

WITNESSES TESTIFYING

Called by the Union

Dan Hamann,
Patrol Sergeant

Nick Wetschka,
Business Agent

Trent MacDonald,
Sergeant

Called by the City

Ann Marie Shandley,
Human Resources Director

Ramona L. Dohman,
Chief of Police

David Jess
Deputy Chief of Police

JURISDICTION

The issue in grievance was submitted to James L. Reynolds as a sole arbitrator pursuant to the provisions of Article 9 of the Collective Bargaining Agreement (Joint Exhibit 1) between the parties and under the rules of the Bureau of Mediation Services of the State of Minnesota. The parties stipulated that grievance was properly before the Arbitrator and that he had been properly called.

At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. Final argument was provided through post hearing briefs submitted to the Arbitrator by each party. The briefs were received by the agreed upon deadline. With the receipt of the briefs by the Arbitrator, the record in this matter was closed. The issue is now ready for determination.

STATEMENT OF THE ISSUE

A stipulated issue in this case is whether or not the City violated the provisions of Article 21 – Compensatory Time of the Collective Bargaining Agreement by denying the Grievant’s request for 20 hours of compensatory time on or about September 29, 2008,

and if so, what shall the remedy be? The Union also presented an issue of whether or not the maximum, under Section 21.2, of 50 hours of compensatory time accumulated by a Sergeant during a calendar year is limited by the amount of unused compensatory time that a Sergeant carried over from the previous calendar year? [Hereinafter referred to as the “carryover” issue.] The City did not join in that issue, and argues that it calls for the Arbitrator to make an advisory opinion.

The grievance (Joint Exhibit 3) was filed on October 13, 2008 and reads in relevant part as follows:

Nature of the Grievance:

On or about September 29, 2008, Sgt. Hamann was denied 20 hours of compensatory time for training on off-duty time September 21-22, 2008. Sergeant Hamann has accrued eight hours of compensatory time during this calendar year. The compensatory time request was changed to +2080 time by Captain Smith with the explanation that his compensatory time beginning balance of 48.5 would not allow for the accrual of more than 1.5 hours this calendar year.

Articles Violated:

This action by the Employer is in violation of Article 21.2, of the Collective Bargaining Agreement, specifically that an employee may accumulate and use up to a maximum limit per calendar year of 50 hours of compensatory time.

Remedy:

The Union respectfully requests [he] be made whole in all respects, including, but not limited to, the allowance of compensatory time to be accrued to 50 hours during any given calendar year.

The City responded to the grievance on October 20, 2008 at the first step and on November 4, 2008 at the second step. In its step two response the City denied the grievance on the grounds that 1) Article 21 addresses compensatory time in overtime situations not present in this case, 2) Article 21.1 specifically provides that whether to

pay Sergeant Hamann or credit him with compensatory time is at the supervisor's discretion, and 3) the 50 hour maximum accumulation prevents the employee from receiving compensatory time rather than pay beyond the 50 hour maximum accumulation. In denying the grievance the City went on to note in its step two response that it has consistently taken the position that this 50 hour maximum accrual (including any accrued balance from the prior year) applied throughout the year. It further noted that the Union's position is not consistent with any established City practice in this area.

The controlling contract language is found in ARTICLE 21 – COMPENSATORY TIME.

It reads in its entirety as follows:

ARTICLE 21. COMPENSATORY TIME

21.1 It shall be the normal practice to pay for all overtime hours worked, however, at the request of the employee, the immediate supervisor may approve compensatory leave time in lieu of overtime payment for employees. The immediate supervisor at all times has the discretion to direct that compensation be by overtime pay, even though the employee may request compensatory leave time. Under no circumstances will overtime be paid or compensatory leave time earned to fill another employee's request to take compensatory leave time.

21.2 An employee may accumulate and use up to a maximum limit per calendar year of 50 hours of compensatory time and shall receive pay at overtime rates for all overtime hours worked while at the maximum compensatory leave time level. For example, an employee may not exceed 50 hours total accrual of compensatory leave time during any given calendar year as this is the maximum cap allowed and the maximum amount that can be used in a calendar year.

