

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

TOWN OF UXBRIDGE

-and-

UXBRIDGE POLICE ASSOCIATION, MASSCOP
LOCAL 123

ARB-23-10092

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Joseph Fair, Esq.

- Representing Town of Uxbridge

Patrick Bryant, Esq.

- Representing Uxbridge Police Association
MASSCOP, Local 939

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The Town violated the collective bargaining agreement when the grievant was scheduled to work six consecutive days during the period of September 26, 2022 through October 16, 2022, without adding overtime or administrative days off. The Town is hereby ordered to make the grievant whole by awarding him two administrative days off.



Timothy Hatfield, Esq.
Arbitrator
October 18, 2024

INTRODUCTION

On June 14, 2023, the Uxbridge Police Association, MASSCOP, Local 123 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web Ex on November 8, 2023.

The parties filed briefs on December 29, 2023.

THE ISSUE

Did the Town violate the collective bargaining agreement as a result of the grievant being scheduled to work shifts on six consecutive days during the period of September 26, 2022 through October 16, 2022 without adding overtime or administrative days off? If so, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

ARTICLE XIV
NEW EQUIPMENT RE-OPENING CLAUSE**Section 1. Scheduled Tours of Duty or Work Shifts, Work Week, etc.:**

Employees shall be scheduled to work regular work shifts or tours of duty shall have regular starting times and quitting times. All work assignments shall be posted on the department bulletin board seven (7) days in advance at all times.

The workday shall consist of eight (8) consecutive hours. All patrol officers including sergeants, covered by this Agreement, shall work the so-called four (4) and two (2) work schedule consisting of four (4) consecutive days (or nights) on duty and two (2) consecutive days (or nights) off duty.

- A. The starting and quitting times of several work shifts or tours of duty are as follows: 7:00 A.M. - 3:00 P.M., 3:00 P.M. - 11:00 P.M., 11:00 P.M. - 7:00 A.M.
- B. In the event that the complement of officers and sergeants increase in excess of nine (9) men, the Chief or Board of Selectmen may at their discretion institute any additional shifts other than set forth under sub- section A for additional police officers only.
- C. The Chief may at his/her discretion institute special assignments. Such assignments shall normally be for no less than one (1) year. Such assignments shall normally be made during the October/April Shift Bid process. Assignments will be based on qualifications. Seniority will apply only in the event that qualifications are relatively equal.
- D. Said assignments shall consist of an eight (8) consecutive hour workday and not exceed the total number of annual hours encompassed by the so-called four (4) and two (2) work schedule. Employees shall be entitled to two (2) consecutive days (or nights) off duty weekly. Scheduled hours shall be posted seven (7) days in advance. Employees working night hours shall be compensated to reflect the appropriate shift differential as defined in Article XVI Section 5 of this Agreement.
- E. If for any non-disciplinary reason the Assignment is terminated, the affected officer shall not suffer any loss of time or benefits and shall be integrated to the patrol force with the same work hours until the next shift bid process.

Section 2. Overtime Services:

All assigned, authorized or approved service outside of an employee's regularly scheduled tour of duty or work shift (other than paying police details), work week, hours of work, including service on an employee's scheduled day off or during his/her vacation and service performed prior to the scheduled starting time for his/her regular work shift or tour of duty and service performed subsequent to the scheduled time for conclusion of his/her regular work shift or tour of duty, and including overtime service and paid for such.

A. Overtime service shall not include:

1. An out of turn work shift or tour of duty which is substituted for a regularly scheduled work shift or tour of duty at the request of an employee (subject to department approval).
2. Swapped tour(s) of duty or work shift(s) between individual employees by their mutual agreement (subject to department approval).

Section 3. Scheduling of Overtime:

In emergencies or as the need of service require, regular police officers (sergeants and officers) may be required to perform overtime work. All such employees shall be given as much advance notice as possible of overtime work opportunities. Scheduled overtime shall be posted and distributed to all regular employees on an equitable and fair basis. Employees other than those required to work beyond their normal shift or tour of duty due to the exigencies of their workday (such as an accident, etc.) shall have the option of declining offered overtime; but in the event that sufficient personnel do not accept emergency situation where time is of the essence in executing the overtime job, such additional regular police officers are deemed necessary by the Town may be required to work overtime on an assigned basis. All employees shall be afforded the opportunity to accept overtime service, but there shall be no discrimination against any employee who declines to work overtime on a voluntary basis.

