

BEFORE THE ARBITRATOR

---

In the Matter of a Dispute Between  
SHOREWOOD POLICE ASSOCIATION LOCAL 307  
and  
VILLAGE OF SHOREWOOD

Case ID: 302.0002  
Case Type: MA

AWARD NO. 7940

---

**Appearances:**

William R. Rettko, Rettko Law Offices, S.C., 15460 W. Capitol Drive, Suite 150, Brookfield, Wisconsin, appearing on behalf of the Shorewood Police Association.

James R. Korom, von Briesen & Roper, S.C., 411 E. Wisconsin Avenue, Suite 1000, Milwaukee, Wisconsin, appearing on behalf of the Village of Shorewood.

**ARBITRATION AWARD**

This is a dispute arising under the 2016-2018 labor agreement between the Village of Shorewood and the Shorewood Police Association Local 307. During negotiations leading to the agreement, the Village proposed and the Association ultimately agreed to the creation of a single relief shift officer position. The long-standing shifts were and are 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m. The relief shift officer would work from 7:00 p.m. to 3:00 a.m.; however, the chief, within seven days' notice, could move the relief shift officer to either the 3:00 p.m. to 11:00 p.m. or the 11:00 p.m. to 7:00 a.m. shift. The new position was created effective January 1, 2017. On February 3, 2017, Officer Wolber, who holds the relief shift officer position, worked the relief shift starting at 7:00 p.m. and ending at 3:00 a.m. The following day (February 4), Wolber worked from 3:00 p.m. to 11:00 p.m. Wolber received straight time pay for all sixteen hours. The failure to pay overtime to Wolber gives rise to this grievance.

The issue is simply whether under Section 6.01 Officer Wolber is entitled to overtime based upon the fact that he worked eleven hours on February 4, 2017.

The contract provision requiring the payment of overtime provides as follows:

**Section 6.01:** Overtime shall be paid at the rate of time and one-half (1-½) for all hours worked over eight (8) hours per day or forty (40) hours per week, subject to the provisions of Section 5.03 hereof. Effective January 1, 2018, overtime shall be paid for hours worked over 8.25 hours per day or 41.25 hours per week. The rescheduling of a work shift to avoid payment of overtime will not be permitted unless the officer mutually agrees, and the rescheduling period is not less than thirty (30) days nor more than sixty (60) days. However, the scheduling of hours worked for a duty shift will remain under the control and discretion of the Chief of the Police Department as prescribed by the Police Department Rules and Regulations. In addition, the Police Chief may continue to reschedule employees' hours so as to avoid any overtime payments when such employees attend the annual twenty-four (24) hour in-service training program. Subject to the provisions of Federal and State law:

- A. Employees of the department shall have the option of having overtime paid in cash or compensatory time off.
- B. Compensatory time off, if requested by the employee, shall be at the discretion of the Chief.

It is the understanding between the parties that regulation of compensatory time shall remain within the guidelines set forth in the Fair Labor Standards Act where it applies to law enforcement personnel, and that the work period shall be twenty-eight (28) days in length. Wages received while on training will be limited to eight (8) hours of straight time per day.

Ex.1 (emphasis added).

The dispute comes down to the definition of the term "day" as it is used in Article 6.01. The Association's view is that the term "day" should be defined as a 24-hour period beginning at midnight and ending on the following midnight. The Village in turn argues that "day" means the duty day for that individual officer.

Essentially, the Association argues that the common definition should apply and that if the term is ambiguous that the past practice evidence provided by the Village is inconclusive and not applicable. They argue further that the relief officer position (newly adopted on January 1, 2017) which was new to the Department was not exempted from contractual overtime provisions.

I conclude that in these circumstances the term “per day” is ambiguous. There is some arbitral precedent illustrating that at least in law enforcement settings the term “per day” or similar references are subject to ambiguity.

