



February 22, 2017

**Via Electronic Delivery Only**

Cpl. Rory Mundwiler  
Mill Creek Police Department  
15728 Main Street  
Mill Creek, WA 98012

Re: Step 3 Grievance Decision

Cpl. Mundwiler:

You submitted, in accordance with Section 12.2 of the 2015-2017 Collective Bargaining Agreement between the City of Mill Creek and the Mill Creek Police Officer's Guild ("Agreement"), your Step 3 grievance dated January 29, 2017. I conducted an informal hearing relative to your Step 3 grievance on the morning of February 10, 2017. Those present at the informal hearing were: Chief of Police Elwin, Sgt. Bart Foutch, the Guild's attorney, you and me. The purpose of this correspondence is to issue my decision.

In your grievance to me, you referenced unsatisfactory resolution of your grievance at Steps 1 and 2 of the grievance process. Specifically, you have grieved the following, alleging violation of Article 5.3, Article 5.4, Article 6 and Article 7 of the Agreement:

- The rescheduling of your modified work day from January 1, 2017 to January 4, 2017 in order to avoid overtime expense.

You have requested the following remedies:

- "The Guild asks that you (City Manager Rebecca Polizzotto) rescind Chief Elwin's instruction to the sergeants and refrain from adjusting officers' 'modified shifts.' The Guild further asks that all affected officers, corporals, and sergeants be made whole for any losses suffered as a result of the Chief's actions."<sup>1</sup>

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<sup>1</sup> Because Cpl. Mundwiler is not an authorized representative of the Guild, and the Guild has not appealed Chief Elwin's written decision to MCPG President Kyle Hughes dated December 29, 2016, this decision will be limited in scope to Cpl. Mundwiler's grievance regarding the rescheduling of his modified work day from January 1, 2017 to January 4, 2017.

## **RELEVANT CBA LANGUAGE**

I have reviewed the Agreement as it pertains to your grievance. A summary of the core CBA language applicable to this grievance is discussed below.

Section 5.1 of the CBA provides as follows:

### **Section 5.1 General Schedule of Work Agreement**

The work schedule will be what is mutually agreed upon between the *Chief* and the membership of the *Guild* (subject to the parameters set forth in the following subsections). If no agreement can be reached, the schedule will remain the same as the schedule referred to in *Article 5, Sections 5.3, 5.4 and 5.5*.

Section 5.1 of the CBA describes the general procedure for setting the work schedule. In short, the work schedule follows whatever is mutually agreed upon by the Department and Guild members. If no mutual agreement is reached, the more specific CBA language governing the work schedule shall prevail.

Section 5.3 of the CBA provides as follows:

### **Section 5.3 Regular Work Cycle**

The regular work cycle for patrol officers, including SWAT operators, shall be 80 hours in a fourteen (14) day work period. Patrol officers' regular work schedule consists of six (6) rotating twelve (12) hour work shifts and one (1) eight (8) hour work shift in the fourteen (14) day work cycle.

Section 5.3 of the CBA expressly provides for a "modified" eight (8) hour shift during each 14-day FLSA work cycle. There is no discussion or contractual guarantee for "modified +4" overtime shifts built into the work schedule.

Section 5.5 of the CBA provides as follows:

### **Section 5.5 Temporary or Emergent Needs**

The *Chief* may change the work schedule or work hours to meet temporary or emergent departmental needs.

Section 5.5 of the CBA provides the Chief of Police with the management discretion to adjust the work schedule or specific work hours to meet both temporary issues and emergencies.

The introductory paragraph to Article 6 (Overtime) provides as follows:

**Article 6 OVERTIME & COMPENSATION**

Overtime work is hours worked in excess of the assigned daily schedule. All overtime must be authorized by the *Chief* or his designee.

Article 6 of the CBA provides management discretion over the authorization of overtime. Nothing in the CBA language provides individual officers the right to mandate overtime upon their request.

Finally, two sections from Article 16 apply to this grievance:

**Article 16 MANAGEMENT RIGHTS**

- B. The *City* has the right to schedule overtime work as required in a manner most advantageous to the department and consistent with the requirements of municipal employment and the public safety.
  
- E. The *City* shall have the right to determine reasonable schedules of work and to establish the methods or processes by which such work is performed.

These two sections provide management discretion with respect to both the scheduling of overtime and setting work schedules.

**INFORMATION PROVIDED DURING HEARING**

Your grievance alleges violation of past practice. During the informal hearing, I asked for more background relative to past practice and Sgt. Foutch referenced an informal verbal agreement between him (in his former role of Guild President) and former Commander Lance Davenport that predates the execution of the current collective bargaining agreement. No other information was provided relative to any claim of past practice.

During the course of the informal hearing, I inquired as to the circumstances that triggered the need to change your schedule as it pertained to your modified shift. The following information was provided by the parties:

- The patrol schedule for October, 2016 through April, 2017 was established in August, 2017 and submitted for review and approval to the Chief of Police.

- After the patrol schedule was established, primary vacation requests were bid and assigned and submitted for review and approval to the Chief of Police.
- Prior to October 1, 2016, Sgt. Foutch scheduled modified shifts for the members of his squad, including you, for the period October, 2016 through April, 2017. The scheduling of these modified shifts was not submitted to the Chief of Police for review and approval. As a result of this process, you had a modified shift scheduled for January 1, 2017.
- Subsequently, Officer Chris White requested and was approved for a non-primary vacation day on January 1, 2017. Approval of this vacation day was not made by the Chief of Police. The VSS program does not show who entered and/or approved the vacation day, but it was visible on the schedule on December 27, 2016.
- On December 27, 2016, Chief Elwin directed Sgt. Foutch to change your mod+4 from January 1, 2017 to January 4, 2017.

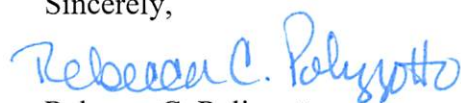
### **DECISION**

Section 5.5 of the CBA provides the Chief of Police with the discretion to modify the work schedule or work hours “to meet temporary...departmental needs.” In this instance, the temporary issue involved short-staffing on January 1, 2017. The short staffing issue was created based upon decisions made by a supervisor other than the Chief of Police with respect to Officer White’s leave request. In other words, the decision to authorize Officer White’s leave request created the overtime issue which you now grieve.

Based upon the information provided, it is my determination that Chief Elwin acted appropriately, pursuant to Section 5.5 of the Agreement, to address the staffing shortage created by your own decision. His rescheduling of your modified work day clearly reflects his denial of overtime pursuant to Article 6 of the Agreement.

For the foregoing reasons, and for the reasons set forth in Chief Elwin’s and Sgt. Foutch’s respective denials, incorporated herein by reference, I respectfully deny your grievance.

Sincerely,



Rebecca C. Polizzotto  
City Manager

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Cc: Chief Elwin  
Sgt. Foutch  
Kyle Hughes, MCPOG President