payments as occurred with Lichtie.

John Konkol

Konkol has served as a Patrol Sergeant for seven years. Prior to that, he served as a unit officer for fourteen years. He estimated that he fields questions from officers on two to three occasions annually regarding the use of sick leave in an overtime claim. Such discussions typically involve younger officers who do not know of City payroll practices. He consistently tells officers that the City will not count sick leave hours toward overtime entitlement. Konkol learned of this practice early in his own employment and did not claim overtime when he used sick leave. Konkol and Strohbusch were called to the same incident on March 1 and 2, 2003. It required each of them to stay until 3:30 a.m. on March 2. Konkol signed the form she filled out to claim overtime. He assumed, however, that she would work her normal shift on March 2. When he later learned that Strohbusch had claimed sick leave for that shift, he informed Gerbensky not to pay the requested overtime. He was sure similar instances had occurred in the past, but could not recall any specifically.

Jeffrey Hennen

Hennen has served the City as a Patrol Officer for twenty-three years, and serves the Association as its Grievance Chairman. He did not believe the City ever denied an officer overtime for hours worked before or after completion of a normal shift. He believed he had received such payment perhaps two or three times in his career. He stated the spreadsheet generated by DeFranco missed overtime that the City had paid on days in which an officer used less than eight hours of sick leave.

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

THE PARTIES' POSITIONS

The Association's Brief

The Association contends that the facts underlying the grievance are uncontested, and establish that the Grievant worked four and one-half hours of overtime "from 3:00 p.m. on March 1, 2003 through 3:30 a.m. on March 2, 2003." Section 5.01 entitles the Grievant for time and one-half pay for those four and one-half hours "in excess of her scheduled workday", which was 3:00 p.m. through 11:00 p.m. on March 1, 2003.

Under Section 5.01, the overtime obligation is triggered by work in excess of a scheduled workday rather than "a 24-hour period ending at Midnight." Since Section 3.01 defines the normal workday as an eight-hour shift, the City's asserted practice conflicts with the labor agreement, and the "definition of workday in the collective bargaining agreement must control". The City acknowledges its practice "only applies to the 3rd relief shift." This

assertion, however, produces the "absurd result" that employees who work twelve and one-half hour shifts would receive different premiums depending on whether or not they worked the 3rd relief shift. That the Grievant's shift spanned two calendar days has no contractual meaning.

Nor will the evidence support the City's assertion of a binding past practice. Arbitral precedent demands that to be binding, a past practice "must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties", citing Celanese Corp. of America, 24 LA 168, 172 (Justin, 1954). The record fails to support any of these criteria. The City has not identified any example of an employee who worked "for more than eight consecutive hours who was denied time and one-half for all hours in the shift exceeding the initial eight hours." The burden of proof on this point is on the City and it failed to meet it.

A review of the record establishes that the governing provisions are unambiguous, and thus that the grievance must be sustained. The Union "requests that the Arbitrator award Officer Strohbusch three and one-half hours pay at time and one-half to compensate her for the overtime she was wrongly denied on March 2, 2003."

The City's Brief

After an extensive review of the evidence, the City contends that the grievance "can begin and end with a simple reading of the contract language contained within Section 5.01, especially when read in conjunction with Section 5.02." The Union's case turns on linking overtime to any hours "in excess of" regularly scheduled hours. Its case has "several serious flaws". Initially, it must be noted that Section 5.02 establishes that when the parties wished to grant pay for any hours worked outside of normal duty, they clearly specified so. Beyond this, the Association's view strains the normal meaning of "excess", which connotes that "the employee must work more than the number of hours in a scheduled workday or workweek, irrespective of when within that workday or workweek the hours may occur." Similarly, the Association's view strains the normal meaning of "hours worked", since it equates sick leave used by the Grievant on March 2, 2003 as "hours worked".

The language of Section 3.01 will not support the Association's view. That section refers to "any" eight hour shift and does not use the term "consecutive". In spite of this, the Association ignores that the Grievant worked three and one-half hours "beginning at midnight on March 2, 2003." Rather, the Association assumes that the occurrence of this at the end of a shift overcomes the evident fact that "she did not work hours in excess of "any eight hour shift." Other agreement provisions support the City's view over the Association's. Section 6.01 highlights the City's unique system of sick leave administration, and Section 10.01 confirms the significance of past practice. Section 12.02 "limits the power of this arbitrator." The Association's view demands the implication of terms into the agreement and Section 12.02 denies such authority to an arbitrator.

