

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

CITY OF CHICAGO

and

**FRATERNAL ORDER OF POLICE,
CHICAGO LODGE No. 7**

GRIEVANT: W. Dougherty

CASE NOS.: Grv. No. 129-09-012
Arb. Ref. 09.341
(FLSA Comp Time)

ORDER

I. Background

Consistent with the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), under Section 20.2 of the collective bargaining agreement between the City and the Union (“Agreement”), covered police officers can accumulate FLSA compensatory time in lieu of overtime pay when they work in excess of 171 hours in a 28-day period.

In 2004, Chicago police officers Hans Heitmann and nearly 2,000 of his coworkers brought suit against the City of Chicago for violations of the compensatory time provisions of the FLSA. The *Heitmann* plaintiffs alleged that the City violated the FLSA by refusing to grant the use of compensatory time off. Ultimately, in *Heitmann v. City of Chicago*, 560 F.3d 642 (7th Cir. 2009), the United States Court of Appeals for the Seventh Circuit found that the procedures for permitting police officers to use accumulated FLSA compensatory time utilized by the Police Department (“Department”) were not in compliance with the FLSA and the corresponding regulations promulgated by the Depart-

ment of Labor. The United States Magistrate originally deciding the dispute issued an injunction specifying how the Department must handle future applications for use of FLSA compensatory time. Although finding that the FLSA had been violated, the Seventh Circuit found there was no basis for injunctive relief and concluded that “[t]he injunction is vacated, and the case is remanded for an award of appropriate non-injunctive relief.” 560 F.3d at 647. Subsequently, the District Court entered a declaratory judgment against the City stating that its compensatory time procedures solely related to compensatory time earned by virtue of the FLSA did not comply with the FLSA. The City was given 120 days to revise its compensatory time procedures in order to comply with the FLSA.

This dispute arose after the Seventh Circuit’s decision in *Heitmann* and after expiration of the 120 day period following the entry of the District Court’s declaratory judgment (and after the parties were unable to resolve the matter) when the Department notified the Union on September 3, 2009 that effective August 22, 2009, FLSA compensatory time would no longer accumulate and that all FLSA compensatory time would be paid out on a monthly basis. The Union, through its First Vice-President William Dougherty, filed a grievance alleging that action violated Section 20.2 of the Agreement, which provides, in pertinent part, that for overtime compensation, “[t]he officer shall have the option of electing pay or compensatory time”

The parties have placed this dispute before the undersigned and have agreed that if a violation of the Agreement is found, in the exercise of my broad remedial power as an arbitrator, I have the authority in this particular circumstance to determine the procedures to be followed for the use of FLSA compen-

satory time which, if necessary, may include modification of the parties' Agreement.

II. Discussion

When the Department announced that it would no longer permit officers to accumulate FLSA compensatory time, the Department violated Section 20.2 of the Agreement which provides that “[t]he officer *shall have the option* of electing pay or compensatory time ...” [emphasis added]. The Department’s announcement took away that contractually guaranteed option. As the Union argues, Section 20.2 of the Agreement has therefore been violated.

III. Remedy

As a remedy, the Agreement shall be modified as follows:

1. The relevant portion of Section 20.2 of the Agreement will be amended to read:

The officer shall have the option of electing pay or compensatory time for approved overtime hours at the rate of time and one half. Earned overtime in excess of 171 hours per 28 day pay cycle will be paid.

2. A new provision shall be added to Article 20 of the Agreement to provide:

Commencing with the first police period in 2010, the following only applies to officers assigned to District Law Enforcement, Public Transportation Section, Airport (Midway and O’Hare), Bomb and Arson, Evidence Technicians, Marine, Detectives assigned to Areas One through Five and Juvenile Intervention and Support Center (JISC). Officers and Detectives detailed out of the above listed units are not eligible.

- An officer requests the use of elective time off a minimum of seven (7) days prior to the requested date.
- The Department will approve or deny the use of the elective time no less than three (3) days prior to the requested date.

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- If the request is denied, the officer is eligible for a Tour of Duty Exchange.
- NOTE: Holidays are not eligible dates for a Tour of Duty Exchange. Officers on furlough are not eligible to participate.

Tour of Duty Exchange

1. The following officers are eligible for a Tour of Duty Exchange:
 - Officers in the same District or Unit on the same watch.
 - Officers assigned to the tactical unit with other tactical officers from the same district.
 - Detectives in JISC on the same watch.
 - Detectives in the same Area on the same watch and under the same oversight office (i.e. RBT, SVU or Violent Crimes).
 - Any exchange must involve officers in the same title code, with the exception that Field Training Officers (FTOs) will be treated as Police Officers for purposes of this section unless a Probationary Police Officer in the district is in a training cycle for the requested date or replacement date. Provided further, that this does not limit the ability of FTOs to exchange with other FTOs during training cycles.
 - Probationary officers (less than 18 months) are not eligible.

NOTE: Approval of a Tour of Duty Exchange will be denied when there is evidence of financial remuneration to either officer.

2. Procedure
 - a. When an officer requests the use of elective time off, to which he is entitled, seven (7) days prior to the requested date and is denied. The Department shall be required to notify the requesting officer of the denial no less than three (3) days before the requested date.
 - b. The requesting officer will identify an eligible full duty officer, who 1) is not scheduled to work the date of the requested Tour of Duty Exchange

- and 2) is willing to work the date of the requested Tour of Duty Exchange.
- c. The requesting officer will agree to work a tour of duty on a specific date for the replacement officer within four weeks, before or after, the requested Tour of Duty Exchange date.
 - d. A minimum of twenty-four (24) hours before the exchange date the requesting officer and the replacement officer will submit a report to the Watch Commander indicating they have agreed to the exchange of days. The Watch Commander will then approve the Tour of Duty Exchange or may grant the original request for elective time.
 - e. Officers are limited to one (1) Tour of Duty Exchange per police period.
 - f. The replacement officer involved in a Tour of Duty Exchange will not be allowed to use elective time to satisfy his or her Tour of Duty Exchange obligation.
 - g. An officer that is unable to report to fulfill his Exchange obligation due to placement on the medical roll (non-IOD) will be ineligible for participation in Tour of Duty exchange for 90 days from the scheduled work date.
 - h. Neither officer involved in the Tour of Duty Exchange shall be entitled to added compensation under Article 20 for working the agreed to tour of duty.

3. An expedited dispute resolution procedure shall be implemented for disputes which may arise with respect to the denial of use of requested FLSA compensatory time. Upon notification by an officer to the Union that a requested day and tour of duty exchange have been denied, designated representatives of Management and Labor Affairs and the Union shall immediately confer about the reasons for the denial. If the parties cannot resolve the matter at that level, the dispute shall be progressed to informal expedited arbitration to be resolved by an arbitrator or arbitrators agreed upon by the parties. Such disputes shall be presented by phone, email or other informal process. The ar-

bitrator deciding the dispute shall have the sole authority to determine what remedy should be applied for violation of the Tour of Duty Exchange language.

4. The parties are directed to draft contract language consistent with this order. The undersigned will retain jurisdiction to resolve disputes, if any, which may arise out of the implementation of this order or drafting of the required language.

A handwritten signature in black ink, appearing to read "Edwin H. Benn", is written over a horizontal line.

Edwin H. Benn
Arbitrator

Dated: December 4, 2009