

Date: November 16, 2022
To: John Catanzara, President, Lodge #7
From: Daniel Gorman, 2VP, Lodge #7
Subj: **Part 2/History of RDO Cancelation Grievances**

Per your instructions, I am submitting this 33-page packet which includes the following:

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For a complete historical perspective, this summary "RDO CANCEL PART 2" should be read in conjunction with the 21-page document titled, "RDO CANCEL PACKAGE", found on the Lodge website.

BRIEF HISTORY: As you know, the first of several grievances regarding cancelled RDO's was filed on May 21, 2021. With the assistance of the Arbitrator, on August 26, 2021 the Parties entered into a Settlement Agreement, whereby the Department created a Pilot Program for the 2022 Summer Holidays ("Settlement Agreement"). On November 16, 2021, the Lodge filed another Class Action grievance stemming from violation of the Settlement Agreement as well as additional cancellations of Officers' RDOs ("Weekend Deployment" Grievance). The Arbitrator conducted hearings into the "Weekend Deployment" Grievance on February 9, 2022, February 17, 2022, March 18, 2022 and April 19, 2022.

The Board of Director's voted to post 21-pages of grievance material related to the subject matter onto the Lodge website (titled: "RDO CANCEL PACKAGE"). The "RDO CANCEL PACKAGE" included activity through the last day of arbitration hearings in April of 2022. Since then, there has been activity which includes the attorneys' post-hearing briefs being submitted, additional grievances that were filed and Arbitrator's Awards being issued.

ADDITIONAL GRIEVANCES SINCE APRIL:

On May 27, 2022, we filed a separate grievance with regard to Officers working more than 10-consecutive days during the 2022 Memorial Holiday cancellations ("Memorial Day 2022 Violation" Grievance) (alleging a further violation of our previous "Settlement Agreement").

On June 23, 2022, the Arbitrator conducted an expedited hearing into the Memorial Day 2022 Violation Grievance.

On June 28, 2022, the Arbitrator denied claims that pertained to violations of the Settlement Agreement over the Memorial Day 2022 cancellations; however, the Arbitrator kept jurisdiction for any possible violations of the Settlement Agreement stemming from any possible challenges to the 2022 "Juneteenth" and Independence Day cancellations.

On June 29, 2022, we filed another grievance for another violation of the "Settlement Agreement" where the Department required Officers to work more than 10-consecutive days over the Juneteenth 2022 holiday.

On July 22, 2022, with the assistance of the Arbitrator, the Department and Unions entered a "Supplemental Settlement". In summary, the "Supplemental Settlement" would provide relief only for the **Labor Day 2022 holiday**.

Summary of the Labor Day 2022 Supplemental Settlement:

-Officers would not have both RDOs cancelled,
-9-hours of rest in between shift if RDOs cancelled,
-awarded "Special Comp-time" if Officers with cancelled RDOs worked more that 10-consecutive days during 2022 Juneteenth and July 4th holidays,
-will give "good faith consideration to Officers who request to retain their RDOs where good cause is shown for the 2022 Labor Day Holiday".

On August 30, 2022, the Department released the following message (which would later be incorporated by the Arbitrator in his Final Award):

Effective immediately, the Department is implementing the following changes to scheduling: For all non-probationary sworn members (except those members assigned to the 4th and 5th watches and members in specialized units):

- 1. No more than one RDO will be cancelled per work week except during the following operational periods, when two RDOs maybe cancelled: Memorial Day, Father's Day, 4 of July, Labor Day, Thanksgiving, and New Year's Eve.*
- 2. Members on a 4-2 schedule will not be required to work more than 12 consecutive days. Members on a 5-2 schedule will not be required to work more than 12 consecutive days.*
- 3. Members will be guaranteed two consecutive days off each police period.*
- 4. Members will have a minimum of nine hours between shifts. For all members, including probationary police Officers and Officers assigned to 4th and 5th watch, including specialized units: Members will have a minimum of nine hours between shifts.*

On September 27, 2022, the Arbitrator issued a 20-page document over the Weekend Deployment Grievance, referenced as "PRELIMINARY INTERIM AWARD". In the Preliminary Interim Award, the Arbitrator made suggestions for the Parties (Unions and City), and directed them to attempt negotiating additional terms for another agreed upon settlement, if possible. The Arbitrator further indicated that he would be issuing a "FINAL AWARD" absent an agreement by the Parties to develop a new, mutually-acceptable settlement.