Section 4. Non-Avoidance of Overtime Provisions:

The scheduled work shifts or tours of duty of individual employees or groups of employees will not be changed or altered for the purpose of avoiding the overtime provisions of this Article.

Section 5. Method of Compensation of Overtime Services:

An employee who performs overtime service in accordance with the provisions of this Agreement shall receive, in addition to his/her regular weekly compensation, time and one-half his/her straight time hourly rate for each hour of overtime service, or fraction thereof, provided however that the rate of compensation for overtime service on a holiday shall be as provided in Article XI, Section 2, of this Agreement. The straight time hourly rate shall be computed as one-fortieth of an employee's regular weekly compensation.

Employees shall not be required to accept compensatory time off in lieu of holiday or vacation pay (where such service is performed on a holiday or during vacation) and shall be remitted to employees

within seven (7) days after the week in which such overtime is performed.

Section 6. Overtime Opportunities:

Overtime service opportunities resulting from the inability of a regular full time police officer or reserve officer to report for scheduled work due to sickness, injury or other cause, shall be first offered to employees (regular full time) on a first refusal basis; only in the event such insufficient employees are available for or desirous of working on an overtime service basis shall such work opportunities be offered or afforded to reserve police officers. (For the purpose of this section only, "scheduled work" refers to work which was scheduled within seven (7) days of the date of the overtime service opportunity).

Section 7. Patrol Shift Assignments by Seniority:

The Town recognized and will apply the principle of seniority in matters of shift assignments and selection of vacation periods. Shifts shall be worked in order of seniority and any new officer may be assigned to any shift for a period not to exceed six (6) months. An officer wishing to change shifts must notify the Chief thirty (30) days prior to a schedule change. Schedule changes shall be implemented on October 1st and April 1st. Any vacancy which occurs during a bid period shall be filled by the employee who requested that position (above their current shift) during the initial bid. If multiple officers requested the vacant shift (above their current shift), the shift will be offered to the officer with higher seniority. Should no employee request the vacant position, it will be filled in inverse seniority.

The sergeants shall be assigned to the 7:00 A.M. - 3:00 P.M., 3:00 P.M. - 11:00 P.M., and the 11:00 P.M. - 7:00 A.M. shifts and the principle of shift by seniority shall apply between the sergeants and the above-mentioned shifts except when a sergeant is assigned as Acting Chief of Police and then the Sergeant shall be assigned 8:00 A.M. - 4:00 P.M. shift.

FACTS

The Town of Uxbridge (Town) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The Union is the exclusive bargaining representative for all employees listed in the recognition clause of the collective bargaining agreement including Patrol Officers and Sergeants.

Patrol Officers work on a four and two schedule, where they work four consecutive days on followed by two consecutive days off. All officers, with one exception, work the same shift on their four and two schedule. Approximately five patrol officers are assigned to each of the three daily shifts.

On occasion, the Town has offered a split shift opportunity to one officer. This shift consists of two evening shifts followed by two overnight shifts prior to two days off. This shift is offered to help with the rotational balance needed to cover all shifts seven days a week.

Twice a year, shift assignments are bid by seniority for a period covering October 1st through March 31st and April 1st through September 30th. The bids are for shifts and not rotation. Officers bid for the desired shift but do not know if their rotation of days will remain the same. Ideally, officers switching shifts can retain their same rotation, but on occasion due to operational needs that is not possible. Also, while there are multiple rotations on each of the three regular shifts, there is only one rotation for the split shift.

Thomas Stockwell (Stockwell/grievant) has been employed by the Town as a patrol officer since 2006. In September 2022, Stockwell was the most senior officer to bid for the split shift commencing on October 1, 2022, and was awarded the bid. Prior to this bid, Stockwell worked the 3 PM to 11 PM evening shift. Stockwell's rotation at the time, had him working on September 29th and September 30th. The split shift rotation schedule which Stockwell was awarded, scheduled him to work October 1st – October 4th, before his two consecutive days

off on October 5th and 6th. The result was that Stockwell was scheduled for and worked six consecutive days.

Stockwell and Officer Sawash testified that they had in the past received administrative days off when rotational issues arose. The Town continues to dispute that any administrative days have been issued to address rotational issues.

When Stockwell originally brought the issue of being assigned to work six consecutive days up to his supervisor Sergeant Stratton, he was advised to file for overtime for the last two shifts. Ultimately, the request for overtime was denied by the Chief and resulted in the Union filing a grievance. The Town denied the grievance at all steps of the grievance procedure, resulting in the instant arbitration.

