

IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc.

and

BMS Case No. 12-PA-0324

City of Oakdale

NAME OF ARBITRATOR: George Latimer
Assistant James St. Peter

DATE AND PLACE OF HEARING: December 3, 2012
St. Paul, MN

DATE OF AWARD: January 7, 2013

BRIEFS RECEIVED AND RECORD CLOSED: December 14, 2012

APPEARANCES

FOR THE EMPLOYER: Mary Tietjen, Attorney
William Sullivan, Chief of Police
Michael Grill, Captain

FOR THE UNION: Scott Higbee, LELS Attorney
Sean Coffey, Officer
Tom Higgins, Officer
Tina Voss, Officer

STATEMENT OF THE ISSUES

1. Did the City violate Article 13 of the Collective Bargaining Agreement providing that overtime will be as equally as practicable?
2. If so, what should the remedy be?

RELEVANT CONTRACT PROVISION

ARTICLE 5 – EMPLOYER AUTHORITY (Emp. Ex. 1)

5.1 – The Employer retains the full and unrestricted right to operate and manage all manpower...; to establish work schedules, and to perform any inherent managerial functions not specifically limited by this Agreement.

5.2 – Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish or eliminate.

ARTICLE 13 – OVERTIME (Union Ex 1)

13.1 – Employees will be compensated at one and one-half (1.5) times the Employee’s regular base pay rate for hours worked in excess of the Employee’s regularly scheduled shift. Changes of shift do not qualify an Employee for overtime under this Article.

13.2 – Overtime will be distributed as equally as practicable.

RELEVANT STANDARD OPERATING PROCEDURE

SECTION B – OVERTIME DISTRIBUTION (Union Ex 2)

2.0 – Introduction

2.1 – This procedure is the result of an effort to address the contractual requirement of distributing overtime as equally as practicable, and to establish a reasonable, practical and understandable procedure for the distribution of overtime.

2.2 – While the department retains the right to assign overtime as needed, the current philosophy of the department is to avoid assigned overtime to the extent possible due to the potential inconvenience created for affected employees.

2.3 – While every effort will be made to approach this issue with a fundamental sense of fairness to all parties involved, the department will consider its first priority to be the fulfillment of its mission and law enforcement obligations.

5.0 – Distribution Guidelines

5.1 – Minimum Staffing Requirements (MSR) overtime required to fill a vacant shift, or portion thereof, occurring within a time frame of 24 hours or less, will be filled in the most expedient manner possible. The preferred option is to extend the shift of on-duty personnel, followed by the early start of on-coming personnel, and finally by the use of the call list.

5.2 – Elective overtime and MSR overtime with more than 24 hours notice, but no more than seven calendar days notice, will be filled through the use of the call list.

5.3 – Elective overtime and MSR overtime for an event scheduled to occur for a period of more than seven days will be posted in the squad room and will be available to all licensed personnel.

5.4 – An exception to these provisions includes those events that are assigned to on-duty personnel as part of the normal course of duty, or are required to be staffed by personnel as part of a specific assignment.

INTRODUCTION

This is a grievance arbitration between Law Enforcement Labor Services, Inc. (LELS or Union), and the City of Oakdale (Employer or City). The parties are signators to a collective bargaining agreement, signed on September 14, 2010. This collective bargaining agreement between the parties expires on December 31, 2012. On September 15, 2011, there was an incident in the City of Oakdale that resulted in overtime and overtime opportunities. As a result, the Union filed separate grievances for six officers (Union Ex. 4, 5, 7, 8, 9, 10). The Employer denied each of these grievances. This arbitration ensued. There are no jurisdictional disputes between the parties. A hearing was held on December 3, 2012. Briefs were filed by both parties on December 14, 2012 and the record was closed.

BACKGROUND AND STATEMENT OF FACTS

On September 15, 2011, there was a triple homicide in the City of Oakdale. A husband, wife, and in-house caregiver were murdered and discovered by children living at the residence as they returned from school that day. After discovering the bodies the children went to a neighbor who called the police. Chief William Sullivan, who has been with the City of Oakdale police department for 25 years, could not recall a similar incident. Only Captain Michael Grill could recall an incident of similar magnitude in the City, which occurred more than 25 years ago.

