

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE CITY OF OAKDALE

AND

**LAW ENFORCEMENT LABOR SERVICES EMPLOYEE'S UNION
LOCAL 197**

BMS Case No. 13 PA 0502

OPINION AND AWARD OF ARBITRATOR

**Richard A. Beens
Arbitrator
1314 Westwood Hills Rd.
St. Louis Park, MN 55426**

APPEARANCES

For the Union:

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For the Employer:

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**Date of Award"
January 13, 2014**

JURISDICTION

This arbitration arises pursuant to a collective bargaining agreement (“CBA”)¹ Between Law Enforcement Labor Services Employee’s Union (“LELS” or “Union”) and the City of Oakdale, Minnesota (“Employer“ or “City“). Five individual Grievants, Patrol Officers Coffey, Groppoli, Schauls, Kroeger and Campbell were all employed by the Oakdale Police Department and were also members of the Union.

The undersigned neutral arbitrator was selected by the parties to conduct a hearing and render a binding arbitration award. The hearing was held on December 17, 2013 in Oakdale, Minnesota. The parties stipulated that the matter was properly before the arbitrator. Both parties were afforded the opportunity for the examination and cross-examination of witnesses and for the introduction of exhibits. Written closing arguments were submitted by January 8, 2014. The record was then closed and the matter deemed submitted.

ISSUE

The parties left statement of the issue to the arbitrator and I would formulate it as follows:

Did the Employer violate Article 13.2 of the collective bargaining agreement when it allowed an officer with the most accumulated overtime in the bargaining unit to work an additional ten (10) hours of overtime on November 9, 2012? If so, what is the proper remedy?

FACTUAL BACKGROUND

The City of Oakdale police department has 31 licensed officer. In addition to the Chief, there are 9 supervisory officers who belong to an IBT supervisory unit and 21

¹ Exhibit 9.

sworn officers represented by LELS.

At issue in this grievance is the Employer's distribution of overtime hours. The five Grievants, all Patrol officers, complain that the City unfairly guided overtime hours to favorite employee in violation of Article 13.2 of the CBA.² The Employer asserts that it has precisely followed its extensive policies and procedures when allocating overtime and is in full compliance with the CBA.³

The incident precipitating this grievance occurred on November 9, 2012. Part of the Oakdale City Hall complex is a large warehouse commonly referred to as the "Cold Storage building." The Oakdale Police Department uses it to store the detritus of day-to-day police operations: old radio and computer equipment, discarded phones systems, outdated squad car light bars, boxes of accumulated IRC's⁴ and outdated files, pamphlets and exhibits still used by CSO's,⁵ etc. These items were stored randomly over time, without any plan or order. Consequently, by the fall of 2012, the warehouse had become cluttered and in need of cleanup and reorganization.

The impetus to clean up the Cold Storage Building came from the Community Service Officers. While the Police Department has a full-time CSO, a number of regular patrol officers have also volunteered to participate in community affairs activities.⁶ Their participation is often time spent in excess of their normal patrol duties and, therefore,

² Exhibit 1, p. 8.

³ This grievance is the latest chapter involving many of the same personalities in what appears to be an ongoing saga within the Oakdale Police Department. See *City of Oakdale and LELS*, BMS Case Nos. 06PA0921 and 06PA1174, (Befort, March, 2007), *City of Oakdale and LELS*, BMS Case No. 09PA0836, (Orman, October, 2009), *City of Oakdale and LELS*, BMS Case No. 12PA0561, (Befort, July, 2012) and *City of Oakdale and LELS*, BMS Case No. 12 PA 0324, (Latimer, January, 2013). (Full texts available at http://mn.gov/bms/arbitration_awards.html)

⁴ Initial Contact Reports.

⁵ Community Service Officers

⁶ Exhibit 5.

paid as overtime. These activities range from supervision of the Explorer Program⁷ to school presentations to Neighborhood Watch training.⁸ Pamphlets, Explorer uniforms and a several exhibits used in these CSO programs were among the items lost in the jumbled muddle of the Cold Storage building.