POSITIONS OF THE PARTIES

THE UNION

Town Violated the Agreement by Forcing Stockwell to Work Six Scheduled Days of Work

The Union's argument is based upon the simple language of the collective bargaining agreement, interpreted in light of purpose and context. "All patrol officers including sergeants, covered by this Agreement, shall work the so-called four (4) and two (2) work schedule consisting of four (4) consecutive days (or nights) on duty and two (2) consecutive days (or nights) off duty." Officers who work this schedule are entitled to basic salary every week. In order to receive the same basic salary, officers cannot be required to work more than four consecutive days or be denied two consecutive days off. Officers who work more than one 8-

hour shift on four consecutive days are entitled to overtime. An officer can be forced to work overtime only if exigent circumstances and the shifts have first been offered to all interested employees. The Town therefore violated the collective bargaining agreement by requiring Stockwell to work six scheduled days in a row, where the Town failed to show that the situation qualified as exigent.

The shift bid language provides a right for officers to bid into new shifts twice a year by rank and seniority. The Town has the means and responsibility to address any rotation issues as a result of this bid change system. Moreover, the Town is contractually obligated to internalize any costs associated with the bid change. The bid change does not provide that the Town can vary from the Hours of Work language of the collective bargaining agreement.

The Town's interpretation, by contrast, fails to adequately harmonize these provisions and results in officers being punished for exercising rights to bid by seniority. The Town's interpretation rests upon absurdities, such as intimating that Stockwell is entitled to relief depending on if his six days in a row was voluntary and/or in the same pay period.

In sum, reading the contract as a whole and in light of the purposes of its provisions, the Town was prohibited from requiring Stockwell to work more than four days in a row.

Past Practice Favors the Union's Interpretation

Because the Union's interpretation is supported by the plain language of the collective bargaining agreement read in light of its context and purposes, the

Arbitrator need not consider past practice. To the degree past practice is relevant at all, it favors the Union's interpretation.

Here, both sides offered past practice to support their respective interpretation. The Union asserted that officers have received administrative days off when scheduled to work more than four days in a row as a result of shift bidding, whereas the Town claimed that it has never occurred in the past, the circumstantial evidence, however, favors the Union's claims of past practice.

Officer Sawash and Stockwell both testified as to the past practice of receiving administrative days off. Additionally, Sergeant Stratton instructed Stockwell to submit requests for overtime compensation, which clearly means he shared the understanding that officers cannot be scheduled to work more than four days in a row as part of their regular rotation.

The schedules produced by the Town do not support the Town's interpretation. As the Town witnesses testified, the schedules reflect what was scheduled to happen and not what actually happened. They are a first draft of what officers worked and when. Any changes to the schedule are not included in these schedules and would only be noted on timesheets which the Town failed to produce at the hearing.

Therefore, to the degree that past practice is relevant, the union's evidence is more persuasive and confirmed the plain language of the collective bargaining agreement.

The Town's Defenses and Interpretations are Unavailing

The Town offered a number of reasons why it did not violate the collective bargaining agreement as to Stockwell in October 2022: he volunteered for the shift change; he knew or should have known the rotation change involved in transferring to the split shift; the six consecutive days were spread over two pay periods and therefore he did not work more than 40 hours in a single week; and he did not attempt to swap or use paid leave. These arguments are unpersuasive and their coherence dissolves under investigation.

That Stockwell volunteered for the split-shift is of no consequence; the collective bargaining agreement entitles individuals to benefits even where they are voluntarily selected. For instance, as Town witnesses acknowledged, an officer who works overtime is no less entitled to time-and-a-half because they volunteered; and an officer who freely seeks a promotion is no less entitled to supervisory pay because they sought the promotion. Plus, Stockwell did not elect to work six consecutive days in a row, he elected the split shift schedule. The absurdity of this argument is revealed by its necessary implication – that he would be entitled to relief if the transfer was involuntary. There is no basis in the collective bargaining agreement to differentiate between rotation changes that imposed involuntarily as opposed to voluntarily.

That Stockwell should have known of the set rotation of the split-shift is also insignificant, because even if the Arbitrator imputes knowledge of the shift's actual rotation to Stockwell, he did not know that he would be forced to work six scheduled days in a row. He had every reason to anticipate that the collective bargaining

agreement would be honored, and he would not be compelled to work more than four days in a row.

The claim that Stockwell's schedule did not violate the collective bargaining agreement because the six consecutive days were spread over two weeks rests upon fortuity, not logic. Had September 29 fallen on a Sunday rather than a Wednesday, then Stockwell's six consecutive days would have fallen in a single week, and, according to the Town, he would have been entitled to overtime compensation.