21.3 Accrued compensatory time may be taken off as paid leave with prior approval of the immediate supervisor.

21.4 Once approved, paid time may not be converted to compensatory time, nor may compensatory time be converted to paid time, with the following exceptions:

- › In December of each year, with requests submitted by the 15th, an employee may elect to receive as cash compensation up to their full compensatory time balance, paid at their current regular base pay, and if elected would not be able to accrue any additional compensatory time until the following January.
- › Upon termination of employment, any compensatory time balance remaining shall be paid in full, at the employee's current regular straight time hourly rate.

21.5 All compensatory time shall be recorded as such on official time sheets, both for accrual and use. Additionally, employees shall request compensatory time off using the standard "Request for Leave" forms.

FACTUAL BACKGROUND

Involved herein is a grievance filed on October 13, 2008 related to the City denying Sergeant Hamann compensatory time for 20 hours of training he took on September 21 and 22, 2008. The City is a municipal corporation incorporated under the laws of the State of Minnesota. The Union is the exclusive bargaining representative for the Police Sergeants of the City. The parties have maintained a collective bargaining relationship since 2004. The current Collective Bargaining Agreement (Joint Exhibit 1) became effective January 1, 2008 and continued in full force and effect through December 31, 2010. For all relevant times the Grievant was covered by its terms.

The controlling contract language found in Article 21 of the Collective Bargaining Agreement has been incorporated into the labor contract since 2004. Section 21.1 has not been changed since first placed in the agreement. The language of Section 21.2 was modified in 2005 to provide for a cap of compensatory time of 50 hours instead of the previous 20 hours. The only other change to Article 21 occurred in the negotiations that

resulted in the 2008-2010 contract. In those negotiations Section 21.4 was modified to provide for a “cash out” of accrued compensatory time in December of each year.

The dispute in this case centers on whether accrued compensatory time from a previous year is to be carried forward to the current year. In particular the dispute relates to whether the accumulated unused balance of compensatory time from a prior year is included in the 50 hour cap on compensatory time specified in Section 21.2.

The facts in this case are not seriously disputed. It is not disputed that Sergeant Hamann ended 2007 with a balance of 40.5 hours of unused compensatory time. He accumulated 8 additional hours and used 30 hours prior to the events that gave rise to the instant grievance.

The events that gave rise to the grievance relate to training the Grievant took in September 2008. It is not disputed that the training occurred at Camp Ripley and involved 40 hours time. Twenty of those hours occurred on days the Grievant was regularly scheduled to work. He was paid his regular compensation for those hours and they are not at issue here. The other twenty hours of training occurred on days when the Grievant was not scheduled to work.

It is not disputed that when training occurs on a Sergeant’s regular day off he may be paid in what is referred to as +2080 time. When that occurs it is expected that he will take an equivalent amount of time off either one week before the training or during a 30

day period after the training is completed. The rationale behind this practice is to ensure that the Sergeant ends the year with a total of 2080 hours of compensated regular time, and does not earn overtime as a result of attending the training. An alternative to +2080 time is that the Sergeant who had training scheduled for his off duty hours could request compensatory time off. If the Sergeant's supervisor approves the training as an addition to his compensatory time, the Sergeant could use the compensatory time at any time during the year or take the balance of his compensatory time in cash at the end of the year pursuant to Section 21.4.

