

In Arbitration Proceedings

between

Opinion

TEAMSTERS #117

and

and

Award

CITY OF AUBURN

RECEIVED  
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PUBLIC EMPLOYMENT  
RELATIONS COMMISSION  
OLYMPIA, WA

I FACTS

At several brief staff meetings, the parties discussed the proposed policy of the Chief of Police to make a command duty officer available during the weekends on the swing and graveyard shifts because the majority of crimes take place during this period.

The command duty officers are the chief of police, two captains and three lieutenants who work from 7 a.m. to 5 p.m. daily. Administratively, the captains report directly to the chief of police; Lieutenant Board reports to the support services captain, and Lieutenants Miller and Cude report to the operations captain. Each lieutenant evaluates his subordinates, schedules work and participates in decisions concerning discipline and discharge.

On July 26, 1985, the City issued a Command Duty Officer Policy, which reads:

Effective immediately there is implemented a Command Duty Officer (CDO) program. The purpose of this program is to make a command officer (Captain or Lieutenant) of this Department available on call at all times should the supervisor desire his assistance and/or advice.

Each Captain and Lieutenant will be assigned as the Command Duty Officer on a rotating basis for one week period of time. The assignment will begin on Friday at 1700 and end on the next Friday at 1700. The CDO will be responsible to attend the Monday

City Council Meeting, if the Chief cannot attend. If the assigned CDO is unavailable to remain on call or fulfill his duties it is his responsibility to arrange for another command officer to take his place. A current schedule of assignments will be maintained at the front desk and provided to the patrol supervisors. The CDO will remain available by telephone and/or pager and, if necessary, provide current contact information to Auburn radio.

The Command Duty Officer's basic duty is to be available to assist the on duty supervisor should the supervisor request it. He shall also be responsible to respond to major emergency situations requiring the presence of a command officer or where the on duty supervisor requests his presence.

Should the on duty supervisor need assistance or advice from a command officer, the supervisor should first attempt to contact the commander of the division involved (Patrol, Investigations, Traffic, Records, Auxiliary Services). If contact cannot be accomplished, or is inappropriate, the supervisor should contact the CDO. Where an emergency exists it shall be sufficient for the supervisor to contact Auburn radio and ask that the current CDO respond.

The CDO shall be contacted and advised if any of the following events occur:

1. An officer or other police employee of the Department is killed or injured sufficiently to cause hospitalization.
2. An immediate family member of an officer or other police employee is killed or seriously injured.
3. A City of Auburn official is killed or seriously injured, either here or elsewhere, and any other public official is killed or seriously injured in our jurisdiction.
4. The filing of a complaint of serious misconduct by an officer or other police employee of the Department.
5. The arrest of an officer or other police employee of the Department, either here or elsewhere, and the arrest of any other police officer in our jurisdiction.
6. Criminal accusation against an Auburn City official.
7. The arrest of an Auburn City official or a member of his/her immediate family.
8. Homicide or possible fatal injuries to the victim of a crime.

9. Kidnapping.
10. Bombing
11. Sniping
12. Barricaded person
13. Hostages being held
14. Shooting in which an officer of the Department is involved.
15. Death or serious injury resulting from an accident in which a police vehicle is involved.
16. Any serious incident which occurs in the jail involving injury to a prisoner or employee.

Nothing in this program is intended to change the current responsibilities or authority of the patrol supervisors. The intent of the program is to provide a reliable resource to the supervisor when the assistance of a command officer is required.

Nothing in this program shall prevent an on-duty supervisor from notifying the Chief of Police regarding significant incidents. When such a notification is made, the CDO should also be advised. Any notification by the on-duty supervisor to the CDO of a significant incident shall relieve the supervisor of the responsibility of making further notification to command personnel unless directed to do so. It shall be the responsibility of the CDO to see that such further notifications are made if he deems them necessary.

