

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
GREEN BAY PROFESSIONAL POLICE ASSOCIATION

and

CITY OF GREEN BAY

Case 384
No. 66764
MA-13624

(Hockey Game Grievance)

Appearances:

Parins Law Firm, S.C., **Attorney Thomas J. Parins**, 422 Doty Street, P.O. Box 817, Green Bay, Wisconsin 54305, on behalf of the Association.

Ruder Ware, L.L.S.C., **by Attorney Dean R. Dietrich**, 550 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, on behalf of the City.

ARBITRATION AWARD

The Green Bay Professional Police Association (herein the Union) and the City of Green Bay (herein the City) are parties to a collective bargaining agreement dated October 10, 2006 and covering the period from January 1, 2005 to December 31, 2006, which provides for binding arbitration of certain disputes between the parties, and which was in effect at the time of the events at issue herein. On February 26, 2007, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over a dispute concerning allocation of overtime at the "Frozen Tundra Classic" hockey game on February 11, 2006. The undersigned was appointed to hear the dispute and a hearing was conducted on February 4, 2008. The proceedings were transcribed. The parties filed initial briefs by March 25, 2008 and reply briefs by April 25, 2008, whereupon the record was closed.

ISSUES

The parties did not stipulate to a statement of the issue. The Union would frame the issues as follows:

Has Article VI of the labor agreement been administered so as to split overtime assignments of more than five and three-quarters hours unless the fourteen and one-quarter work order limitation has been waived?

The City would frame the issues, as follows:

Did the City violate Article VI of the labor contract when it did not waive the fourteen and one-quarter hour rule or split the overtime when the assignment exceeded five and three-quarters hours at the Frozen Tundra Classic?

If so, what is the appropriate remedy?

The Arbitrator adopts the issues as framed by the City.

PERTINENT CONTRACT LANGUAGE

ARTICLE 1. RECOGNITION/MANAGEMENT RIGHTS

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1.03. **MANAGEMENT RIGHTS.** The Union recognizes the prerogative of the City, subject to its duties to collectively bargain, to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not abridged, delegated or modified by this Agreement, are retained by the City, including the power of establishing policy to hire all employees, to determine qualifications and conditions of continued employment, to dismiss, demote and discipline for just cause, to determine reasonable schedules of work, to establish the methods and processes by which such work is performed. The City further has the right to establish reasonable work rules, to delete positions from the Table of Organization due to lack of work, lack of funds, or any other legitimate reasons, to determine the kinds and amounts of services to be performed as pertains to City government and the number and kinds of classifications to perform such services, to change existing methods or facilities, and to determine the methods, means and personnel by which the City operations are to be conducted. The City agrees that it may not exercise the above rights, prerogatives, powers, or authority in any manner which alters, changes, or modifies any aspect of the wages, hours, or conditions of employment of the Bargaining Unit, or the terms of this agreement, as administered, without first collectively bargaining the same or the effects thereof.

ARTICLE 6. OVERTIME

6.01 OVERTIME PAYABLE. Employees will be compensated at the rate of time and one-half (1½) based upon their normal rate of pay for all hours worked in excess of the scheduled work day or work week. Overtime shall commence after 8½ hours on a regular workday or for hours worked outside the normally scheduled workweek. For purposes of calculating overtime, compensation for the hourly rate shall be based on a bi-weekly schedule of 75.6 hours and an annual schedule of 1964.5 hours. No change in the amount of overtime claimed by an employee shall be made unless the employee is notified of such proposed change within seven (7) days of the employee turning in an overtime card.

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6.03 ALLOCATION OF OVERTIME.

(5) Overall hour limitation. Except as provided above, overtime shall not be allocated or assigned where it would result in an officer working more than 14-1/4 hours, in a combination of overtime, training, duty hours and/or shift trades in any 24 hour period. A new 24-hour period commences whenever there is a 7.5 hour break in on-duty time. An officer cannot be inversed into an assignment if it would result in the violation of this article. The 14-1/4 limitation provided for in this paragraph shall be extended to allow for the duty of officers to extend their shifts upon the order of a supervisor or when addressing emergencies that may occur at the end of a shift.

