

IN THE MATTER OF ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc.,
Union,

and

City of St. Francis, Minnesota,
Employer.

OPINION AND AWARD

Grievances of Nicholas Steiger
Grievances of Arnold Gennaro

BMS Case Nos. 10-PA-0088,
10-PA-1021, and 10-PA-1024

ARBITRATOR:

Gerald E. Wallin, Esq.

DATE OF AWARD:

June 17, 2010

HEARING SITE:

St. Francis, Minnesota

HEARING DATES:

May 4, 2010

RECORD CLOSED:

May 18, 2010

REPRESENTING THE UNION:

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JURISDICTION

The hearing in this matter was held on May 4, 2010. The undersigned was selected to serve as arbitrator pursuant to the parties' collective bargaining agreement ("Agreement") and the procedures of the Minnesota Bureau of Mediation Services. The parties submitted five grievances involving an issue concerning the interpretation of their Agreement to arbitration. The provision of their Agreement calling for Award issuance in thirty days was waived to allow for a sixty-day period. Both parties were afforded a full and fair opportunity to present their cases. Witnesses were sworn and their testimony was subject to cross-examination. The parties submitted post-hearing briefs that were duly received by email attachment on May 18, 2010, which closed the record, and the matter was taken under advisement.

ISSUES

The parties stipulated to the following statement of the issues:¹

1. Whether the City violated Section 13.1 of the labor agreement.
2. If so, what is the appropriate remedy?

BACKGROUND AND SUMMARY OF THE EVIDENCE

According to the parties' presentations, the background facts leading to the five grievances are essentially undisputed. They presented the following stipulation at the outset of the hearing:

Law Enforcement Labor Services, Inc.
And
The City of St. Francis
(Holiday Pay Grievances)

1. The grievant Nick Steiger is a police officer with the St. Francis Police Department.
2. The grievant A. J. Gennaro is a police officer with the St. Francis Police Department.

¹The Employer initially raised an objection to the procedural arbitrability of two of the five grievances involved. The Employer withdrew its objection after the hearing and confirmed that withdrawal in its post-hearing brief.

3. The grievants are in the bargaining unit represented by Law Enforcement Labor Services, Inc. consisting of the essential employees of the St. Francis Police Department excluding supervisory and confidential employees.

3.*{sic}* The grievants are, and at all material times for this grievance have been, covered by the provision of Joint Exhibit 1 – the labor agreement between LELS and the City of St. Francis.

4. Section 13.1 of the collective bargaining agreement provides that:

13.1 The following days are established holidays as of the date of this contract:

New Year's Day	Columbus Day
Martin Luther King's Birthday	Veteran's Day
President's Birthday	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Eve Day (½ Day)
Labor Day	Christmas Day

“Individuals who are not scheduled to work on an actual holiday will be paid for eight (8) hours of work.”

“Individuals who are scheduled to work on an actual holiday and take the day off will only be paid a maximum of eight (8) hours.²

5. July 4, 2009 occurred on a Saturday.

6. The grievant Nick Steiger did not work on July 4, 2009.

7. The grievant Nick Steiger received 8 hours of pay on his July 9, 2009 pay stub.

In addition to the foregoing stipulation of facts, the parties agreed upon eight Joint Exhibits consisting of the Agreement, the five grievances and associated correspondence, the annual police officer work schedules for 2008-9, and the comparable work schedules for 2009-10.

The three grievances submitted by Officer Steiger challenge his pay treatment for holidays in 2009. They involve the holiday periods for the 4th of July, Thanksgiving, and Christmas. The two grievances submitted by Officer Gennaro involve the Thanksgiving and Christmas periods in 2009. The common thread in the five grievances is the Union's belief that the two officers were shorted

² Quotation marks, or their absence, are as noted in the Agreement

pay in violation of Article XIII, Section 13.1.

Both grievants are rotating patrol officers. As such, they essentially work a fourteen day rotation of days on and days off that are planned to produce 80 hours of paid time. The expected shift rotations include work days varying among 8, 10, and 12-hour work shifts and day-off periods varying from two to five days. The two-week pay periods begin on a Monday and conclude with the second following Sunday.

According to the testimony of Chief Harapat, rotating patrol officers observe the contractual holidays on the actual calendar day of the respective holiday. Other officers who perform administrative-type duties who work a Monday through Friday work schedule observe holidays on the day designated by the City for observance by all other Monday through Friday employees.

The Employer publishes a planned work schedule for police officers approximately three months in advance of the respective month of work. This allows officers to do some degree of advance planning for the use of their days off and to use accrued vacation. That advance schedule is subject to change due to circumstances unforeseen at the time of its issuance.

Article XII of the parties' Agreement governs Hours of Work. Among its provisions, the Article establishes a requirement for posting work schedules as well as the handling of vacation, sick leave, and holiday time. Per Subdivision 12.1, the Employer is required to post a work schedule for a given calendar month by the first day of the preceding calendar month. It is undisputed that no grievances were filed that alleged that the Employer failed to post the work schedules for July, November, and December of 2009 as required by Subdivision 12.1.

