



February 22, 2017

Via Electronic Delivery Only

Sgt. Bart Foutch
Mill Creek Police Department
15728 Main Street
Mill Creek, WA 98012

Re: Step 3 Grievance Decision

Sgt. Foutch:

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 February 1, 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, 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 Step 2 of the grievance process.¹ Specifically, you have grieved the following, alleging violation of Article 5.3 of the Agreement:

- The rescheduling of your modified work day from January 23, 2017 to January 14, 2017 in order to avoid overtime expense.

You have requested the following remedies:

- "The Guild asks that Chief Elwin rescind his instructions to the Sergeants and refrain from requiring them to adjust officer's "modified shifts." The Guild further requests that all affected officers be made whole for any losses suffered as a result of the Chief's actions, in my specific case, payment for 4 hours of overtime that I would have worked on January 23rd."²

¹ Under Step 1 of the grievance procedures set forth in Section 12.2 of the Agreement, officers are required to submit a grievance to their immediate supervisor. Because Sgt. Foutch does not have an immediate supervisor, Chief Elwin accepted Sgt. Foutch's grievance at Step 2.

² Because Sgt. Foutch 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 Sgt. Foutch's grievance regarding the rescheduling of his modified work day from January 23, 2017 to January 14, 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. Although your grievance letter cites only Section 5.3 of the CBA, I concur with Chief Elwin that other sections also apply.

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

In your grievance you reference violation of a number of prior established policies and procedures. I asked you to provide me with copies of these policies and procedures. None were provided.

Additionally, your grievance alleges violation of past practice. During the informal hearing, I asked for more background relative to past practice and you referenced an informal verbal agreement between you (in your 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, you scheduled your modified shifts, and those of your squad, for the period October, 2016 through April, 2017. The scheduling of these modified shifts were not submitted to the Chief of Police for review and approval.
- After October 1, 2016 and prior to January 14, 2017, Officer Mundwiler requested and was granted by you pre-scheduled sick leave to include January 23, 2017.
- Your approval of Officer Mundwiler's request transformed your modified 8-hour day into a modified 8-hour shift + 4 hours overtime.

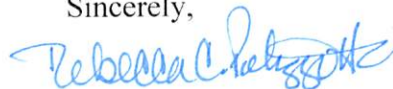
DECISION

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 23, 2017. The short staffing issue was created based upon decisions made solely by you with respect to Officer Mundwiler's leave request. In other words, your decision to authorize Corporal Mundwiler'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 denial incorporated herein by reference, I respectfully deny your grievance.

Sincerely,



Rebecca C. Polizzotto
City Manager

Cc: Chief Elwin
Kyle Hughes, MCPOG President