Shortly after 4:00 PM Patrol Officers Tim Higgins, Tina Voss, Kimberly Coffey, and Sergeant Karin LaTour responded to the call. These officers entered the residence, located the bodies, and began to secure the crime scene. As time elapsed, the activities at the scene began attracting the attention of neighbors. The responding officers were then occupied with controlling the crowds and speaking with potential witnesses. In addition to the officers mentioned above, Chief Sullivan and Captain Grill also arrived on scene to assist. Other law enforcement agencies were also present on the scene, including criminal investigators and the Minnesota Bureau of Criminal Apprehension (BCA).

Around 6:00 PM, Captain Grill directed Patrol Officers Higgins, Coffey, and Voss to return to the police station and write their reports. Captain Grill remained on the scene and was informed by Sergeant Scott Olson that the BCA wanted someone to monitor the rear area of the home. Sergeant Olson had requested an Explorer for the assignment. (Union Ex. 6, page 2). An Explorer was a non-licensed officer, but someone who was interested in a career in law enforcement. Typically a high school or college student filled this role. Captain Grill testified that he did not agree that the use of an Explorer would be sufficient.

Upon learning of the BCA's request, Captain Grill received a phone call from Patrol Officer Brian Stroshane who called to relay an offer of assistance from the St. Paul Police Department. In addition, Stroshane asked Captain Grill if there was anything he could do to help. Captain Grill, just receiving the request from the BCA, said that Stroshane should come to the scene and monitor the rear of the house as long as needed. Officer Stroshane was off duty at this point and at home.

At the police station Officers Higgins, Voss, and Coffey had finished writing their reports and offered to return to the scene if anything further was needed of them. They were told by

Sergeant LaTour that nothing more was needed and that they could leave for the day. Around 7:00 PM., as they were leaving the station, they saw Officer Stroshane coming in. They later learned that he contacted Captain Grill and offered his services. As a result, Officer Stroshane received five hours of overtime. There is no dispute among the parties that Officer Stroshane had the highest overtime balance within the unit.

EMPLOYER ARGUMENT

The City did not violate the overtime distribution provision of the CBA when Captain Grill accepted Officer Stroshane's offer of assistance during a response to a triple homicide. Under the circumstances surrounding the tragedy on September 15, 2011, it would not have been practicable to expect Captain Grill to reject an offer of assistance to fill an immediate request from the BCA and instead initiate the telephone calls to arrange for shift extensions or determine the next eligible officer on the call list.

The plain language of the CBA requires that overtime be distributed "as equally as practicable." Furthermore, the CBA provides that the Employer retains the right to operate and manage all manpower and to establish work schedules. There is no language indicating that the City intended to waive that right to manage necessary manpower in these types of circumstances. It was completely reasonable and practical for Captain Grill to accept the offer of help rather than pursue other, more time-consuming means to find an officer to fill that need.

The City did not violate its policy relating to the distribution of overtime. (Emp. Ex. 4). The policy states that the department retains the right to assign overtime as needed and that the department's first priority is to fulfill its mission and law enforcement obligations. (Emp. 4, page 4). On September 15, the department's first priority was to deal with the tragic crime that had been committed, not to ensure the precise equality of distribution of overtime to officers.

Moreover, the distribution guidelines in Section 5.0 of the department's policy were not triggered in this situation. Section 5.1 of the policy states:

MSR [Minimum Staffing Requirements] overtime required to fill a vacant shift, or portion thereof, occurring within a time frame of 24 hours or less, will be filled in the most expedient manner possible. The preferred option is to extend the shift of on-duty personnel, followed by the early start of on-coming personnel, and finally use the call list. (Emp. Ex. 4, page 8).