Briefly, this policy requires captains and lieutenants, to be "available by telephone and/or pager" and, if called out, a CDO must respond within "a reasonable period of time and to keep himself in condition to respond." If the force were at full strength, a CDO officer would have CDO duty once every five weeks. At present, he has duty every four weeks because two captains are on leave and the Chief takes a turn.

On July 29, 1985, the three lieutenants presented their views on the policy to the Chief. They calculated that the

policy required them to be "on call" for 1280 hours per year, the equivalent of 160 8-hour work periods. Although they did not disagree with the objectives of the program, they thought that they were entitled to some compensation because the duty exceeded "casual overtime," it "greatly restricted" their personal activities, and it imposed a burden because they had to respond within a minimal period of time. The Chief's view was that the policy was not "a significant intrusion on your off-duty time, especially when you are allowed the flexibility by the policy for having someone standby for you" (Letter of September 3, 1985).

In negotiations for a successor collective bargaining agreement, the City and the Union were able to agree on the following terms for the 1986 agreement:

1. Wages - increase 2.0%
2. Instant Death Benefit - a \$3,000 instant death benefit to survivor (line of duty death).
3. Health and Welfare - The city will continue to pay the full premiums for the Association of Washington Cities Dental Plan and Medical Plan as revised by AWC effective April 1, 1986 and currently in effect.
4. Term of Agreement - From date signed by the City and Union through December 31, 1986.
5. Other Provisions of 1985 Agreement - no change.
6. Outstanding ULP's or Grievances - none.

But, the parties could not reach agreement on two issues: overtime compensation and additional compensation for the command

duty officer (CDO) program for lieutenants. To complete an agreement, they declared that they were at impasse on these two issues and jointly requested the Public Employment Relations Commission (PERC) for a mediator. They also agreed that if mediation failed, they would submit these two issues to interest arbitration under RCW 41.56.450.460 (Impasse Agreement).

Mediation was unsuccessful, the Executive Director of PERC declared an impasse, and the parties proceeded to arbitration. On January 13, 1987, before the arbitration hearing began on the two issues, the parties were able to agree on the first issue, overtime compensation, but they could not agree on the second issue, additional compensation for the command duty officer.

Therefore, the only issue before the arbitrator is:

Shall the City be required to pay additional compensation to the lieutenants for the command duty officer (CDO) assignment? (Impasse Agreement)

The parties stated their respective positions in the Impasse Agreement. The Union's position, restated, is: the command duty assignment is extra duty, lieutenants are not compensated adequately already, and additional compensation is justified.

The Union proposed to amend Article V to read as follows:

In the event that an employee is assigned to the command duty officer assignment, such employee shall receive four (4) hours additional compensation for each eight (8) hours of assignment to the command duty assignment.

The City's position, restated, is: The command duty assignment is part of the lieutenant's job, the lieutenants are compensated adequately already, and no additional compensation is justified.

## II THE STATUTORY CRITERIA

Mindful of legislative intent, I interpreted and applied the statutory criteria (RCW 41.56), examined the parties' data, analyzed their arguments, and arrived at the judgment set forth in the Award.

(a) The constitutional and statutory authority of the Employer.

The City has the constitutional and statutory power to pay lieutenants additional compensation. It refuses to do so; I have given this factor some weight.

(b) Stipulations of the parties.

The parties stipulated the comparable cities: Bremerton, Kent, Longview, Olympia, Redmond and Renton.

(c) comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of like employers of similar size on the West Coast of the United States.

The Union undertook an extensive analysis of the CDO program in the comparable cities and concluded that none of the stipulated comparable cities has a CDO program identical to or the equivalent of Auburn's program as it existed in 1986. Only Renton has a CDO program, a program similar to Auburn's program but "substantially less intrusive on the lieutenant's off duty time" (Br. p.12).

The Union set forth the specifics. Longview, Bremerton and Olympia do not require an officer to receive or to respond to a phone or pager; these three cities do not intrude on an officer's off duty time.