BACKGROUND

The Green Bay Professional Police Association (herein the Union) and the City of Green Bay (herein the City) have been parties to a collective bargaining relationship for many years. One of the significant features of the collective bargaining agreement concerns allocation of overtime, in large part because during the fall and winter months of the year the police department provides security at Green Bay Packers home football games, which obviously involves significant amounts of overtime. Because Green Bay is a smaller city than most professional sports venues, however, the police force is also correspondingly smaller, which means that at special events, such as Packers games, a proportionately larger portion of the force is needed to work overtime providing security than might be the case elsewhere. One of those features is a provision in Section 6.03(5), which bars assignments of overtime in cases where it would require an officer to work more than 14¼ hours in a 24 hour period. This is a safety provision intended to prevent officers working overly extended shifts resulting in excessive fatigue. Nevertheless, the parties have recognized that for certain large events, chiefly Packers games and Fourth of July celebrations, manpower requirements dictate that the

14¼ hour rule be waived to adequately staff the event. In other situations, an alternative employed over a number of years has been for overtime shifts exceeding 5¾ hours to be split to allow more officers to work overtime within the 14¼ hour limitation.

On February 11, 2006, the City hosted for the first time a University of Wisconsin hockey game at Lambeau Field. The event was billed as the “Frozen Tundra Classic,” and the City Police Department was asked to provide security. On January 20, the event was posted for overtime sign-up, specifying that the shift would run from 12:15 p.m. to 7:00 p.m., a period of 6¾ hours. Because the shift was in excess of 5¾ hours and the 14¾ hour rule had not been waived, this effectively limited the overtime to officers who were not working a regular shift within the same 24 hour period. The Union President questioned the City’s decision to not either waive the 14¼ hour rule or split the shift, but ultimately the City did neither. As a result, the Union filed a grievance, which was advanced through the contractual procedure and denied at each step, resulting in this arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that in cases of overtime assignments exceeding 5¾ hours there is a long-standing agreement between the parties to either split the shift or waive the 14¼ hour limitation set forth in Article 6.03(5). The agreement was never reduced to writing, but was mutually understood by the parties through many modifications of the overtime language over several bargains. The testimony of the witnesses supports the existence of the agreement and the evidence of the City is either contradictory or is *de minimis* with regard to the number of occasions and the length of the shifts, which were barely more than six hours. The Union provided many examples of the shifts being split or the limitation being waived.

Even if the existence of an agreement to split shifts or waive the 14¼ hour rule is not established, there is still a long standing past practice of doing so. This practice is unequivocal, clearly enunciated and has existed for a lengthy period of time. The evidence shows there is an agreement between the parties to either split shifts or waive the 14¼ hour rule. Testimony show that this practice has been discussed in bargaining many times and is clearly understood by the parties. Further, it has been in effect since at least 1983, thus satisfying all the requirements to constitute a binding practice. The evidence produced by the Union establishing the elements of the practice was uncontested by the City and there is no evidence that it was ever repudiated. Further, there would be no hardship to the City to enforce the practice. The grievance should be sustained.

The City

The City maintains that the history of the contracts between these parties shows that language requiring splitting of overtime was actually removed from the contract in the 1989-91

agreement. Since then the City has retained discretion to assign special event overtime, sometimes splitting the shifts, sometimes not. Attorney Parins testified to an agreement reached by the parties in the 2002-2004 bargain to either split shifts or waive the 14¼ hour limitation, but could produce no written document supporting his contention. His testimony was not credible. Lt. Ebel and Lt. Bongle testified they were unaware of any such agreement and evidence shows several cases where the shifts weren't split, nor was the 14¼ hour limitation waived.

The City has administered the agreement in order to retain flexibility in scheduling overtime. There is no express agreement to split overtime or waive the 14¼ hour rule, nor has the Union shown existence of a binding past practice. The evidence shows that sometimes the City splits overtime and sometimes not. Sometimes the 14¼ rule is waived and sometimes it is not. There is, therefore, no unequivocal practice and the City witnesses testified that they were of any such. The City should not be required to waive the 14¼ hour rule and risk undue fatigue to its officers. Nor should it be required to split overtime where it has ample officers to fill the shifts without doing so and retains discretion to make a determination of its force needs.