In support of each of the five grievances, the Union introduced a graphic depiction of the general, or expected, day-on and day-off rotation for each of the grievants. In addition, the Union introduced the time card completed by each grievant for the holidays in question, the pay check stub issued by the Employer for the respective time card, and associated documents.

According to the work schedules posted for July, November, and December of 2009, Grievant Steiger was not scheduled to work on the 4th of July. Nor was he scheduled to work on Thanksgiving Day, the day after Thanksgiving, Christmas Eve Day and Christmas Day. Grievant Gennaro was not scheduled to work on Thanksgiving Day, the day after Thanksgiving, Christmas Eve Day and Christmas Day. The remainder of their work schedules over these holiday periods differed from their general, or expected, rotation patterns. The differences consisted of reduced shift hours or different work days and days off. For example, an expected shift of 10 or 12 hours

according to the pattern was reduced to a lower number of hours.

It appears that the reduction in total working hours for the pay period spanning of each holidays was made to keep the aggregate total of each officer's holiday time and work time at or below 80 hours. The pay stubs in evidence suggest that the Employer pays overtime rates for hours in excess of 80 during a pay period.

According to the Union's post-hearing brief, its position on the five grievances is based on two primary contentions. First, the language of Article XIII, Section 13.1 is not clear and unambiguous in that the words "scheduled to work" and "actual holiday" are not defined in the Agreement. Second, the interpretation of these words should be governed by the parties' past practice. In this regard, the Union maintains the practice is to recognize the three-month advance schedule which incorporates the general, or expected, rotating patterns as the governing schedule.

As previously noted, in the Union's view on the five grievances, both Grievant Steiger and Grievant Gennaro were shorted pay hours for each of the applicable pay periods.

According to the Employer's position, the "final" work schedules for each of the holiday periods involved were the schedules required by Article XII, Section 12.1 to be posted by the first of the preceding month. None of those schedules had the two grievants scheduled to work on the holidays in question. In addition, neither of the grievants worked on any of the actual holidays and they were properly paid for the holidays in accordance with Article XIII, Section 13.1.³ In support of its position, the Employer notes several other provisions of the Agreement. For example, Article XII, Section 12.1 also provides that no officer is guaranteed a number of hours of work per day or per week. The same section reserves to the Employer the right to establish work schedules without regard to any traditional practices.

OPINION AND FINDINGS

At issue in this dispute is the limited question of whether the Employer violated Section 13.1 of the Agreement by the manner in which the two grievants were compensated for the holidays in controversy. After listing the twelve recognized holidays, Section 13.1 only contains this one

³Grievant Steiger did perform 7.75 hours of overtime work on the day after Thanksgiving in 2009. However, it is undisputed that this work was part of his voluntary participation in a DWI Task Force program that operated outside of the Agreement and did not constitute work performed on a holiday within the meaning of the Agreement.

sentence that applies to the five grievances: *Individuals who are not scheduled to work on an actual holiday will be paid for eight (8) hours of work.* (Italics supplied) Therefore, it is the proper meaning of this one sentence that determines the merits of the five grievances.

The only provision governing the scheduling of work that was cited by the parties is found in Article XII, Section 12.1. The arbitrator's own examination of the Agreement did not reveal any additional provisions that might regulate how work shifts are to be scheduled.

Section 12.1 reads in full as follows:

This Article is intended only to define the normal hours of work and normal scheduling and to provide the basis for the calculation of overtime or other premium pay. Nothing herein shall be construed as a guarantee of hours of work per day or per week. The Employer reserves the right to establish work schedules without regard to unusual or traditional practices. Regular schedules shall not be construed as excluding shift rotations and emergency work schedules based on public necessity as determined by the Employer. The Employer reserves the right to establish work schedules. These schedules shall be posted on the first day of each month period *{sic}* to the scheduled month, (example: October schedule to be posted September 1st.)

Given the text of Section 12.1, it can be seen that the only type of work schedule that is required by the Agreement is the one for a given month that must be posted the first day of the previous month. There is no reference whatsoever in the Agreement to the 3-month planning schedule that the Employer provides apparently as a courtesy. As written, therefore, the reference in Section 13.1 pertaining to "Individuals who are not scheduled to work ..." on the actual holiday can only be a reference to the monthly schedules posted the first day of the previous month. Accordingly, the Union's contention that the words "... are not scheduled to work ..." in Section 13.1 are ambiguous and lack clarity must be rejected. To the contrary, the finding must be that those words refer to the work schedule for a given calendar month as posted the first day of the previous calendar month.