Redmond has no lieutenants; the duties of captains and lieutenants are combined in a commander position. Of two commanders, one never carries a pager; the other always does but he can assign the duty to a sergeant. Redmond does not control a commander's off duty time. Further, Redmond gives a commander six days of administrative, provides him with a car, and the City does not enforce the thirty (30) minutes response time (Union Exh. 5). Still further, the monthly rate of pay of a Redmond commander is 14.5 percent higher than the monthly rate proposed by the City of Auburn for 1986.

Kent has no mandatory CDO program. The arrangement is an "informal" unwritten one: lieutenants carry pagers but they need not respond in person and there is no specific response time.

Renton's CDO program is similar to Auburn's program but less intrusive because lieutenants are on call 7.4 weeks per year, not 13 times a year as in Auburn. During the first half of 1986, Auburn lieutenants had CDO duty one week in every five weeks, 40 percent more than the Renton lieutenants. Auburn lieutenants must spend 91 days a year on CDO duty; Renton lieutenants fewer than 53 days. The current four man rotation program which began in June 1986 is more intrusive than Renton's program because the Auburn lieutenants are on call 81 percent more often than the Renton lieutenants. Further, the response time in Renton is one hour; in Auburn it was 30 minutes in 1986. Renton lieutenants may exchange CDO duty and they are free to notify the Chief if they want to be relieved from the duty and have been unable to

obtain a replacement. But, in Auburn lieutenants must stay on duty if they are unable to obtain a replacement. The small number of lieutenants in Auburn, three (3) reduces the options available to a lieutenant to exchange the CDO duty; and lieutenants are loathe to sacrifice their limited number of free evenings and weekends. Further, the Renton CDO receives a police vehicle during his off duty hours. And, if the Renton CDO is called out, he receives paid overtime at one and a half times his usual hourly rate, with a minimum of two hours per callout. Auburn lieutenants receive no pay for callouts unless the callout exceeds four hours. The record shows that Auburn lieutenants have been called out at night, worked for more than three hours but received neither overtime nor comp time. One lieutenant has accumulated 53 hours of uncompensated CDO callout time. Still further, the base salary and overtime provisions for Renton lieutenants are about six percent higher than the base salary and overtime provisions in Auburn's proposed 1986 rate (Emp. Exh. 7). The disparity becomes more marked if the compensation for CDO duty is added to their salary.

The Union concluded that Renton's CDO program cannot be compared to the 1986 Auburn program because the Renton program is less intrusive and the labor relations context in Renton is substantially different from that in Auburn. Economic action and interest arbitration are not available to the Renton lieutenants because they are unrepresented. The Union urged the arbitrator



to give greater weight to "traditional labor relations standards."

The City admitted that Redmond and Renton paid higher wages to lieutenants but it pointed out that the wage differential existed before the CDO program, and that the wages of the lieutenants in Auburn are higher than the wages paid lieutenants in Bremerton, Kent, Longview, and Olympia. The City also pointed out that all comparable jurisdictions except Olympia and Bremerton require the command officer to carry a pager off duty; no jurisdiction paid the off duty officers to carry a pager; and, Renton's CDO program, the model for the Auburn program, does not pay CDO officers additional compensation when assigned CDO duty.

The City also admitted that commanders in Redmond were not comparable to lieutenants; they were someplace between a captain and lieutenant but this is "the best match" the City could make (Br. p. 8). The City admitted that the "comparable cities" are not comparable in many respects. But these cities have two common features: first, command officers usually carry pagers to keep them in contact with their department during off duty hours, and, second, none of the comparable cities grants additional compensation solely for carrying a pager.

FINDING: I have given no weight to the "comparability" guideline. The Union's data is conclusive: the stipulated "comparable" cities are not comparable on the CDO issue.

(d) the average consumer prices for goods and services, commonly known as the cost of living.