The Union in Reply

The City makes some errors of fact in its brief in order to manipulate the facts to buttress its arguments. While it has not always split overtime when shifts exceed 5¾ hours, when it has not done so, it has always waived the 14¼ rule except in a couple of *de minimis* instances. In cases where Lt. Ebel claimed that the 14¼ rule was not waived the evidence shows this to be clearly untrue.

The City denies there was an agreement to split overtime or waive the 14¼ hour rule, yet the only evidence on the point was that of Attorney Parins confirming the understanding. He testified at length and credibly as to the history of the agreement. Further, the City's claim that it can schedule overtime in its discretion would make the language of Section 6.03(5) meaningless, because it makes the 14¼ hour rule moot unless the City chooses to enforce it. The Union's position that there is an agreement to either split overtime shifts in excess of 5¾ hours or waive the rule is a more reasonable interpretation of what has been done in the past. Without such an understanding there would have to be an individual waiver of the 14¼ hour rule in every instance and there is no evidence of such. The City argues this matter is about flexibility, but actually it is about who controls overtime assignments. If the City can chose not to split shifts it can greatly restrict who is eligible for overtime. The agreement asserted by the Union allows the City the same flexibility while allowing more officers the opportunity to work overtime.

The City in Reply

The City reasserts its position that there is no agreement to either waive the 14¼ hour rule or split overtime where the shift exceeds 5¾ hours. There is no writing to memorialize any such agreement, nor could Attorney Parins remember who in the City agreed to it. At the

hearing, the Arbitrator ruled that there was no contractual agreement under the parol evidence rule, leaving the Union to make a past practice argument.

There is also no past practice supporting the Union's position. The Union has failed to prove the existence of any of the elements of a binding past practice. There is a clear dispute as to whether the practice was unequivocal. Lt. Ebel and Lt. Bonge disputed that the practice was clearly enunciated and agreed upon. Further, there is no evidence of acceptance of the practice by the City. The only evidence of agreement is as to the two biggest events the police department has to cover – Packer games and the Fourth of July celebration – because of the number of officers needed. For smaller events the City has retained its discretion regarding scheduling. It has not agreed to compromise its management rights in this area and they should not be taken away here.

DISCUSSION

In this case, the Union contends that the City violated the parties' collective bargaining agreement when it posted and assigned overtime for the "Frozen Tundra Classic" collegiate hockey game and neither split the overtime shift nor waived the 14¼ limitation on work hours within one 24 hour period, even though the overtime shifts exceeded 5¾ hours. The Union's argument is based on two separate theories. First, it contends that there was an express agreement between the parties, acknowledged by both parties in bargaining, that where there was an overtime assignment that would exceed 5¾ hours either the shift would be split or the 14¼ limitation found in Article 6.03(5) would be waived. In this way more officers would have the opportunity to bid for overtime and the City would be able to staff overtime without unduly fatiguing its officers. The Union's second argument is that, independent of any express agreement between the parties, there was a binding past practice of handling longer overtime shifts in this fashion. In either event, the Union was entitled to have had the shifts split or the 14¼ hour limitation waived for the hockey game. I will deal with each of these arguments separately.

The evidence of an agreement between the parties is primarily based upon the testimony of Attorney Thomas Parins, who has been representing the Union in its relationship with the City since 1975. Attorney Parins testified extensively as to the history of the overtime language in the contract and the Union offered several exhibits showing the evolution of the overtime language over the years. In 1983, the parties entered into a Memorandum of Understanding limiting officers to working no more than 16 hours in a 24 hour period and requiring that all overtime shifts exceeding 8 hours be split. In 1986, this language was incorporated into the contract. In the 1989-91 agreement, the splitting language was made permissive by the insertion of the word "may" instead of "will." Parins explained that this was to allow for waiver of the splitting requirement for Green Bay Packers football games, which require a significant number of security officers, making shift splitting impractical. In the 1996-98 contract the reference to splitting overtime shifts was removed. New language was added restricting allocation of shift overtime where it would result in an officer working more than a shift and one-half, which was 12¾ hours, in a 24 hour period. This was in response to a