When Sgt. Hamann completed the Camp Ripley training in September he submitted a request to his supervisor to add 20 hours to his compensatory time balance. His supervisor, Captain Smith, denied the request on the basis that Sgt. Hamann had accrued 48.5 hours of compensatory time at the time of his request, and that the cap of 50 hours would not permit him to add the requested 20 hours. Captain Smith advised Sgt. Hamann that he would approve the addition of 1.5 hours to his compensatory balance. The Grievant declined, and he was paid for the 20 hours through +2080 time. Captain Smith explained his decision to not approve more than 1.5 hours of compensatory time for Sgt. Hamann by stating that he had begun 2008 with 40.5 hours of compensatory time carried over from 2007 and had added 8 additional hours from rifle training that he took in August 2008, for a total of 48.5 hours. The fact that Sgt. Hamann used 30 hours of compensatory time in late August and early September were not deemed by the City to reduce the amount of time charged to his compensatory time balance. By the City's

reckoning, Sgt. Hamann had 48.5 hours of compensatory time at the time he requested adding the 20 hours from the Camp Ripley training.

Sergeant Hamann and subsequently the Union saw the issue differently. They acknowledged that he had 40.5 unused compensatory hours from 2007, but did not regard them as being rolled over into his 2008 compensatory time balance. They further recognized the addition of 8 hours from the August rifle training, and believed that those were the only hours accrued in 2008. Even with the balance of 40.5 hours from 2007 and 8 hours accrued in 2008 the Union believed that Sergeant Hamann's use of 30 hours in late August and early September reduced his balance of compensatory time in September, 2008 to 18.5 hours. Based on that balance they believed there was room to add the 20 hours from the Camp Ripley training without going over the 50 hour cap.

The Union filed the instant grievance on October 13, 2008. The grievance was processed through the steps of the grievance procedure without resolution, and was heard in arbitration on January 29, 2010.

POSITION OF THE PARTIES

Position of the Union

It is the position of the Union that the grievance be sustained and a determination made that the City violated the terms of the Collective Bargaining Agreement. It seeks an order that the unused compensatory leave that a Sergeant carries over from previous calendar years does not count toward the maximum of 50 hours of compensatory leave that a

Sergeant may accumulate during a given calendar year pursuant to Section 21.2 of the CBA. In support of that position the Union offers the following arguments:

1. Under the plain language of the Collective Bargaining Agreement accrued and unused compensatory leave from previous years should not count toward the 50-hour cap. Under the ordinary accepted meaning of the phrase “accumulate ...up to a maximum limit per calendar year of 50 hours of compensatory time”, accrual toward the 50-hour cap for a calendar year is clearly limited to hours earned during that calendar year.
2. In the case of Sgt. Hamann, prior to the Camp Ripley training in September 2008, the only compensatory leave that he had accumulated during calendar year 2008 was eight hours from the rifle training in August. Accordingly he had more than enough room under the 50-hour cap to earn an additional 20 hours in compensatory leave from the Camp Ripley training.
3. Even if the 2007 rollover of 40.5 hours were considered, Sgt. Hamann added 8 hours and used 30 hours in 2008, leaving a balance of 18.5 hours. That would still allow more than enough room to add the 20 hours from the Camp Ripley training.
4. The plain language of Section 21.2 simply does not support the position of the City that compensatory time from the prior year end is carried over to the following year. There is nothing in that section that could reasonably be understood to require carry-over of unused compensatory leave hours from previous years.
5. In order for the City to prevail, the phrase “accumulate ... up to a maximum limit per calendar year of 50 hours of compensatory time” would have to be interpreted as though the words “per calendar year” were not there. That is contrary to basic principles of contract interpretation.
6. The City’s position that the 40.5 hours of compensatory time Sgt. Hamann had earned prior to 2008 were actually “accumulated” or “accrued” in 2008 makes no sense. Had the parties reached an agreement that carried-over hours would count toward the 50 hour cap, the Collective Bargaining Agreement would say so. It clearly does not.
7. Even if extrinsic evidence is considered, it supports the Union’s position. Unrebutted testimony of several Union witnesses showed that the subject of carrying over unused compensatory leave hours

from one year to the next was not discussed at all during contract negotiations.