The situation on September 15 did not involve "overtime required to fill a vacant shift." There was no "vacant shift." Rather, the situation involved an immediate need to fill an unexpected assignment. Given the circumstances, Captain Grill's acceptance of Officer Stroshane's offer to help could not have been more expedient. He had just learned of the request to assist in monitoring the rear of the crime scene and received the call moments later.

In addition, even if the above section were applicable in this situation, these options for filling a "vacant shift" are only preferred, not mandatory. As the plain language of the policy states, the department retains the right to fill a shift or assign overtime as needed and in the most expedient manner possible. To require the department to set aside law enforcement obligations and concern itself primarily with ensuring equality in the distribution of overtime would be unreasonable.

For the above reasons, the City requests the Arbitrator to find that there was no violation of the overtime provision of the CBA and that the grievances be denied.

UNION ARGUMENT

The Union argues that the City violated its contractual obligation to distribute overtime as equally as practicable when it provided the September 15 overtime opportunity to an individual who was off duty and who had the most accumulated overtime in the unit. Of the six grievants,

Patrol Officer Higgins was the most deserving of the opportunity because he was (a) on duty, finishing his shift, and (b) had the least amount of accumulated overtime to date.

In regards to overtime distribution, Section 5.1 of the Operating Procedure states that the “preferred option” is extending the shift of on duty personnel. (Union Ex. 2, page 8). Thus, the Union is not contending that the City should have activated the overtime call list. Rather, the City had the reasonable, expeditious, and “preferred” option of contacting officers who were still on duty. All Captain Grill would have needed to do when he received the request from Sergeant Olson was call the station and inquire if any of the officers still on duty wished to work the assignment. Captain Grill’s excuse that he was unsure if those officers had finished their reports fails to hold weight because one short call would have determined that.

The City contends that, under the circumstances, it was justified in not activating the call list or following the overtime distribution policy because it was responding to an emergency. However, by the time Officer Stroshane offered to come to the crime scene there was no longer an emergency situation. The initial responding officers had been sent back to the station, the scene had been cleared, no suspects were being sought or pursued, and the primary objective of the Oakdale police was protecting the scene. Indeed, Sergeant Olson, who requested assistance in monitoring the back of the residence, had requested an Explorer for the assignment. (Union Ex. 6, page 2). The fact that Sergeant Olson believed an Explorer would satisfy the assignment requirement counters any claim that this was an emergency situation.

The Union argues that just because Officer Stroshane fortuitously called in shortly after the need of monitoring the rear entry of the crime scene does not warrant deviating from the contract or operating procedures. Nothing in the contract or the operating procedures suggests an overtime preference should be given to officers who happen to call in and offer their services

and availability. Such a preference would risk the inequities the parties came to recognize as inherent in the previous overtime process, which consisted of posting opportunities at the station. Officers, such as Stroshane, who live close to the station could more readily offer their services and take away opportunities otherwise available for on duty officers. Self help to overtime opportunities will inherently work to the disadvantage of certain employees and therefore work against the contractual objective of distributing overtime as equally as practicable.

For the above reasons, the Union requests the grievances be sustained and that Officer Tom Higgins be awarded the overtime he would have received had Employer followed the guidelines in the CBA and operating procedures.

ANALYSIS AND AWARD

The CBA language and the testimony at hearing makes clear that overtime allocation is understandably important to the Union and the law enforcement officers it represents. The Union makes a good argument that the process set in place was a useful way to avoid giving certain officers an advantage to overtime while disadvantaging others. The process is justified given the Union's concern that overtime be evenly distributed. In normal circumstances, the assignment which occurred in this case might not have occurred. This case manifestly falls outside any description of normal circumstances. This Arbitrator is not persuaded by the Union's argument that because the scene had been cleared the emergency had passed. A triple homicide had occurred and the BCA had requested additional coverage. Captain Grill's action was reasonable and expeditious. This Arbitrator should not substitute his opinion for the choice made by a seasoned officer in these circumstances.

Therefore, the Arbitrator concludes that given all the circumstances, the conduct of the Employer was reasonable and consistent with its contractual duties.

AWARD: Grievances denied.

George Latimer, Arbitrator

January 7, 2013

Date