The Union asserted that the two percent wage increase, "in no way compensates the lieutenants for their increased duties because from January 1, 1985, the effective date of the previous contract, and January 1, 1986, the CPI-U rose 2.34 percent and the CPI-W rose 2.2 percent. By either measure, the two percent wage increase for 1986 is less than the CPI increase. If the January 1985 to January 1986 and the January 1985 to November 1986 figures are averaged, they yield 2.04 percent. The City did not take into account the increases that occurred between January 1985 and November 1986 in computing an appropriate 1986 pay rate (Br. p. 10).

The City pointed out that the All Urban Consumer Price Index for the year ending November 1986 for the Seattle-Everett area was .6% and that the Urban Wage Earners and Clerical Workers Index for the same period was .3%. Hence, "the compensation package offered the lieutenants even without any compensation for the CDO program greatly exceeds the Consumer Price Index." (Br. p. 10, City Exh. 16).

FINDING: I have given no weight to this guideline. Neither the union nor the City advanced persuasive arguments.

(e) Changes in any of the foregoing circumstances during the pendency of the proceedings.

None

(f) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment.

1. The comparison between a police lieutenant and a battalion chief

The Union contended that "a reasonable approach" to determine whether or not lieutenants should be paid additional compensation is to compare a CDO lieutenant in the police department with a battalion chief in the Fire Department. A battalion chief in the Fire Department holds a supervisory position, so does a lieutenant in the Police Department; their duties are not qualitatively different. Both officers must be ready to respond to any call within a very short time; neither is free to go more than 30 miles from Auburn. A Battalion chief must be available to respond to serious fire calls on week ends when no officer of appropriate rank is on duty.

The Union recognized the differences. Although a battalion chief is on "standby" time the duty is "more analogous" to "on call" than to a standby because a battalion chief is free to go about his own business, so long as he is able to respond to the nearest fire station in the City of Auburn within 15 minutes. The major difference between a battalion chief and a lieutenant CDO is the length of duty time: a battalion chief's duty assignment lasts for a maximum of 60 hours; the CDO assignment lasts for seven days. A battalion chief is paid time and a half when called back to the station in addition to their duty officer pay, but the lieutenants are paid neither for their CDO time nor for their callbacks. A battalion chief can earn an added 6.2 percent on his annual salary, or approximately \$2,500.00 for 520 hours. In contrast, a lieutenant, on a four week cycle, spends

1,664 hours per year on on call status but receives no pay for any of their CDO activities.

The City rejected the comparison between a police lieutenant and a battalion chief. First, a lieutenant and a battalion chief are not "like personnel" under RCW. 41.56. Second, a battalion chief is a firefighter and a lieutenant is a police officer. Third, a battalion chief works 24 hour shifts on a rotation schedule of one day on and two days off. During swing and night shifts, a battalion chief is completely in charge of the entire department. A lieutenant works a 9-5 daily shift. Fourth, the parties agreed to "comparable cities" not to a comparison between police and fire personnel. Fifth, a battalion chief on standby must respond to the station within 15 minutes after a call; there are no exceptions to this rule. A battalion chief receives an average of two calls per night; a CDO officer gets two calls per month. During the last six months, a battalion chief has had to respond to the station 23 times; a police lieutenant has had to respond to the station eight times in the past 18 months. Sixth, other personnel in the City perform additional duties but receive no additional compensation.

FINDING: I have given no weight to this guideline. The City's reasons conclusively show that a police lieutenant and a battalion chief are not comparable.

2. The City's agreements with other bargaining units.

The City urged the arbitrator to note that only three bargaining units did not settle for a 2% increase, the same 2%

wage increase offered lieutenants. First, the finance and clerical workers received 1.78% increase, the increase agreed to for the second year of their contract. Fire fighters received a 3% increase during the first year of their contract and only a 1.5% increase during the second year. Finally, non-commissioned clerks and jailers received a 3% increase because the pay of these employees was not comparable to the pay of other similar positions in the City.