The remaining references in Section 12.1 to the creation of work schedules establish that the Employer has broad scheduling freedom within its sole discretion to depart from any expectations arising from a rotation pattern. There is no guarantee of work hours or days. According to the record, therefore, such rotation patterns are merely guidelines for planning purposes; they are not restrictions upon the Employer's freedom to develop work schedules as it determines to be

appropriate.

Finally, the testimony of the Chief of Police was un rebutted on the point that rotating patrol officers observe recognized holidays on the actual calendar day that corresponds with the designated holiday. It is undisputed that both grievants were rotating patrol officers at all times relevant to the holidays in question. Therefore, for purposes of these five grievances, the finding must be that the words, "... on an actual holiday ..." as found in Section 13.1 refer, as written, to the actual holiday and not to some other date of observance.

In addition to the foregoing findings, the arbitrator notes that the Agreement became effective on January 1, 2008. There is no evidence that holidays were observed differently or that work schedules were created differently in 2008.

Given the foregoing general findings and considerations, the analysis turns to the individual grievances.

Steiger Grievance for July 4, 2009

According to the stipulated facts and Joint Exhibit 8, Grievant Steiger was not scheduled to work on July 2nd, 3rd, 4th, or 5th.⁴ He did not perform any work on July 4th. His pay stub does show that he received 8 hours of holiday pay for the holiday not worked. Therefore, on the basis of the narrow issue for arbitration, the grievance must be and is denied.

The stub further shows that Officer Steiger was paid for a total of 90½ hours of compensated time, which included his DWI Task Force time, but he was only paid for 2½ hours of overtime. This leaves open the question of whether his overtime compensation was properly calculated. This overtime question, however, is not a holiday pay question within the scope of the stipulated issue. Therefore, no findings are made herein on that overtime question.

Steiger Grievance for November 26 and 27, 2009

According to Joint Exhibit 8, Grievant Steiger was not scheduled to work on either Thanksgiving Day or the Day after Thanksgiving. His time card shows he did not work on either day.⁵ His pay stub shows that he was paid for all of the 95¾ hours he claimed for the pay period.

⁴ Officer Steiger did perform 8½ hours of DWI Task Force work on July 3, 2009. As previously noted, this type of work is outside of the scope of the Agreement.

⁵ Officer Steiger did perform 7¾ hours of DWI Task Force work on November 27th. See Footnote 4.

The 16 hours he was paid for the two holidays were not separately designated as holiday pay. Instead, they were included for pay merely as “Hourly” units along with his other hours worked. Such designation is consistent with Article XII, Section 12.2. Section 12.2 states, “For the purpose of this section, vacation, sick leave and holidays shall be considered as time worked.” His 95¾ pay hours included 15¾ hours of overtime. Accordingly, the evidence establishes that he was properly paid in accordance with Section 13.1. This grievance, therefore, must be denied.

Steiger Grievance for December 24 and 25, 2009

According to Joint Exhibit 8, Grievant Steiger was not scheduled to work on either Christmas Eve Day or Christmas Day. His time card shows he did not work either holiday and claimed a total of 12 hours of pay for them. He also claimed 12 hours of vacation time to bring his total pay hours up to 80 for the pay period. This total also included 12 hours of scheduled work on New Year’s Day. His pay stub shows that he was properly paid for all hours claimed in accordance with Section 13.1. He was also properly paid for an additional 12 hours of holiday pay for the work on New Year’s Day in accordance with Section 13.2. No violation of Section 13.1 has been established by the evidence. This grievance, therefore, must be denied.

Gennaro Grievance for November 26 and 27, 2009

According to Joint Exhibit 8, Grievant Gennaro was not scheduled to work on either Thanksgiving Day or the Day after Thanksgiving. His time card shows he did not work on either day. He claimed a total of 16 hours of pay time for the two holidays. The total time claimed on his timecard was 87½ hours. His pay stub shows he was paid for a total of 87½ hours, which included 7½ hours of overtime pay. Although the holiday pay was not separately designated as such on his pay stub, he was nevertheless properly compensated in accordance with Section 13.1. Therefore, this grievance must be denied.

Gennaro Grievance for December 24 and 25, 2009

According to Joint Exhibit 8, Grievant Gennaro was not scheduled to work on either Christmas Eve Day or Christmas Day. His time card shows he did not work on either holiday and claimed a total of 12 hours of pay for the days. He claimed a total of 80 hours of pay time for the

pay period, which included 8 hours of vacation time and 12 hours of work on New Year's Day, for which he was scheduled to work. His pay stub shows he was paid for all of the hours claimed. In addition, he was paid an additional 12 hours of holiday pay pursuant to Section 13.2 for the work on New Year's Day. According to the evidence, Grievant Gennaro was properly paid for all time claimed. No violation of Section 13.1 was established. The grievance, therefore, must be denied.

AWARD

The Employer did not violate Section 13.1 of the Agreement as alleged in the five grievances. Accordingly, the five grievances are denied.



Gerald E. Wallin, Esq.
Arbitrator

June 17, 2010