Stockwell's ability to use paid leave or swaps could have ameliorated the scheduling of six consecutive days but would not eliminate the contract violation. Any use of paid leave would have reduced his accrued leave, a sacrifice no other officer was required to make. Similarly, a swap also would have incurred a unique obligation that no other officer would have been required to make as a result of a shift change.

Finally, that Stockwell received more than two consecutive days off in October 2021 did not entitle the Town to force him to work six consecutive days in October 2022. To have him work fewer than four consecutive days in a rotation does not violate the collective bargaining agreement's plain language whereas working more than four consecutive days does.

Conclusion

For the reasons stated above, the grievance should be sustained. The Arbitrator should conclude that the Town violated the collective bargaining agreement by scheduling Stockwell to work six scheduled rotation shifts in a row,

order the Town not to schedule officers for more than four rotation shifts in a row, unless processed through the overtime language, and direct the Town to make Stockwell whole by ordering the Town to provide overtime compensation for the two additional shifts, or administrative days off in lieu thereof.

THE EMPLOYER

The Union Failed to Demonstrate That the Town Violated the Collective Bargaining Agreement

The Union has the burden of demonstrating by a preponderance of the evidence that the mere fact that Stockwell was required to work his schedule work shifts on six consecutive calendar days without being granted overtime or additional days off constituted a violation of the collective bargaining agreement.

In support of its position, the Union has pointed to Article VII, Section 1. The Union, however, would have you read this language in a vacuum without consideration of the fact that the Union collectively bargained for a provision that allows officers to bid on their shifts twice per year. When reading the “4 and 2 schedule” language, one must consider it in context of the fact that in September and March of each year, officers have the right to request to move to a different shift. While the particular days of the week a given officer has on and off when the new bid period takes effect may be different from the days on and off that the officer had been working immediately prior to the shift bid change, the officer will nonetheless still be working a four day on and two days off work rotation both before and after the October 1st changeover. In some cases, the new rotation will line up perfectly with the old rotation, and in other cases it will not. However, this

does not change the fact that each October 1st and April 1st the officer will still be working a four days on and a two days off work rotation both before and after the new shift bid takes effect.

There is nothing in the collective bargaining agreement that requires the two shift bid periods to be viewed as one continuous work period. Implicit within a twice annual shift bidding system is the notion that officers' shifts and days on and off are subject to change based on the results of the shift bid. However, this does not mean that officers in Stockwell's position are no longer working a four and two rotation within the meaning of the collective bargaining agreement. Rather, it just means that they are working a different four and two rotation than they had been immediately prior to the shift bid. There is nothing in the collective bargaining agreement that precludes an officer from having to be assigned to work shifts on six consecutive calendar days so long as the officer is still assigned to a four and two rotation as was the case here.

The Union Cannot Recover on a Grievance That Was Knowingly and Intentionally Created by the Grievant's Voluntary Choices

There is no dispute that Stockwell voluntarily chose the split shift. The record is also clear that at the time Stockwell made his shift bid selections, his seniority ranking was such that he was effectively guaranteed to be awarded whatever shift he wanted. Furthermore, there is also no dispute that both the present and future work schedules were available to Stockwell via the scheduling app at the time he submitted his bid selection. If Stockwell wanted to maintain his then current rotations of days on and off, he could have stayed on the same 3-11

shift that he was working at the time. Alternatively, he could have selected one of the other two non-split shifts and the Department would have worked to ensure that his days on and off did not change.

Thus, to the extent that the Arbitrator were to find that Stockwell's having worked shifts on six consecutive calendar days was somehow ran afoul of Article VII of the collective bargaining agreement, any such violation was one that the grievant knowingly manufactured himself and as such, no violation of the collective bargaining agreement by the Town can be demonstrated.

The CBA does not Require the Payment of Overtime or the Issuance of Administrative Days Off and the Union Failed to Prove a Past Practice

The Union cannot point to any provision of the collective bargaining agreement that requires the Town to grant administrative days off or issue overtime to an officer when, as a result of the implementation of a new shift bid, the officer's days on and off change for the new bid period and result in the officer working more than four consecutive work shifts. The failure by the Town to issue Stockwell overtime pay and/or administrative days off in connection with the instant matter falls outside of the contractual definition of a grievance. As such, the Union's grievance should be denied on this basis alone.