You will note on page 18 of the "PRELIMINARY INTERIM AWARD" the Arbitrator found, "Recognizing that these grievances only address Department-wide RDO cancellations, at a minimum the Department exercised its management right arbitrarily and in bad faith when cancelling RDOs Department-wide due to the Festival of lights parade and tree lighting ceremony and for the New Year's Eve weekend as these events were known to be upcoming before the commencement of any 28 day police period."

The Arbitrator specifically addressed monetary compensation. You will find on page 19, the Arbitrator stated, *"This Arbitrator will not consider any proposed monetary relief for two reasons, namely, any monetary relief is premature and arguably is a matter for contract negotiation and, if necessary, interest arbitration."*

Since the Parties were unable to agree upon a mutually-acceptable settlement, on November 1, 2022, the Arbitrator issued a 9-page document titled "ARBITRATOR'S OPINION AND FINAL AWARD" ("Final Award") which is attached to this packet. For a quick reference, I have included bullet points from the FINAL AWARD.

FINAL AWARD BULLETPOINTS: (Please see FINAL AWARD for full text)

1. Arbitrator reiterated "that the only reason this matter is before this Arbitrator is a finding that the Department under the circumstances exercised its rights arbitrarily..."
2. The Superintendent's General message of August 30, 2022 addressing certain commitments as to working schedules in general are incorporated.
3. The Department is required to give "Notice" if it intends on cancelling RDOs for any holidays or "known events," in essence, making the Pilot Program for the 2022 Summer Holidays in the Settlement Agreement permanent.

(Please note that the Arbitrator stated earlier that the "Notice" requirement is only applicable to a "Department-wide" cancellation and will not apply if the cancellation is limited to an Area or Unit.)

4. A 28-Day Anticipatory Notice via AMC and Roll-Calls is required (except for 2022 Thanksgiving, tree lighting ceremony, and Festival of lights Parade). Opportunity to find volunteers will exist.
5. 14-Day Effective Notice to include length of deployment, which RDOs will be cancelled, which Units will be included, and if 12-hour days will be implemented.
6. For the remainder of 2022 "known events" and beyond, the "28 day-14 day notice" requirements as outlined in the Pilot Program for the 2022 Summer Holidays will apply.
7. If there are insufficient number of volunteers, the Dept may cancel RDOs, and if so, will make a "reasonable attempt" to maintain normal schedules.

8. FOP members who have had both RDOs cancelled (pursuant to one of the referenced deployments), will be given priority treatment for time-due requests and to be used through the first full police period following the referenced deployment.
9. Officers whose RDOs are being cancelled for a referenced deployment will be given an opportunity to find an Officer on furlough to work in their place.
10. The Department will continue to give “**good faith** consideration” to Officers who request to retain an RDO where “good cause” is shown (based on the Officer’s circumstances). Appeals will go directly to Deputy Chief and Chief.
11. Officers in a 4 and 2 schedule will not be required to work more than 10-consecutive days.

Officers in 5 and 2 schedule will not be required to work more than 12-consecutive days.

Officers will have a minimum of 9 hours off between shifts.
12. PPOs are covered by the Final Award.
13. The Arbitrator remanded the issue back to the Parties to address whether or not Officers assigned to the 4th and 5th watches and specialized units should be included as part of the Final Award. The Dept has an opportunity to submit a statement on this issue by November 30, 2022, explaining the need to exclude 4th and 5th watches and specialized units. The Unions will then have the opportunity to respond in writing by December 20, 2022.
14. If the Department decides to cancel RDOs on a Department-wide basis because crime has increased **based on the statistical analysis**, the Department must give fourteen (14) days’ notice so as to permit a survey for volunteers and Officers to obtain substitutes.
15. The “Notice provisions” are subject to change to respond to Department Operational needs that were not anticipated.
16. ~~The provisions of the Final Award do not apply if the Superintendent and the Mayor determine in writing that a serious emergency condition exists.~~
17. The comments made in this Final Award explaining the rationale are incorporated by reference.
18. As the City did not prevail in the grievance, the City is required to pay for all the Arbitrator’s fees and expenses.