FINDING: I have given this guideline some weight.

3. The traditional differential between the officers rank in the police department.

The City pointed out that an award of additional compensation to lieutenants would destroy the traditional differential between sergeants, lieutenants, captain and the chief. The differential between lieutenants and captains is approximately \$3,300; the differential between the captains and the chief is about \$2,000. The Chief carries a pager 24 hours a day, seven days a week. Were the arbitrator to award lieutenants the compensation they ask for, they would be paid an estimated \$17,000 more per year.

The Union contended that the current wage differential between ranks, "a reflection of increased rank and responsibility," does not compensate lieutenants for CDO duties because none of the differential can "properly be allocated as compensation for the CDO program" (Br. p 20-21). Lieutenants should receive additional compensation even if the compensation upsets the current salary rank among City employees because the

premium pay for patrolmen and battalion chiefs has already substantially modified the salary structure. A battalion chief who works his full turn of duty officer will have an income well in excess of \$43,000.00 even if overtime for callbacks is not included. Already, at least two police officers in Auburn have incomes of \$43,000.00 or more if premium pay for overtime, callbacks, and standby and the cash value of their comp time are included. Three battalion chiefs and two patrolmen may well have incomes that would place them in the top ten employees and above City Engineer and the Planning Director. The City should not impose additional duties on the lieutenants and refuse to increase their pay to maintain "some artificial parity." The top ten paid employees in the City are not required to remain in an on call status for one week each month. The lieutenants are uniquely situated, their right to be compensated for CDO time should be resolved independently of the salary of other City employees.

FINDING: I have given some weight to this guideline and discussed it in my conclusion.

### III CONCLUSION

To meet the lieutenants' objections to the CDO program, the City restated the purpose of the CDO program: to have a command officer available by phone or pager in the event of an emergency (Br. p. 9). And, because the CDO program "maybe somewhat more restrictive than the previous system," the City modified the program in January 1987. It provided a pager with an estimated

range of 60 miles and it declared its willingness to relax the period within which lieutenants would be required to physically respond to the Department. The Union admits that the modified policy makes the CDO program "less oppressive" but insisted that lieutenants be paid four hours pay for every eight hours on CDO duty because the CDO program imposes additional job duties on lieutenants and the CDO program restricts the private life of lieutenants. And, the Union would not accept an award of time and a half because this award would not recompense lieutenants for maintaining themselves in a constant state of readiness and immediate availability.

QUESTION: Shall the City be required to pay additional compensation to the lieutenants for the command duty officer (CDO) assignment?

Answer: Yes.

The Union's argument is cogent and decisive. Lieutenants should be paid additional compensation because the CDO program imposes a new condition of employment, a psychological and physical restriction which reaches into and intrudes upon the off duty time of lieutenants for 13 weeks a year. To arrive at the amount of compensation, I have taken into account the following mix of contributing and restraining factors: the City's continuing refusal to pay any additional compensation, the stipulations of the parties, the total package, the Union's request for an estimated \$17,000 per year, a sum not proportionate to the additional responsibilities and the number of times lieutenants would be called, and the psychological,

political, and economic effects that an award of \$17,000 would have on the differential between officers' ranks, and on other bargaining units.

#### IV AWARD

The City of Auburn is hereby ordered to (1) pay each lieutenant assigned to CDO duty a flat fee of \$35.00 for every week of CDO duty. This sum pays lieutenants for the new duty: to be in readiness and available during the CDO week; and (2) pay an additional \$25.00 to a lieutenant when he is on CDO duty and is called out regardless of the duration of the call out. I have purposely awarded this modest sum for the call out to prevent lieutenants from returning to the station unnecessarily.

I retain jurisdiction over the interpretation and application of this Award until April 30, 1987.

Date: March 27, 1987  
Seattle, Washington

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Charles S. LaCugna  
Arbitrator