Consequently, Brian Stroshane, a patrol officer who participates in the CSO programs, organized a clean up of the warehouse.⁹ The evidence indicates he was motivated by the need to find and organize pamphlets, uniforms, and exhibits used in the community affairs programs. He, along with CSO supervisor Stark, CSO officer Meuwissen, and Administrative Captain Grill¹⁰, spent three Fridays, October 5, October 19, and November 9 all in 2012,, cleaning and reorganizing the Cold Storage warehouse. The 10 hours of overtime paid to Stroshane on November 9, 2012 lie at the heart of this grievance.

The parties' CBA in place on November 9, 2012 required that, "*Overtime will be distributed as equally as practicable.*"¹¹ Presumably in response to similar problems in the past, the City adopted a lengthy and highly detailed overtime distribution policy in October, 2011.¹² Some categories of overtime such as court time, call-backs, major holidays and shift extensions are mandatory. These play no part in the current grievance. However, two categories, Minimum Staffing Requirements ("MSR") and special events

⁷ The Explorer Program is for youths, ages 14 to 20, who have an interest in law enforcement. They meet weekly and are given training and hands-on experience in the duties and responsibilities of police work. (See City of Oakdale website.)

⁸ Exhibit 5.

⁹ Exhibit 6.

¹⁰ Grill is the member of the departments senior management team and oversees community affairs activities.

¹¹ Exhibit 9, Sec. 13.2. This provision was in effect in the CBA in place from 1/1/10 to 12/31/12. It has since been amended (Exhibit 1, Sec. 13.2), but the changes are not relevant to this grievance.

¹² Exhibit 3.

are elective. MSR overtime may be necessitated by illness, injury, or vacation of a regularly scheduled officer.¹³ Special event overtime is typically requested of an outside entity contracting for law enforcement services.¹⁴

In order to “equally distribute” elective overtime, the City maintains a cumulative, bi-weekly log of precisely which officers have been offered and either accepted or refused the elective overtime hours.¹⁵ Hours spent on MSR, special events, and hours of overtime refused are added together to create a Designated Overtime Balance for each officer. This, in effect, creates a reverse overtime call list that includes 28 officers. When subsequent elective overtime opportunities arise, the officer with the lowest Overtime Balance is the first one called. If he or she refuses, the officer with the next lowest Overtime Balance is called, and so on. Elective overtime with more than 24-hour notice, but less than seven days notice is filled through use of the call list.¹⁶ When there are more than seven days notice, the anticipated overtime is posted and available to all licensed personnel.¹⁷

A final category of overtime consist of hours required to be staffed by personnel as part of a special assignment. This latter category is excepted from the distribution provisions relative to elective overtime.¹⁸

On November 9, 2012, Officer Stroshane had already worked the most overtime of any officer on the force, and, as a consequence, was on the very bottom of the

¹³ Exhibit 3, Section 4.1 e.

¹⁴ Exhibit 3, Section 4.1 h.

¹⁵ Exhibit 4.

¹⁶ Exhibit 3, Section 5.2.

¹⁷ Ibid., Section 5.3.

¹⁸ Exhibit 3, Section 5.4.

Designated Overtime Balance seniority list. On the other hand, the five Grievants, Officers Coffey, Groppoli, Schauls, Kroeger and Campbell, all had significantly lower Designated Overtime Balances than Stoshane.¹⁹

Grievants assert the City violated CBA Article 13.2 and their own Overtime Distribution Policy²⁰ by assigning Officer Stoshane to the job. Each of the five Grievants testified that they were available on November 9 and would have accepted the overtime task of cleaning up the Cold Storage building had it been offered. They claim the cleanup job required no special knowledge or talents and, therefore, should have been assigned in accordance with the City's Overtime Distribution Policy.

The City denies violation of CBA Article 13.2 and asserts that Stoshane was given the overtime as part of a "special assignment." The purpose of the cleanup was precipitated by the need to locate and organize CSO materials located in the storage facility. Therefore, they argue, Stoshane's assignment was exempt from the normal rules pursuant to Sec. 5.4 of Overtime Distribution Policy.