The Association's arguments cannot obscure that the burden of proof and persuasion lies on the Association to demonstrate a violation of the agreement. Merely establishing the absence of a binding practice will not warrant confirmation of the Association's view. More significantly, the evidence establishes a binding practice. Gerbensky's testimony establishes that every time "this fact pattern has arisen" the City has denied overtime. Beyond this, Konkol's testimony establishes that few such fact patterns make it to payroll. Rather, officers commonly understand that the City does not count sick leave as "hours worked" for overtime purposes and that "the payroll day starts at midnight." The evidence is sufficient to establish that the Association was well aware of each point. That the Grievant did not testify and that the Association failed to establish any specific example of the City paying overtime in the fashion the grievance seeks to compel.

Thus, the contract language is clear on its face without reference to past practice, but evidence of past practice supports the City's view. More significantly, the evidence establishes that the City's handling of sick leave is unique. It treats "sick leave as a non-accrued benefit." This favors employees "with extensive or recurring medical illnesses" but this benefit comes with a cost – the City "does not count sick leave as 'hours worked' for calculation of overtime." The grievance must, therefore, be denied.

DISCUSSION

The stipulated issue is broad, but its reference to the grievance highlights that it focuses on Article 5. The specific focus is Section 5.01, which mandates overtime "for all hours worked in excess of the scheduled workday". The Association maintains the "scheduled workday" for Strohbusch on March 1 ran from 3:00 p.m. until 11:00 p.m., thus entitling her to the four and one-half hours worked "in excess" of that schedule. Under its view, the fact that the overtime extended into March 2 has no contractual significance. The City contends that the "scheduled workday" under governing policy and practice is "any eight hour shift" within a twenty-four hour calendar day ending at Midnight. Strohbusch worked one hour "in excess" of the "scheduled workday" which ended at Midnight on March 1. She worked from Midnight through 3:30 a.m., but then worked only four of eight hours of the shift scheduled for 3:00 p.m. through 11:00 p.m. on March 2. Since sick leave cannot be counted toward overtime eligibility, the City appropriately paid her at straight time for the three and one-half "hours worked" during the morning and for the four "hours worked" during the evening of March 2, giving her sick leave for the balance of the eight hours which constitutes a shift of work for the twenty-four hour workday ending on Midnight of March 2.

The grievance questions three and one-half hours of overtime pay, which manifests less the inflexibility of the parties than the intractability of the issue. The three and one half hours poses an interpretive swamp and an evident irritant. The delay in the record reflects, among other points, confusion over whether the matter had been returned to resolution through informal bargaining.

In any event, the interpretive swamp opens because the language of Section 5.01 cannot be considered clear and unambiguous. Association arguments reflect this by using Section 3.01 to clarify Section 5.01. Recourse to other agreement provisions is an acknowledgement of ambiguity in Section 5.01, and as the City persuasively points out, other agreement provisions such as Sections 6.01 and 10.01 can be read to support its position.

Passage through the interpretive swamp turns on the relationship of Section 5.01 to these other agreement provision. The parties extensively argue evidence of past practice to clarify their views on these provisions.

Examination of past practice is essential to the City's position, which urges that it does not permit the use of sick leave to constitute "hours worked" in order to fill out an eight hour shift to qualify for overtime. As the City urges, Section 6.01 grants contractual significance to its "sick leave policy". However, City policy regarding the grievance is unwritten and the agreed-upon scope of City payroll practice is problematic.

The City persuasively argues that DeFranco's, Konkol's and Gerbensky's testimony establishes it does not use sick leave to fill out a normally scheduled shift. The Kermendy situation underscores this, since it appears that Kermendy did not work hours in excess of his normally scheduled shift unless sick leave was counted to fill it out. However, the situation arose after the filing of the grievance posed here, which makes it difficult to infer Association agreement to the City's handling of the matter as it bears on the facts posed by the Strohbusch situation. The Hoffman situation supports the City's view, since the overtime arose between two normally scheduled shifts and the City used its payroll day rather than either normally scheduled shift to determine whether more than eight hours had been worked. The Association did not grieve either matter.

In any event, neither matter bears directly on the contractual significance of the City's payroll day as applied to the completion of a shift that spans Midnight. The Lichtie and Strohbusch examples pose this issue, since neither officer used sick leave to fill out a normally scheduled shift. Rather, each officer worked hours contiguous to a normally scheduled eight-hour shift specified in Section 3.01. Each worked at least a twelve hour shift spanning Midnight. The issue posed is whether the City's payroll day has contractual significance which demands denying overtime for any twenty four hour calendar day in which an employee claims sick leave and has not worked "in excess" of eight hours. The payroll practice splits a normally scheduled shift. Thus, even though Strohbusch worked continuously from 3:00 p.m. on March 1 to 3:30 a.m. on March 2, the City's payroll day broke the last three and one-half hours, which, absent her use of sick leave, would have been added to the hours from 3:00 p.m. to 11:00 p.m. on March 2 to generate three and one-half hours of overtime. Lichtie's case involves a similar situation on the 11:00 p.m. through 7:00 a.m. shift.