8. The City's claim that because Article 21 addresses compensatory time in overtime situations it does not apply here is contrary to the undisputed practice of the parties. That practice has been to allow Sergeants to earn compensatory leave for training and travel, and to apply those straight-time compensatory leave hours to the same bank as their overtime-rate compensatory leave hours. Moreover, the City relied on the 50 hour cap found in Article 21 to deny the request of Sgt. Hamann. Accordingly, the only reasonable conclusion is that, according to past practice, Article 21 does apply to Sgt. Hamann's grievance.
9. The City's claim that "whether payment is made or compensatory time is permitted is at the immediate supervisor's discretion" is true but irrelevant here. Captain Smith acted on the basis of the City's perception of the 50-hour cap. Accordingly, his denial was not an act of discretion, but rather an act of non-discretionary enforcement of contract language.
10. The accrual of compensatory time off is not a staffing or shift coverage issue. Sergeants seeking to use their compensatory time arrange for another Sergeant to fill in for them. In any event, Sergeants seeking to use compensatory time must have supervisory approval to do so. If using compensatory time would create a staffing shortfall, the Captain is empowered at all times to deny the request.
11. The City has not consistently enforced its interpretation of Section 21.2. Two other Sergeants have been shown to have gone over 50 hours in accrued compensatory leave, including unused hours carried over from the preceding year. The City has not provided a coherent explanation for why it has taken a "hard-line" on this issue with Sgt. Hamann, and not with other Sergeants.

Position of the City

It is the position of the City that no violation of the Collective Bargaining Agreement occurred and the grievance should be denied. In support of that position the City offers the following arguments:

1. The City administers a single compensatory time off bank for its Sergeants that includes both overtime and training time. While not specifically referenced in Article 21, the City and Union witnesses all acknowledge that Article 21 limitations apply to placing training time into the compensatory time off bank.
2. It is not disputed that the Sergeants' immediate supervisor has the authority to approve or deny an employee request to add to his compensatory time bank. In this case there is no dispute that the Grievant's supervisor denied his request. He had the discretion to do so and for that reason the grievance should be denied.
3. Section 21.2 provides additional authority for the City's action. That section contains a restrictive compensatory time cap that mandates that no supervisory discretion is permitted if the request will place the Sergeant above 50 hours. Except for the level of hours that language has remained unchanged since the initial labor agreement.
4. Section 21.2 provides a restrictive cap that differs from the cap in the police officers contract. The police officers contract allows an employee to use time in the bank in order to accrue more time. That is known as "replenishing" and is not permitted in the Sergeants' contract.
5. The Union sought the ability to replenish in every one of the three negotiations for the Sergeants labor contract. The bargaining history as shown in City Exhibits 2, 3, 5, 6, 7 and 8 and Union Exhibit 15 demonstrate that the Union sought replenishment, but ultimately did not prevail. They used replenishment in order to "leverage on work schedule". In each contract negotiation, the Union chafed at the prohibition against the compensatory time off bank being replenished. In each negotiation, the Union proposed to remove this restriction. In each instance, the Union's request on this specific issue was dropped as part of the eventual settlement.
6. The Union's claim that Sergeants can replenish the hours that were carried over from a prior year is not supported by any testimony or evidence. The City's Chief Labor Negotiator for all of the negotiations, however, testified, without challenge, that carryover was intended to be applied to the cap so that the balance on January 1 would have the practical effect of reducing the amount that could be accrued in that year. That was done in order to remain at the "hard and fast" 50 hour cap. How the carryover was applied was thoroughly discussed at negotiations, and both sides understood the restriction in the Sergeants' contract.

