

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration Between

CITY OF MILWAUKEE

and

MILWAUKEE POLICE ASSOCIATION

Case 595  
No. 71504  
MA-15147

AWARD NO. 7906

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**Appearances:**

Thomas J. Beamish for the City.

Jonathan Cermele for the Union.

**ARBITRATION AWARD**

I was assigned by the Wisconsin Employment Relations Commission to serve as arbitrator as to a premium pay grievance. Hearing was held in Milwaukee, Wisconsin, on September 10, 2014. The parties made oral argument at the conclusion of the hearing. The hearing was transcribed and I received a copy of the transcript on September 22, 2014. At my request, the record was supplemented by additional evidence and then closed on January 9, 2015.

**ISSUE**

The parties were unable to agree on a statement of the issue but did agree that I had authority to frame the issue after giving consideration to their respective positions. Having done so, I conclude the issue is as follows:

Did the City violate Article 67 of the collective bargaining agreement when it denied the grievant Field Training Officer (FTO) premium pay, and, if so, what remedy is appropriate?

**DISCUSSION**

Article 67 states in pertinent part:

1. The Chief of Police retains the exclusive right to make assignments of Field Training Officers (FTO's) from the ranks of employees in the Police Officer classification. Such assignments shall be made in accordance with procedures established for this purpose from time to time by the Chief.
2. The duties and responsibilities for the FTO assignment shall be as determined from time to time by the Chief. An employee in the Police Officer classification assigned by the Chief as a Field Training Officer shall be entitled to receive premium pay equal to \$2.00 per hour in addition to his/her base salary for each hour spent on duty while so assigned, provided however that such an employee shall not be entitled to this premium pay for time spent at FTO training programs. ...
3. FTO Premium Pay shall only be granted when an employee assigned by the Chief is actually performing FTO duties and shall not be granted when such an employee is temporarily assigned to other duties.

\* \* \*

The language of Article 67 quoted above has been included unchanged (although the level of premium pay has increased) in the parties' collective bargaining agreements since a May 1995 interest arbitration award ordering that the City's FTO proposal be included in a 1993 – 1994 agreement.

When the FTO program began, a pair of police officers would be assigned as FTOs to train a new police officer in training (OIT) as part of their regular shift duties. One of the two officers had the responsibility to complete paperwork which recorded what the OIT has been exposed to during the shift. That officer received one half hour of overtime as compensation for completing the paperwork after the regular shift had ended. Officers so assigned did not receive any specific FTO training. At some point, the City created a more formalized FTO program. Police officers applied to be FTOs and, if selected, performed FTO duties on a full-time basis after receiving specific and ongoing FTO instruction as to how to train and evaluate OITs.

However, from time-to-time, when a full-time FTO is unavailable on a particular day, the City will assign a police officer to serve as an OIT's FTO. Such an officer (like the grievant in this case) is expected to provide on-the-job training to the OIT during the officer's regular shift and may choose to informally communicate to the City any positives or negatives that were observed regarding the OIT. However, the officer does not complete the formal evaluation paperwork expected of a full-time FTO and has not gone thru the FTO training program.

Here, the grievant, who is not a full-time FTO, was assigned to and did serve as an FTO during several shifts but did not receive FTO pay. The absence of FTO pay is consistent with the City's practice in such circumstances.

I conclude the contractual language is ambiguous as to whether it applies to the work of a "fill-in" FTO. The City plausibly argues that FTO pay is contractually reserved for those employees who are full-time FTOs and correctly notes that officers such as the grievant have not been trained as FTOs and do not perform the full range of FTO duties. The Union counters with a reasonable contention that the grievant met the Article 67 prerequisites for FTO pay because he was a police officer assigned to work as a FTO. Both sides agree that whatever the equities of the matter might be, it is the language of Article 67 that determines whether the grievant is entitled to FTO pay.

When confronted with ambiguous contract language, it is generally understood that the history of how the contract language was created can be of assistance when determining the intent of the language. Here, that history is provided by the text of the interest arbitrator's award. Reviewing that text, it seems clear from the arguments recited in the award that both sides understood that the additional FTO compensation was for officers formally selected and trained to serve as FTOs on a full-time basis (see, in particular, Union arguments 5 and 7 on page 286 and City arguments 1 and 2 on page 283 of the award). Therefore, I conclude that the contract is currently silent as to any compensation to be received by employees such as the grievant when serving as a "fill-in" FTO. Thus, given the contractual silence, I further conclude that the City did not violate Article 67 when it did not provide the grievant with FTO pay.

Dated at Madison, Wisconsin, this 28th day of January 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter G. Davis, Arbitrator