concern raised by the City over officers becoming fatigued by working too many hours without a break. This restriction did not apply to special event overtime, which included Packers games, other athletic events, community celebrations, political campaign visits, and the like. In the same contract, a management rights clause was added for the first time. This provision required the City to bargain over any changes, alterations or modifications in wages, hours, conditions of employment, or terms of the agreement, as administered. Parins explained that this language was intended to bind the City to any existing practices. Finally, in the 2002-04 contract the language was again amended to prohibit allocation of overtime where it would result in an officer working more than 14¼ hours in a 24 hour period without at least a 7½ hour break. This revision included all overtime, including special events. It was understood between the parties, however, that for events requiring large numbers of officers, such as Packers games and the Fourth of July celebration, the City could waive the 14¼ hour limitation to meet its force requirements. Parins testified that during these negotiations the parties discussed putting shift splitting language in the contract to indicate that in instances where the 14¼ hour rule was not waived, shifts in excess of 5¾ hours would be split to allow more officers the opportunity to post for the overtime, 5¾ hours being the difference between a full shift and the 14¼ hour limit. They also discussed putting in the exceptions to the 14¼ rule. He testified that ultimately they agreed to not add any such language to the contract because they had reached an understanding on these points and didn't want to get too specific in setting forth details, which could restrict flexibility. Parins did not produce documentation supporting the existence of any such understandings, nor could he specifically recall who from the City agreed to them.

It is a standard axiom of contract law that a written contract is presumed to contain the entire agreement of the parties. Where there is a signed document that purports to be the final binding agreement between the parties, therefore, courts and arbitrators have held that oral evidence of other terms or agreements, which would alter, add to, or subtract from, the written document is inadmissible to prove some additional agreement. This has become known as the parol evidence rule. In essence, the Union here is arguing that there is an additional, unwritten codicil to the contract that requires overtime shifts in excess of 5¾ hours to be split where there is no waiver of the 14¼ total hour limitation. Under the parol evidence rule, however, where such an agreement is not reduced to writing, oral evidence of its existence carries no weight, except under certain exceptional circumstances, which do not apply here. It is also clear to me that the parties to this contract intended that this should be so in the interpretation and administration of their agreement. This is shown by the language of Article 34, which states, as follows:

ARTICLE 34. AMENDMENT PROVISION

34.01 AMENDMENT PROCEDURE. This agreement is subject to amendment, alteration or addition only by a subsequent written agreement between and executed by the City and the Bargaining Unit where mutually agreeable. The waiver of any breach, term, or condition of this agreement by either party shall not constitute a precedent in the future enforcement of all its terms and conditions.

It is clear from this provision that the entire agreement of the parties was intended to be contained within the four corners of the document. The only way additional terms, such as the shift-splitting requirement asserted here, could be merged into the contract would be by means of an additional or subsequent writing, such as a memorandum of understanding or successor agreement, executed by the parties. There is no such written agreement here. I am also mindful that in the 1996-98 agreement, the parties removed shift-splitting language in favor of the shift and one-half limitation, when they need not have done so. This seems to me a deliberate choice preferring one method of limiting overtime over another, rather than a supplement to what was already in effect. I am further mindful that Article 3, Section 3.09, prohibits the arbitrator from modifying, adding to, or subtracting from the express terms of the agreement. In order to find the existence of a shift-splitting agreement on this record, I would be required to add to and modify the existing agreement, which I am not permitted to do. On that basis, therefore, I find that there is no enforceable contractual agreement requiring the City to split overtime shifts exceeding 5¾ hours in length where there has not been a waiver of the 14¼ hour limitation. This finding does not rule out the existence of a binding past practice regarding shift-splitting, however, and I turn now to that inquiry.

Unlike an amendment or addition to the contract, a binding past practice is not part of the written contract, but is ancillary to it. While it may alter the way in which a contract is interpreted or administered, therefore, especially when an agreement is silent or ambiguous on a certain point, its existence is separate from the contract. Rather, it exists because over time the parties have developed a particular understanding or way of doing things and the practice has become so well understood and integrated into the parties' relationship that they are entitled to rely on its continuation. The parties here have ably set forth the criteria for determining the conditions under which a practice may become binding. In order to qualify, a practice must be 1) unequivocal, 2) clearly enunciated and acted upon, 3) readily ascertainable over a reasonable time as a fixed and established practice and 4) accepted by both parties. LINCOLN COUNTY (COURTHOUSE), WERC CASE 193, No. 58373, MA-10932, (Meier, 8/22/00).