7. In order to alleviate the impact of this cap, the Union requested and the City agreed to cash out the accrued compensatory time in December upon request of the employee. This permitted the Union members another way, besides use, to get the compensatory time off balances to zero so there was no limitation on the 50 hours they could accrue in the following year.
8. The Police Chief and Deputy Chief both testified that it was the practice to carryover compensatory time from prior years, and that any amount carried over would be included in the 50 hour cap. The City's consistent application of this language has been to permit the carryover of accrued hours into a new year that have not been cashed out and continuing to apply these hours to the "No Replenishment Rule" on the same basis as hours accrued in that year. This consistent application of the Rule prohibited the action that the Grievant requested. The two instances in which the City erred in application of this cap illustrates that the cap exists except in the unusual instance where both the supervisor and the payroll department erred.
9. The City negotiated this language in the contract to provide a benefit that the Sergeants understood was very limited and very different from the police officers benefit. Supervisory discretion is provided when a Sergeant makes a request that time be added to his compensatory time bank and when a Sergeant requests use of his compensatory time.
10. Allowing Sergeants to accrue a large compensatory time balance that would have to be controlled only through supervisory control on its use would have created employee morale and potential conflicts with the Fair Labor Standards Act.
11. The relatively small number of Sergeants, compared to the number of police officers, working for the City makes it difficult to maintain staffing levels of at least one Sergeant on duty for each shift should Sergeants be permitted to replenish compensatory time off banks.
12. The Union is now seeking to obtain in this grievance arbitration what it could not in negotiations – the right to replenish the compensatory time off bank. It is "fundamental that it is not for the Labor Arbitrator to grant a party what which it could not obtain in bargaining".

ANALYSIS OF THE EVIDENCE

The controlling contract language is found in Article 21 of the Collective Bargaining Agreement. It is apparent from the record that the parties have negotiated at length over the language of that article. Notwithstanding those lengthy negotiations, the agreed to language contains ambiguities that the parties will likely want to clarify in future negotiations.

A threshold issue to be determined is whether the language of Article 21 is clear and unambiguous, or whether a reasonable person would find that the language could be construed to have more than a single meaning expressed in its words. If it is clear and unambiguous then the Arbitrator need not look to extrinsic evidence to find the meaning intended. Clear and unambiguous language will speak for itself and carry to meaning ordinarily associated with the words in the contract.

In this case the language of Article 21 is found to be less than clear on some matters. First of all it is noted that the Article as written applies to compensatory time related to overtime, and not to training time that is at issue here. The extrinsic evidence shows, however, that the parties have also applied that language in regard training time in the past. Indeed, the record shows that the City maintains only one compensatory time balance for each Sergeant, and that balance includes both compensatory time earned through overtime and compensatory time earned through training activities undertaken on a Sergeant's regular day off.

The City argues, in part, that because the language clearly references only compensatory time earned through overtime that the language is not applicable to compensatory time earned during training undertaken on a Sergeant's regular day off. It further argues that because reference is not made to training time in the language of Article 21, it does not apply here and the City can rely on the general reservation of rights found in Article 5 to administer the application of compensatory time related to training. That argument is misplaced. It is not disputed that the City maintains only one compensatory time account for each Sergeant, and that training time occurring on regular days off have been routinely placed in that account with the knowledge of both parties. Clearly the actions of the parties demonstrate that they intend training time to be eligible for inclusion in the compensatory time account of a Sergeant if so requested and approved by the Sergeant's supervisor. There was no testimony whatsoever that there was any other compensatory time account into which training time could be placed. Accordingly, the provisions of Article 21 are deemed to relate to training time as well as overtime hours.

Section 21.1 of Article 21 clearly provides that a Sergeant must request that potentially creditable hours of overtime or training taken on regular days off be placed in his compensatory time bank. That Section also clearly provides that the immediate supervisor has at all times the discretion to approve or deny the Sergeant's request. That language is clear and unambiguous. There is nothing in the language restricting the authority of the Sergeant's supervisor in approving or denying the request. Accordingly, the Sergeant's supervisor may deny the request based on contractual restrictions, staffing issues, coverage issues, or any other reasonable basis. The only restriction that could

reasonably be regarded as limiting the supervisor's authority is that his decision must not be discriminatory, arbitrary, or capricious. This grievance can be resolved on the basis of that clear contract language.

