

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

WISCONSIN PROFESSIONAL POLICE ASSOCIATION / LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

and

CITY OF WEST ALLIS

Case ID: 313.0002

Case Type: MA

(Scott Waarvik Overtime Grievance)

AWARD NO. 7926

Appearances:

Roger W. Palek, Staff Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin, appearing on behalf of the Union.

Sheryl Kuhary, Assistant City Attorney, City of West Allis, 7525 West Greenfield Avenue, Room 232, West Allis, Wisconsin, appearing on behalf of the City.

ARBITRATION AWARD

The Wisconsin Professional Police Association / Law Enforcement Employee Relations Division (hereinafter referred to as “Union”) and the City of West Allis (hereinafter referred to as “Employer”) were parties to a collective bargaining agreement that provided for final and binding arbitration of unresolved grievances. Pursuant to the parties’ request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the instant grievance. A hearing on the grievance was held in West Allis, Wisconsin, on February 24, 2016. The hearing was not transcribed. The parties filed briefs whereupon the record was closed on April 1, 2016. Having considered solely the evidence and the arguments of the parties based on the hearing of February 24, 2016, the undersigned issues the following Award.

ISSUE

The Employer framed the issue as:

Did the City violate Article 7, Section 6, of the collective bargaining agreement when it assigned / gave School Liaison Officers first choice in working the After School Program overtime on September 17, 2015, and denied said overtime to Sergeant Scott Waarvik?

The Union framed the issue as:

Did the City violate the collective bargaining agreement when it failed to select the most senior uniformed officer for available overtime on September 17, 2015?

PERTINENT CONTRACT PROVISION

ARTICLE 7 – OVERTIME

* * *

SECTION 6. Department seniority and, when applicable, seniority within rank will be the basis for overtime assignments for “scheduled overtime” only. “Scheduled overtime” is defined as events involving a two (2)-week notice, if possible, and are limited to the following:

- A. Athletic events (each School Liaison Officer has the right of first refusal);
- B. Minor parades that do not require shift assignments;
- C. Minor community events that do not require shift assignment, not Department programs; and
- D. Special enforcement programs funded through federal or state grants.

The “scheduled overtime” event must be posted at least two (2) weeks, if possible, in advance by proper departmental notice.

A sign-up sheet will be placed in the Assembly, listing the event, date of the event, times officers will be scheduled for duty,

sigh-up [sic] deadline, and the rank of officers eligible for assignment.

Once an officer accepts the overtime assignment, he/she will be held responsible for appearing on that date.

Officers who are given overtime assignments involving Department programs will be selected based upon current job assignment, prior experience with the program, communication and public relations skills, and seniority. Department programs that are currently authorized are National Night Out, Community Alliance Against Drugs events, school dances and/or activity nights sponsored by the school district, Weed and Seed Cigarette and Alcohol Enforcement, and the West Allis Youth Commission.

BACKGROUND

In January 2015, the West Allis Police Department (hereinafter referred to as “Department”) was approached by the West Allis School District (hereinafter referred to as “District”) about providing additional police services at the high schools, as well as other schools and locations where the “After School Programs” (hereinafter referred to as “ASP”) operate. The parties agreed that the Department would provide one officer on overtime between 4:00 p.m. and 8:00 p.m., Monday through Friday. The pilot program would start on February 16, 2015, and run through May 1, 2015. The overtime cost would be paid by the District. Police Captain Steven Beyer stated in his February 9, 2015 memorandum to all police officers that this assignment would be considered a Department program under the collective bargaining agreement as defined in Article 7, Section 6. School Liaison Officers (hereinafter referred to as “SLOs”) who work full time in the schools were assigned the overtime. The Union did not grieve the overtime assignment for the time period of February 16 through May 1, 2015.

The ASP was again implemented beginning in September of the 2016 – 2017 school year.

FACTS AND DISCUSSION

Beyer testified that with the initial District request of January 2015 he reviewed the overtime contract language and decided the SLOs had first choice in working the ASP and made the assignments accordingly. A memorandum dated February 9, 2015, outlined the District’s request and how Beyer planned to make the assignments. During the hearing, Beyer

further testified that SLOs had an existing close working relationship with the District which included: (1) extensive, prior experience working in the schools; (2) previous interaction with students, parents, teachers, and school administrators; (3) immediate access to confidential student databases used when dealing with student problems; and (4) a knowledge of the building layout which was helpful when responding to student conflict situations.

A memorandum sent by SLOs to Beyer dated September 21, 2015, laid out the reasons the officers believed they should continue to be given priority choice of overtime over other police officers in the Department.

The Union filed a grievance on September 24, 2015, asserting a violation of Article 7, Section 6, of the collective bargaining agreement. Sergeant Scott Waarvik, a patrol officer and sergeant for 29 years, stated the assignment should have been offered strictly on seniority. He testified he had experience with the duties listed in general terms. Waarvik also testified, however, he did not have access to the student database or the report on student activities used by SLOs.

SLO Marla Martin, with 15 years of experience, provided testimony as to why the ASP does not meet the “scheduled overtime” definition listed in Article 7, Section 6. Martin testified non-SLOs would not have knowledge of the children’s specific family situations - whether their parents were divorced, remarried, or whether they were in foster care - which would make immediate conflicts difficult. There are over 1,700 kids and 300 staff members in the District, and a day-to-day working knowledge is invaluable in dealing with complex student problem situations. SLOs know how school security systems work and can address “hot spots” where students sneak away from proper supervision. SLOs are familiar with kids that present special issues and are able to address those issues when they attend parent-teacher conferences. Without that knowledge, access to student database, and the historical experience, children are put at risk.

AWARD

The Arbitrator finds the testimony of School Liaison Officer Marla Martin most compelling and that the assignment of School Liaison Officers to the After School Program does not meet the collective bargaining agreement definition of “scheduled overtime.”

The Arbitrator further finds the City of West Allis did not violate the collective bargaining agreement when it assigned overtime to School Liaison Officers, and the grievance of Sergeant Scott Waarvik is denied.

Signed at the City of Madison, Wisconsin, this 9th day of May 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Rodney G. Pasch, Arbitrator