Here, the Union contends, in the alternative, that there is a long-standing practice where overtime shifts exceed 5¾ hours of either waiving the 14¼ hour limitation or, alternatively, splitting the shift. There is no question that there is a practice of waiving the 14 1/4 hour limitation under certain circumstances. The record is clear, and both parties agree, that this is common for Packers games, Packer Family Fun Nights and for the Fourth of July. The reason is that these events require much larger contingents of officers than most others. Packers games require approximately 90 officers to provide security, which is nearly half the force. Fourth of July celebrations require approximately 45 officers. Testimony from Lt. Paul Ebel, former Special Events Coordinator for the Department, was to the effect that the force requirements for these events is so large that it would not be possible to staff them without waiver of the 14¼ hour rule and Union witnesses agreed that the waiver was understood for these events. In fact, since 2006, the Department has included language in its special event overtime postings indicating that it may, in its discretion, waive the 14¼ hour rule if necessary to maximize agency resources. There is no evidence that the Union has ever objected to this

characterization of the City's discretion. The dispute, then, is as to whether there is an additional recognized practice of splitting overtime shifts of 5¾ hours or more in situations where there is no waiver.

Officer William Resch, who is the Union President, testified that shift overtime has always been split where it would result in an officer working more than a shift and one-half. He also stated that most special event assignments are not more than 5¾ hours, so splitting is not an issue in those cases. He testified that after the 14¼ hour rule was applied to all overtime in the 2002-04 agreement he was unaware of problems scheduling overtime and he understood that in any case where an overtime shift exceeded 5¾ hours the 14¼ hour rule was waived or the shift was split. The Union also introduced several exhibits for a number of special events where the event was scheduled for more than 5¾ hours and the overtime postings were split into two or three increments of less than 5¾ hours. These include such events as Art Street, a Congressional Medal of Honor recognition, Lambeau Leap of Faith, Bayfest, the World Snowmobile Association Races and a Cry For Independence Parade and Festival. As to the last, Resch testified that initially the overtime was posted for more than 5¾ hours, but the concern was presented to Lt. William Bongle, the current Special Events Coordinator, who then split the shift. He stated that as far as he knew all overtime scheduling was handled in this way, but allowed that there could have been some occasions that went unreported. He was further aware of at least one event, a Tall Ships festival, where the 14¼ hour rule wasn't waived and the shifts weren't split.

For the City, testimony was offered by Lt. Ebel and Lt. Bongle, who have served as the Special Events Coordinators since before the current language was bargained into the contract. Lt. Ebel was Special Event Coordinator from 2001-05. He stated that he would not necessarily split overtime if the shift was short or if there were sufficient officers to cover the event. One such was the Green Bay Marathon in May 2001, for which the 14¼ hour rule was not waived, but 3 of the 18 officers covering the event worked in excess of 6 hours of overtime. Likewise, the marathons in 2002 and 2003 were scheduled by Lt. Ebel. In 2002, 6 officers worked in excess of 6 hours of overtime and in 2003, 5 officers worked in excess of 6 hours of overtime. Finally, Ebel testified that the 3 officers assigned to the Snocross Races at Lambeau in March 2005 worked more than 7 hours of overtime. Lt. Bongle began as Special Events Coordinator in January 2006. He was unaware of any requirement of splitting shifts and has scheduled overtime with the philosophy that he would split overtime when practical, but was not bound to do so if the situation made it unfeasible or impractical. He, too, has scheduled overtime shifts without splitting the shift or waiving the 14¼ hour rule. These include the Convoy of Hope, the Hispanic Information Fair, the CellCom Marathon and the Tall Ships Festival. He testified that splitting shifts is a good idea when the overtime assignment is very long or when a large number of officers is needed. His decisions on scheduling overtime are based on the needs of the public, the needs of the event sponsor and the safety of the officers. Long overtime shifts tend to lead to greater officer fatigue, which is hazardous. As to the Frozen Tundra Classic, Bongle testified that only 26 officers were needed, so he didn't need to waive the 14¼ hour limitation because there were adequate officers available to cover the event. He further testified that it would have been inefficient to

split the shift because the second shift of officers would have required a separate briefing and then would have to travel to the game in separate vehicles and find the officers they were to relieve. In his opinion, the overlap of time and duplication of resources made it impractical to split the overtime. The officers who worked the event each received about 7 hours of overtime.