In *Winnebago County (Sheriff’s Dept.)*, WERC Case No. MA-15102 (Greer, 2012), the contract provided that overtime would be paid based upon “time worked in excess of the regularly scheduled workday.” The grievant signed up for a voluntary four-hour assignment preceding his regular eight-hour shift. He worked the four hours but only six of his regular eight hours. The arbitrator concluded that the term “regularly scheduled workday” was ambiguous and that it should be defined as a number of hours worked not a timeframe. The result compelled an award of two hours of pay at the overtime rate rather than four. In a case perhaps closer to ours, *City of Waukesha (Police)*, WERC Case No. MA-12676 (McLaughlin, 2006), the employer took the opposite approach of the Village in this matter. The contract provided for the payment of overtime “for all hours worked in excess of the scheduled workday.” The employee worked her normal 3:00 p.m. to 11:00 p.m. shift and then worked an additional four and one-half hours, three and one-half of which were worked on the following day. She again reported at 3:00 p.m. but only worked until 7:00 p.m. The city took the position that the term “scheduled workday” ended at midnight, and she was entitled to one hour overtime at the time and one-half rate. The rather long winded and confusing award provides no help in this matter other than to illustrate that the issue does arise and that seemingly straightforward language can be ambiguous.<sup>1</sup>

The Village provided evidence of a consistent past practice if using the “duty day” definition of the term “per day.” It may be summarized as follows:

<u>Date</u>	<u>Officer</u>	<u>Hours Worked</u>	<u>Overtime Paid</u>
02/28/13	Taraboi	02/27 – 11 p.m. to 02/28 – 7 a.m.; 7 a.m. to 11 a.m.	4 hours
04/09/15	Kerr	04/08 – 11 p.m. to 04/09 – 7 a.m.; 7 a.m. to 11 a.m.	4 hours
06/25/15	Miller	06/25 – 3 p.m. to 11 p.m.; 11 p.m. to 06/26 – 3 a.m.	4 hours
08/06/15	Miller	08/06 – 3 p.m. to 11 p.m.; 11 p.m. to 08/07 – 3 a.m.	4 hours
03/25/16	Meyers	03/25 – 3 p.m. to 11 p.m.; 11 p.m. to 03/26 – 3 a.m.	4 hours
03/31/16	Meyers	03/31 – 3 p.m. to 11 p.m.; 11 p.m. to 04/01 – 3 a.m.	4 hours
06/30/16	Taraboi	06/29 – 11 p.m. to 06/30 – 7 a.m.; 7 a.m. to 11 a.m.	4 hours
08/26/16	Grams	08/26 – 3 p.m. to 11 p.m.; 11 p.m. to 08/27 – 3 a.m.	4 hours

<sup>1</sup> While the city’s position in *Waukesha* is the direct opposite of the Village’s here, the fact that the employer advocate is the same individual is of no consequence. In my view, advocates represent the positions and interests of clients which may vary widely and are sometimes polar opposites.

<u>Date</u>	<u>Officer</u>	<u>Hours Worked</u>	<u>Overtime Paid</u>
11/03/16	Taraboi	11/02 –11 p.m. to 11/03 – 7 a.m.; 7 a.m. to 11 a.m.	4 hours

In each of the above-described situations, the Village used the “duty day” definition and the employees received four hours overtime. If they worked the next regular shift following the extra hours, they would have received three hours of overtime under the Association’s calendar day definition.<sup>2</sup> If they did not work the next regularly scheduled shift they would receive no overtime under the Association’s definition.

Given the fact that the Village has consistently used its definition of the term “day” for at least the past three years, it has established a past practice. The Association argues that the past practice is irrelevant because this is a new situation and the Village cannot point to anyone who worked two shifts or portions thereof in a 24-hour period and was declined overtime. I find that argument unconvincing. As a practicable matter, the Village’s duty day definition results in the payment of overtime for all hours worked contiguous to the employee’s regularly scheduled shift. Additionally, Sections 6.02 and 6.03 require the payment of overtime for any call-ins outside the regularly scheduled shift. Given that language, it is virtually impossible for any officer (other than the relief shift officer) to work two different shifts in a 24-hour period and not receive overtime.

In light of the established past practice which apparently only adversely impacts one position, I have no alternative but to find in favor of the Village and conclude that it did not violate the contract by denying overtime pay to the grievant.

Dated at Madison, Wisconsin, this 6th day of July, 2017.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James R. Scott, Arbitrator

<sup>2</sup> This is true for the persons working the 3:00 p.m. to 11:00 p.m. shift. Those working 11:00 p.m. to 7:00 a.m. who worked the following day would receive four hours of overtime under either definition but the fourth hour of overtime would be the first hour of their next scheduled shift.