Additionally, even if the Arbitrator was to consider the Union's past practice argument, the Union has failed to meet its burden of demonstrating that any past practice of granting overtime pay or administrative days off to officers whose days on and off change following the shift bid ever existed. To meet its burden, the Union is required to demonstrate that the practice occurred with regularity over a

sufficient period of time so that it was reasonable to expect that the practice would continue.

In support of its past practice argument, the Union offered only self-serving, conclusory testimony of Stockwell and Sawash. Sawash testified that on one occasion he was given the option to take a day off, but contrary to his testimony, he was not granted an administrative day off but instead used a vacation day. As for the remainder of his conclusory and non-specific testimony, Sawash was unable on cross-examination to recall any other specific instances where he was supposedly granted a day off by the Department so that rotations before and after a shift bid lined up. Thus, the testimony of Sawash about the existence of a past practice is wholly unreliable and entitled to no consideration from the Arbitrator.

The only other evidence the Union offered about a past practice was the grievant's purely self-serving testimony, lacking in any indicia of reliability. Other than a general assertion that he has been given overtime or administrative days off when similar situations have arisen in the past, Stockwell offered no details about the particulars of these alleged situations. Stockwell said he could not remember the specifics of what officers were involved, or the days of the week that were involved in the Spring of 2020 when the Department supposedly accommodated him.

On the issue of overtime pay, the testimony reflects that the only situation in which officers have received overtime pay in connection with a shift bid rotation change is when the change results in that officer having to work more than forty hours during the same pay week. However, that is because of federal law requiring

the officers to be paid for such excess hours. In Stockwell's case, his additional shifts were spread over two different pay periods, so he never crossed the 40-hour threshold in either pay week.

In this instance, the Union has failed to demonstrate that officers in similar circumstances as Stockwell have ever been granted administrative days off or overtime pay by the Department as a result of having to work more than four consecutive work shifts as a result of the implementation of a shift bid. The Union's past practice argument must fail.

Conclusion

For all the foregoing reasons, the Town submits that the Union failed to meet its burden of showing that the Town violated the collective bargaining agreement as a result of Stockwell being scheduled to work on six consecutive days during the period of September 26 to October 16, 2022, without adding overtime or administrative days off. As such, the Union's grievance should be denied.

OPINION

The issue before me is: Did the Town violate the collective bargaining agreement as a result of the grievant being scheduled to work shifts on six consecutive days during the period of September 26, 2022 through October 16, 2022 without adding overtime or administrative days off? If so, what shall the remedy be?

For all the reasons stated below, the Town violated the collective bargaining agreement when the grievant was scheduled to work six consecutive days during the period of September 26, 2022 through October 16, 2022, without adding overtime or administrative days off.

Article XIV, Section 1 of the parties' collective bargaining agreement clearly and unambiguously states that:

All patrol officers, including sergeants, covered by this Agreement, shall work the so-called four (4) and two (2) work schedule consisting of four (4) consecutive days (or nights) on duty and two (2) consecutive days (or nights) off duty.

There are no qualifications or exceptions to this requirement. It does not state except for twice a year during shift bidding, or except if the days are spread over multiple pay periods, or except if the days were voluntarily chosen by the employee while exercising his contractual right to switch shifts by bidding. Other than the overtime provisions of the collective bargaining agreement, officers work four consecutive days on and two consecutive days off.

The parties are free to collectively bargain some new provisions around shift bidding to avoid situations such as happened in this case, but until they do so, they are bound by the clear and unambiguous language of four consecutive days on and two consecutive days off. Any other ruling would render this provision of the collective bargaining agreement meaningless.

Having found the collective bargaining agreement to have been violated, the next issue is the appropriate remedy. The Union, in its original grievance, disclaimed arguing over the lack of an overtime payment. In its post-hearing brief,

the Union argues that it should not be held to the statement listed on the original grievance form and the idea of an overtime payment as a remedy should be considered. While I agree with the Union that, in some circumstances, the range of possible remedies available to me, as the arbitrator, should not be limited by what the grievance states, in this case however, there is another viable option to make the grievant whole. The concept of administrative days off is not foreign to the parties and would make the grievant whole for the violation of the collective bargaining agreement by the Town when it assigned him six consecutive workdays. As such, the Town is hereby ordered to make the grievant whole by awarding him two administrative days off.

AWARD

The Town violated the collective bargaining agreement when the grievant was scheduled to work six consecutive days during the period of September 26, 2022 through October 16, 2022, without adding overtime or administrative days off. The Town is hereby ordered to make the grievant whole by awarding him two administrative days off.



Timothy Hatfield, Esq.
Arbitrator
October 18, 2024