The record shows that the Grievant requested that 20 hours of training he took on his regular days off be credited to his compensatory time balance in September 2008. That request was denied and he was paid for the training time. In denying the Grievant's request Captain Smith, the Grievant's supervisor, opined that the Grievant did not have sufficient hours available to add 20 hours to his compensatory time balance. He made that determination by including the 40.5 hours of unused compensatory time Sergeant Hamann had at the end of 2007 in his 2008 compensatory time balance. Also included were an additional 8 hours Sergeant Hamann had accrued in 2008. Thirty hours that Sergeant Hamann had used in 2008 were not recognized by Captain Smith as reducing Sergeant Hamann's compensatory time balance. Accordingly, Captain Smith reckoned that Sergeant Hamann had a total of 48.5 hours in his compensatory time balance when he made his request to add an additional 20 hours from the Camp Ripley training he took on his regular days off.

The City does not agree with the issue framed by the Union that involves carryover of compensatory time from a prior year. It argues that resolution of that issue would require an advisory opinion by this Arbitrator. The City is correct that arbitrators are reluctant to issue advisory opinions that are couched in a hypothetical situation. That is not the situation here, however. Captain Smith denied Sergeant Hamann's request to credit his

compensatory time account with the 20 hours of Camp Ripley training time because he had a balance of 48.5 hours in his account at the time. It is not disputed that his balance of 48.5 hours included 40.5 hours carried over from 2007. The appropriateness of including the 40.5 hours from 2007 in the Grievant's 2008 balance is fundamental to resolving this grievance. This case does not present a hypothetical situation. To the contrary, the facts related to this case are specific and largely undisputed. It is incumbent on an arbitrator to examine the facts adduced from the record and apply them to the language of the labor contract. That was done here by this Arbitrator in regard to the language of Article 21, including Section 21.2.

Section 21.2 provides a clear limit cap of 50 hours of accumulated compensatory time. It specifically provides that "an employee may accumulate ... up to a maximum limit per calendar year of 50 hours of compensatory time." What is involved here is the "per calendar year" phrase. The Union asserts that because of the "per calendar year" phrase carryover from the prior year is not to be included in the accumulated time bank for the current year. That view creates the question: what happens to the accumulated compensatory hours from the prior year? A partial answer may be found in Section 21.4 that provides for payout at the end of a year at the election of the employee. It is clear that such a payout is not mandatory. The presence of a payout provision, however, provides an opportunity for a Sergeant to be compensated for some or all of his accumulated compensatory time, and permits him to manage how much, if any, compensatory time is carried into the next year. It is not disputed that the grievant did not request payout under the terms of Section 21.4 to reduce his balance of 40.5 hours

compensatory hours at the end of 2007. If payout is not elected by the employee then the question is: what happens to the compensatory time balance at the end of the year?

It is undisputed that the City maintains only one compensatory time account for each employee. There is no evidence that unused balances of compensatory time from a past year would go into any account other than the compensatory time account for an employee in the current year. That compels a finding that the parties have carried forward compensatory time balances from a prior year into the compensatory time account for a Sergeant for the current year.

In this case Sergeant Hamann requested the addition of 20 hours into his compensatory time account. With a carryover of 40.5 hours from 2007 and addition of 8 hours from 2008 it would appear that he would have exceeded the 50 hour limit cap by the addition of the 20 hours. The Union argues that would not have happened because Sergeant Hamann had also used 30 hours before requesting the 20 hours from the Camp Ripley training be added to his account. The Union contends that his use of 30 hours brought his balance down to 18.5 hours, leaving ample room for the addition of the 20 hours from the Camp Ripley training. The Union's argument is compelling, but not convincing. The City argues that the interpretation suggested by the Union would result in "replenishment", which is not provided for in the contract.

The City contends that the Police Officers' labor contract provides for replenishment, whereas the Sergeants contract does not. The City goes on to argue that the Sergeants

have been seeking the same replenishment as the Police Officers since they first began to bargain with the City.

