

BEFORE
JAMES R. COX
ARBITRATOR

VILLAGE OF ORLAND PARK

and

COMPENSATORY TIME REQUESTS
GRIEVANCES 2008 - 7,11 & 12

METROPOLITAN ORDER OF POLICE
CHAPTER 159

SUPPLEMENTAL DECISION AND AWARD

Hearings in this matter were conducted October 5th and 9th, 2009. MAP Attorney Joseph Mazzone represented the Union. Attorney David Novak presented the Orland Park case. After the Award had issued December 15, 2009, a Motion to Reconsider was submitted January 13, 2010. The Union responded January 27, 2010.

APPLICABLE CONTRACT PROVISIONS

SECTION 4.5 COMPENSATORY TIME

Except as otherwise noted in Article 7.2, compensatory time at a time and one-half rate may be granted at such times and in such time blocks as are mutually agreed upon between the involved employee and his supervisor. If mutual agreement on compensatory time cannot be reached, the employee shall receive 1½ time his regular rate of pay for overtime worked.

THE MOTION

The Award noted: "As the Village indicated in their Post Hearing Brief, it had been 1985 when Law Enforcement Agencies like the Orland Park Police Department became subject to the overtime provisions of the Fair Labor Standards Act. The Act was amended to allow local Agencies to offer Police Officers an opportunity to elect compensatory time off in lieu of overtime payment. In Orland Park, the parties made Patrol Officers' rights to the Comp Time alternative subject to provisions of 4.5."

The Village argues that the contractual compensatory time language is permissive in that such paid time off "may be granted at such times and in such time blocks as are mutually agreed upon between the involved employee and his supervisor". In their Motion to Reconsider, Orland Park stresses that Section 4.5 does not create an entitlement to compensatory time off and that, "as required by Federal Law, Section 4.5 does no more than reflect the agreement of the parties that Orland Park is permitted to offer compensation time off, not that it is required to do so". There has not been any proposal to remove Section 4.5 from the Contract and I do not know of any Labor

Board Decision or Arbitrator's Award that would permit the Village to unilaterally eliminate this benefit from the Labor Agreement. The provisions of Section 4.5 have remained in the Agreement without modification and, until October 2008, there had been an expectation that the compensatory time alternative might be available to both Officers and the Village dependent upon mutual agreement. Although there has been an October 2008 change in its administration, the benefit remains a part of the Agreement.

According to his undisputed testimony, while Officer Osthoff had attended numerous training classes over the years, there had not been any occasion prior to August 26, 2008 when his request to accrue Comp Time for such overtime work had been denied. In September 2008 Kevin Bush had been denied a request to accrue eight hours compensatory time for attending a Special Response Team training day. That same month, September 14, 2008, Grievant Osthoff had worked a half hour overtime providing an accident assist at the end of his regular shift. When he asked for that half-hour as Comp Time, Sergeant Walsh alerted him that "*Commander Kenealy really isn't approving that much Comp Time anymore.*" Osthoff's Comp Time balance at that time was low - a little more than three hours. The sought comp time was a half hour. There was neither evidence nor argument that the Osthoff and Bush Comp Time Requests had been denied because of the time or the time blocks during which they sought to use the benefit. The Village had been concerned about what they saw as excessive Comp Time accrual.

Both in 2007 and Summer 2008, during meetings with Chapter 159, the Chief had emphasized Orland Park's concern about what he saw as relatively high levels of compensatory time some Officer's had banked. A MAP proposed limit on accruals was rejected and, as late as July 2008, the Union had been told that the Village would continue efforts to reduce existing Comp Time levels with an objective to eventually pay all overtime at time-and-a-half. However, the benefit continued to be provided. In August and September of 2008, there had been six occasions when the Village had agreed to grant comp time. When there was a change in the approval policy, it was not communicated to the Union in advance. It was the following month, that Department's new comp time policy was promulgated to all Sworn Officers, those working Patrol and those assigned to Investigations - "*Effective immediately, do not submit requests to accrue compensatory time or indicate "Comp Earned" on your time sheet. It is not mutually agreed to and will not be approved.*"

While other Officers had been granted requested comp time for work performed August 17th, August 31st, September 14th (two such approvals that day), September 25th and September 28th, these two Grievants had been denied comp time for overtime worked August 26th and September 14th and 18th. This was clearly disparate treatment. The Grievances were sustained for that reason.

The Award should not be construed as limiting the mutually agreed concept expressed in Section 4.5. It is because of the disparate treatment - granting some Officers compensatory time while denying such paid time off to other similarly situated Officers¹ - that the Grievances were granted.


James Cox
Arbitrator

Issued this 19th day of February 2010

¹ To reiterate, there was no evidence that the Osthoff and Bush Comp Time Requests had been denied because of the time or the time blocks during which these Grievants had sought to use the time - an explicit provision of 4.5. Their requests were denied as part of the Village program to reduce compensatory time accrual during the same months that other Officer requests for comp time had been granted.