The Association's arguments have their greatest persuasive force on this point. It is an arguably absurd result to conclude that the parties intended the language of Section 5.01 to produce different payment schemes for officers based on whether or not they work a 2nd relief shift as defined by Section 3.01. Under the City's view, an officer who does not use sick leave will always receive overtime for working four hours preceding or following completion of that shift. An officer working a normal 3rd relief shift will always receive overtime for working four hours prior to the shift provided no sick leave is used. The interpretive issue under the City's view only arises if hours are added to the end of a normal 3rd relief shift or are added prior to or following a normal 1st relief shift.

The Association forcefully notes the weakness in City arguments regarding past practice on this point. Even though the Association did not grieve the Lichtie matter, the evidence of Association agreement regarding City payroll practice is tenuous. With the exception of the e-mails, past practice evidence lacks specificity. Hennen believes the City has paid overtime in situations comparable to Lichtie's and Strohbusch's. DeFranco, Gerbensky and Konkol believe the City has not. The e-mails are less than definitive in establishing a clear practice. The Hoffman matter generated a series of e-mails among several administrators to identify how the practice should be applied. DeFranco's spread sheet on the use of sick leave in less than eight hour increments affords no insight on the payment of overtime for work contiguous to a normal shift which spans Midnight.

Reservations regarding the force of the City's arguments fail, however, to give the Association's view a contractual basis. To be persuasive, the Association's argument regarding the absurdity of treating one group of shift employees differently than another must have a basis in the agreement. Use of the term "Employees" at the start of Section 5.01 could serve to establish such a basis. This ignores, however, that "Employees" introduces the benefit provided in Section 5.02, which applies differently to 1st and 3rd relief shift officers than to 2nd relief shift officers.

Beyond this, the Association's view affords no insight on how to reconcile the terms used by the parties in Sections 3.01, 5.01 and 5.02. Arguably, the City's view undercuts the statement of "a normal workday" in Section 3.01. The Association, however, fails to explain why the parties referred to "the scheduled workday" in Section 5.01. In Section 5.02, the parties used "normal" to establish the "duty hours" that set the base for the call-in minimum. In Section 5.01, the parties used "normal" to preface "rate of pay", yet declined to use that term in the same sentence to preface "workday". The Association's arguments afford no clarity on why this use of "normal" should be treated as synonymous with "scheduled" (emphasis added throughout this paragraph).

The City contends that the reference to "any eight (8) hour shift" in Section 3.01 confirms that the definition of "a normal workday" has flexibility built into it to accommodate the City's payroll practices, which are incorporated into the agreement through Section 6.01

and through the use of "scheduled" rather than "normal" workday in Section 5.01. While the City's argument appears dubious regarding the facts posed in Strohbusch's circumstances, it at least accounts for why the parties used different terms in these sections to establish the workday that serves as the basis for premium pay. The Association's arguments ignore the difference, even though it arises in the same sentence of Section 5.01.

The point is more than grammatical. It is undisputed that the City has a unique system of applying sick leave, which is not treated as an accrued benefit. Section 6.01 underscores that this unique system has contractual significance. The Association seeks to establish an exception to the City's payroll practices, based on the facts posed by the Strohbusch matter. That exception has persuasive force as a policy matter, provided it can be given a contractual basis. On this record, it cannot. There is no specific evidence of practice to support it.

It can be granted that this dispute over three and one-half hours of pay is an interpretive swamp, posing the contractual equivalent of "how many angels can dance on the head of a pin?" The force of the Association's concern regarding the equity of distinguishing between the pay attached to twelve hour shifts based on the employee's normal shift must be acknowledged. However, the issue is not whether I share the Association's view of employment policy on the point. It may be that the parties agreed to create a disincentive to use sick leave for evening shifts. It may be that the parties agreed to the disincentive because the sick leave system creates other benefits worth valuing over it. The interpretive swamp is best crossed with reliance on evidence of the parties' mutual intent. What evidence there is in this record which reliably shows mutual intent turns on past practice and on the relationship of Section 5.01 to other agreement provisions. However weak, that evidence favors the City's view and turns the interpretive issue in its favor.

AWARD

The Employer did not violate the collective bargaining agreement as alleged in the grievance.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 4th day of January, 2006.

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

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