A careful reading of the compensatory time language (Article 22) in the Police Officer's contract (Union Exhibit 19) shows that Police Officers may accumulate up to 50 hours of compensatory time and use of that time will be permitted if it does not unduly disrupt the operations of the agency. There is no contractual limit on the number of hours of compensatory time that may be used in a year found in the Police Officers' contract. In the Sergeants contract, on the other hand, the compensatory language reads that a Sergeant may accumulate and use 50 hours per year. On first impression, that language sounds similar to the language in the Police Officers' contract. That first impression may indeed be the source of the misunderstanding underlying this dispute. An important distinction between the Police Officers' and Sergeants' language is shown, however, through the example cited in Section 21.2 of the Sergeants' contract . The example uses the phrase "total accrual of compensatory time during any given calendar year". [Emphasis supplied]. "Total accrual" clearly shows that the parties intended to apply a cap of 50 hours of total accrued compensatory time over the course of the year. Total accrual is reasonably taken to mean the cumulative total number of hours that have been added during the year to a Sergeant's compensatory account. That is clearly different from the Police Officer's contract language that provides only for a cap of 50 hours to be observed at any point during the year. The Police Officers' contract does not control the cumulative total number of hours that are added in the course of a year. While both the Police Officers' and the Sergeants' contracts provide for accumulation of up to 50 hours

of compensatory time in a year, the example cited in Section 21.2 clearly shows that the parties agreed to a total accrual of compensatory leave time in the Sergeants' contract and did not agree to a total accrual in the Police Officers' contract. There is nothing in the language of the Sergeants' contract to suggest that using compensatory time would reduce the cumulative total accrued compensatory time .

Another important difference in the two contracts appears in the "use" language. With approval, Police Officers may use any number of compensatory time hours in the course of a year by adding to their compensatory time balance from time to time and then withdrawing hours from time to time. So long as the accumulated hours do not exceed 50 at any point in time, the used hours have no contractual limit. The Sergeants' contract on the other hand provides a clear limit cap of 50 hours on the number of compensatory time hours that can be used during the year. Accordingly, no matter how many times additions and withdrawals are made to a Sergeant's compensatory time balance during a year that balance cannot cumulatively exceed a total of 50 hours and the Sergeant cannot use more than 50 hours. There is no contractual bar in the Sergeants' contract from using and adding compensatory time during a year. The only limits are that the total hours of compensatory time placed into a Sergeant's account and hence accumulated during the year cannot exceed 50 hours for the entire year. Similarly, the total number of compensatory hours used in the course of a year by a Sergeant cannot exceed 50 for the entire year.

In the instant case, Sergeant Hamann had 48.5 hours in his compensatory time account after the carryover from 2007 was made and he subsequently added 8 hours. He then used 30 hours. Because he had a total accrual of 48.5 hours, however, that alone prevented him from adding more than 1.5 hours even though he had used 30 hours. The total accrued hours standard is independent of usage, and in this case remained at 48.5 even though Sergeant Hamann had used 30 hours. Accordingly, the City was correct in its denial of his request to add his 20 hours of Camp Ripley training time.

Importantly, there was no evidence presented that the City has allowed compensatory time to routinely exceed the 50 hour total accrual cap. Two cases were cited where Sergeants exceeded that cap. The City averred that those were errors by the payroll department, and the Union presented no evidence to the contrary. Moreover, no evidence was presented that such exceptions were the rule.

For all of the above cited reasons the Arbitrator is without power to reverse the actions taken by the City and the grievance must be denied.

IN THE MATTER OF ARBITRATION BETWEEN

LAW ENFORCEMENT
LABOR SERVICES, INC.
UNION

and

CITY OF MAPLE GROVE, MINNESOTA
CITY/EMPLOYER

OPINION AND AWARD

Contract Interpretation
Compensatory Time Grievance
Sergeant Dan Hamann, Grievant
BMS Case No. 09-PA-0608

AWARD

Based on the evidence and testimony entered at the hearing, the grievance and all remedies requested are denied.

3.23.2010

Dated: _____

James L. Reynolds

James L Reynolds,
Arbitrator

Awd06.10