In balance it is my view that the evidence favors the position of the City. There is no question that both Lt. Ebel and Lt. Bongle, who have been scheduling special event overtime for the past several years, have scheduled overtime shifts in excess of 5¾ hours on several occasions. Further, neither testified to being aware of any binding practice requiring the splitting of shifts, although Bongle did state he tried to split longer overtime shifts when it made sense to do so. This evidence shows that any practice of splitting overtime was not unequivocal, since there were numerous exceptions, not clearly enunciated and acted upon, since Ebel and Bongle made their scheduling decisions based on a variety of considerations, not just the Union's desire to have longer shifts divided, and not accepted by both parties, since the Department officials responsible for scheduling overtime were unaware of such a practice.

The Union challenges the City's position on a number of grounds. It suggests that for the marathon events in 2001-03 there must have been a waiver of the 14¼ rule because Ebel testified that some officers worked their regular shifts before and after the event. The exhibits show, however, that not all officers worked more than 5¾ hours at the marathon events. So, it is possible for officers to have worked the event and their regular shifts without violating the 14¼ hour rule. There is no evidence that the officers who worked more than 5¾ hours were those who also worked their own shifts. Bongle was not asked about officers who worked at the marathons while he was Special Events Coordinator. The Union disputes the weight to be given City Exhibit 4, regarding the Snocross event because the actual posting was not included, leaving it open to question whether there was a waiver of the 14¼ hour rule. The evidence is clear, however, that the 14¼ rule is only waived when force requirements mandate it and the Department is reluctant to do so because of the concern for over-worked officers. Only 3 officers were apparently assigned to the Snocross event, allowing the presumption that there was no waiver for this event and that the shift simply wasn't split. The Union dismisses the other City exhibits as *de minimis*, either because the overtime was barely more than 5¾ hours, or because only a few officers were needed for the event. I am not persuaded by either argument. First, if the supposed binding practice required overtime in excess of 5¾ hours to be split, it would not matter how much over the 5¾ hours the shift was scheduled for. This is because the 5¾ hours allows an officer to work his shift and the overtime within the 14¼ hour limit where it has not been waived. Anything over 5¾, even 15 minutes would violate the 14¼ hour rule and preclude anyone also working a shift from posting for the overtime. Second, the fact that some of the cases involved small numbers of officers supports the City's view that such scheduling is discretionary and that the number of officers needed is one of the factors to be taken into account. The Union did offer a number of exhibits regarding events where the 14¼ hour rule was waived or the overtime was split, but "more often than not" is not the standard for determining the existence of a binding practice. Finally, the Union argues that the inclusion of the management rights clause in 1996, at a time when shift splitting was the

practice, bound the City to bargain over any change in the practice, which it did not do. In fact, though, shift splitting was removed from the contract in 1996 and replaced by the shift and one-half limitation, which only applied to shift overtime. In fact, Officer Resch testified that one of the reasons the language was changed in 2002 to cover special event overtime was because the Union did not believe the shift and one-half language in the previous contract covered special event overtime and objected to City attempts to limit it. At the time the management rights language was added, therefore, there was no established practice of splitting special event overtime shifts such that the City would have to have bargained over it.

In sum, the evidence makes it disputable, at best, as to whether there was a practice of splitting overtime in excess of 5¾ hours. In my view, the more credible view is that the Department's Special Events Coordinators are required to consider numerous factors when scheduling overtime for special events, length of shift being but one. That they do try, when possible, to split longer shifts to increase the pool of officers available does not bind them to doing so in all circumstances. As to the Frozen Tundra Classic, I am satisfied that Lt. Bongle made his scheduling decision based on reasonable criteria and did not violate the contract or past practice by neither waiving the 14¼ hour limitation nor splitting the overtime into increments less than 5¾ hours.

For the reasons set forth above, and based upon the record as a whole, I hereby enter the following

AWARD

The City did not violate Article VI of the labor contract when it did not waive the fourteen and one-quarter hour rule or split the overtime when the assignment exceeded five and three-quarters hours at the Frozen Tundra Classic. The grievance is denied.

Dated at Fond du Lac, Wisconsin, this 28th day of July, 2008

John R. Emery /s/

John R. Emery, Arbitrator