The Union filed the present grievance on behalf of the five officers on November 15, 2012.²¹ The City denied the grievance initially and again in Steps 2 and 3 of the CBA grievance process.²²

¹⁹ Ibid. As of October 29, 2012, Stoshane had a balance of 115.0 hours, Schauls had 79.5, Campbell had 82.25, Coffey had 83.50, Kroeger had 93.00, and Groppoli had 93.0.

²⁰ Exhibit 3, Sec. B

²¹ Exhibit 2.

²² Ibid.

APPLICABLE CONTRACT AND POLICY PROVISIONS²³

Article 13²⁴

Overtime

13.2 *Overtime will be distributed as equally as practicable.*

Work Scheduling and Overtime Distribution²⁵

Section B: Overtime Distribution

4.2 *Elective: Broadly describes any of a variety of overtime categories characterized by a self-selection process which is non-compulsory and completely voluntary in nature. Employees are free to sign-up for posted overtime and are likewise free to accept or refuse overtime offered through the activation of a call-out list. Employees will be credited for elective hours worked and elective hours refused for documentation of equitable distribution compliance.*

4.3 *Designated Overtime Balance:*

....

The designated overtime balance list shall be regarded as the singular source for the official determination of the ranking of overtime hours credited ...

Rankings will be displayed in ascending (Sic) order with the highest ranked members corresponding to the lowest credited Designated Overtime Balances.

....

5.2 *Elective overtime and MSR overtime with more than 24-hours notice, but not more than seven calendar days notice, will be filled through use of the call list.*

5.3 *Elective overtime and MSR overtime for an event not 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 special assignment.*

²³ Only those provisions deemed relevant to the present grievance have been included.

²⁴ Exhibit 9.

²⁵ Exhibit 3.

OPINION AND AWARD

The instant case involves a contract interpretation in which the arbitrator is called upon to determine the meaning of some portion of the collective bargaining agreement between the parties. The arbitrator may refer to sources other than the CBA for enlightenment as to the meaning of various provisions of the contract. The essential role of the arbitrator, however, is to interpret the language of the CBA with a view to determining what the parties intended when they bargained for the disputed provisions of the agreement. Indeed, the validity of the award is dependent upon the arbitrator drawing the essence of the award from the plain language of the agreement. It is not for the arbitrator to fashion his or her own brand of workplace justice nor to add to or delete language from the agreement.

In undertaking this analysis, an arbitrator will first examine the language used by the parties. This objective approach “...holds that the meaning of the language is that meaning that would be attached to the integration by a reasonably intelligent person acquainted with all the operative usages and knowing all the circumstances prior to and contemporaneous with the making of the integration.”²⁶ If the language is clear and unambiguous, that is the end of the inquiry. A writing is ambiguous if judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning.²⁷

Resolution of this grievance will be determined by responding to two questions: What does “practicable” mean? And, more importantly, what constitutes a “special

²⁶ Elkouri & Elkouri, *How Arbitration Works*, Seventh Edition, (2012), Chapter 9.1.B.I.

²⁷ See *Metro Office Parks Co. v. Control Data Corp.*, 205 N.W.2nd 121 (1973).

assignment? The CBA in effect at the time of this grievance requires that, "*Overtime will be distributed as equally as practicable.*" Webster's Collegiate Dictionary defines practicable as "capable of being put into practice; feasible." Inclusion of the word is a recognition that flexibility is needed when assigning overtime. The majority of arbitrators agree that use of a work like "practicable" allow management "...*reasonable flexibility in the interest of efficient operations.*"²⁸ Further, the majority of arbitrators find, "...*no employee has a pre-emptory right to overtime on any particular day that it is available.*"²⁹

The City has adopted a lengthy and complex process designed to equitably distribute overtime.³⁰ However, not all factors are in their control. The Grievants in this case had already refused anywhere from 52 to 94 hours of elective overtime in 2012. Some have never worked elective overtime.³¹ They do so for good reason -- most are married with children and working wives. It is often impossible for them to arrange childcare or other familial obligations on short notice. On the other hand, Officer Stoshane is unmarried and apparently without any pressing family obligations. His personal circumstances simply allow him to accept and work more overtime hours than the Grievants. While he has accumulated a large number of overtime hours, most of these were awarded only after every other officer above him on the list had been called and refuse the work. At the hearing, Grievants acknowledged that it would not be "practicable" to tailor an overtime distribution system to the individual circumstances of

²⁸ Elkouri & Elkouri, *How Arbitration Works*, Seventh Edition, (2012), Chapter 13.14. B.

²⁹ Ibid. See also Sundstrand Corp., 66-2 ARB ¶8700, at 5422 (Kelliher, 1966)

³⁰ Exhibit 3.

³¹ Grievants Campbell and Groppoli. See Exhibit 4.

all 28 officers on the call list.

Neither the CBA nor the Overtime Distribution policy define the phrase, “special assignment.” Included among the definitions of “special” contained in Webster’s New Collegiate Dictionary is “...other than the usual” and “..being designed for a particular purpose.” Participation in community affairs programs is clearly an assigned special duty above and beyond normal patrol work in the City of Oakdale.. In the spring of 2012, Chief Sullivan requested volunteers and asked for letters of interest. The work they would perform was outlined in the Daily Bulletin item of March 16, 2012:

“...Officers selected for this assignment will be responsible for participating in a variety of activities that are currently managed under the umbrella of Community Affairs. Examples include CFMH, Neighborhood Watch, etc. This activity will also be managed by Community Affairs Officer Stark and will be assigned an independent budget and the allocation of a block of overtime for exclusive use in that specific program.”³²

Only six officers submitted letters of interest and were assigned to community affairs projects.³³ None of the Grievants expressed interest in or were assigned to community affairs activities. Officer Stoshane was one of those who applied and was accepted.

The evidence clearly indicates the impetus for cleanup of the Cold Storage building originated with Stoshane and was motivated by the need to find and organize CSO materials. Pamphlets, Explorer uniforms, and exhibits still useful to them were lost amidst the jumble of castoff items stored there. Stoshane was the principal organizer of

³² Exhibit 5, p. 1.

³³ Exhibit 5, p. 2.

what turned out to be a three-day task.³⁴ Only those who either supervised or were directly involved in community affairs activities were asked to help. He solicited the help of Captain Grill, CSO manager Stark, and CSO Meuwissen. While there is no question the project involved removing or recycling a majority of items unrelated to community affairs activities, the testimony indicates the precipitating goal was to locate and organize CSO materials. Even if the unrelated items necessitated the bulk of the work, that was secondary to the original motive.

While the Union asserts the City is demonstrating favoritism by assigning Stroshane to the final cleanup day, the evidence indicates otherwise. On the first two days, October 5 and 19, Stoshane was already assigned to work and, as a consequence, was paid straight time. The final cleanup day, November 9, was moved from November 2 and chosen to accommodate Captain Grill's schedule. I find the City properly regarded the final work day a part of a continuing special assignment. Stroshane had originally suggested November 2, a day when he was already scheduled to work, and would have been paid straight time. Since Stroshane had not been scheduled for patrol duty on November 9, his 10 hours of cleanup duty was compensated at overtime rates. The schedule change was purely serendipitous and not the result of any favoritism.

The preponderance of the evidence indicates the Cold Storage cleanup was a "special assignment" and not subject to the normal rules of overtime distribution. While the majority of the cleanup may well have involved moving or disposing items unrelated to CSO work, that was secondary to the ultimate goal of finding and organizing CSO

³⁴ Exhibit 6.

materials. Using Stroshane for the final day's work is well within the "special assignment" exception to regular overtime rules. Having determined the work to be part of a continuing "special assignment," I find the City was under no duty to use the call list or post the overtime in the squad room. Based on the evidence before me, I find the City did not violate the CBA or its own overtime distribution rules.

AWARD

The grievance is DENIED.

DATED: _____

Richard A. Beens, Arbitrator