**VOLUNTARY ARBITRATION TRIBUNAL
Before George T. Roumell, Jr., Arbitrator**

*In the Matter of the
Arbitration between:*

CITY OF CHICAGO, CHICAGO
POLICE DEPARTMENT

-and-

FRATERNAL ORDER OF POLICE
CHICAGO LODGE NO. 7

Gr. Nos. 129-21-017 and 129-21-019
(Consolidated)

POLICEMEN'S BENEVOLENT &
PROTECTIVE ASSOCIATION OF ILLINOIS,
UNITS 156 A, B, C – SERGEANTS
LIEUTENANTS and CAPTAINS

Gr. Nos. SGTS 545-21-076 *et al*
LTS 546-21-029 *et al*
CPTS 548-21-012 *et al*

**ARBITRATOR'S INTERIM OPINION AND
PRELIMINARY INTERIM AWARD**

APPEARANCES:

**FOR CITY OF CHICAGO POLICE
DEPARTMENT:**

Jennifer A. Dunn, Special Asst. Corp. Counsel

**FOR FRATERNAL ORDER OF
POLICE CHICAGO LODGE NO. 7:**

Pasquale A. Fioretto, Attorney
Catherine M. Chapman, Attorney
Rebecca L. Andruzzi, Attorney

FOR PBPA UNITS 156A, B & C:

Donna M. Dowd, Attorney
Jason W. Lee, Attorney

The Grievances

This arbitration proceeding involves the filing of two grievances by the Fraternal Order of Police Chicago Lodge No. 7 and several grievances filed by each Unit of the Policemen's Benevolent and Protective Association, namely, Units 156A Sergeants, 156B Lieutenants and

156C Captains, each challenging the Chicago Police Department's actions in cancelling Officers' and Supervisors' regular day off (RDO) during the period from November 12, 2021 through January 10, 2022. By agreement, the grievances were consolidated so that they were heard together in an arbitration proceeding that lasted four days – February 9, 2022, February 17, 2022, March 18, 2022 and April 19, 2022.

On November 16, 2021, the Lodge filed Gr. No. 129-21-017 which on its face read:

STATEMENT OF GRIEVANCE

In May of 2021, the Lodge filed a grievance (129-21-007) disputing the cancellation of members' regularly scheduled days off (RDOs) among other violations of the CBA (copy of grievance 129-21-007 attached).

On August 26, 2021, the parties met and with the assistance of Arbitrator George T. Roumeil, Jr., the parties reached a settlement agreement (copy of "Settlement Agreement" is attached).

On or about November 8, 2021, the city issued a Department Order via AMC message, cancelling the first of members' RDOs on November 12, 13, 14 of 2021 (see attached document titled "attachment to 129-21-017").

ATTACHMENT TO CLASS ACTION
GRIEVANCE NO. 129-21-017

The City and the Lodge are operating pursuant to the terms of an expired Collective Bargaining Agreement ("CBA") in effect for the period of June 1, 2021 through May 31, 2017. The Parties are in the process of bargaining a successor agreement.

Section 20.7 of the CBA specifically states (emphasis added):

The Employer's right to assign Officers for duty at any time and at different times during each twenty-eight (28) day police period remains unrestricted and unchallenged. Watch assignments and designated starting times shall be established and posted for each police period. Watch assignments and designated starting times shall remain in effect for the duration of the twenty-eight (28) day police period, except for:

* * *

This Section does not apply in the following situations:

A. The Superintendent and the Mayor have determined in

writing that a serious emergency condition exists.

Section 20.9 of the CBA requires (emphasis added):

Days off assigned on “change day” shall remain unchanged for the duration of each 28-day police period except for:

- A. in-service training (including individualized training) with a maximum of seven (7) programs per year for a maximum of twenty-eight (28) days per year and with seven (7) days’ notice to the Officer; or
- B. elective training (elective training are job-related programs (the Department makes available to Officers and in which the Officer elects to participate); or
- C. mandatory proficiency training for employees receiving D-2 or D-2A pay or otherwise receiving specialist or premium pay because of the position or assignment held, with a maximum of twelve (12) programs per year, for a maximum of thirty (30) days per year and with seven (7) days’ notice to the Officer; or
- D. pre-service training for promotions.

None of these exceptions presently apply.

Although the Lodge acknowledges the City’s right to assign Police Officers on regular day-off status, under the specific circumstances as set forth in Section 20.9 of the CBA, this does not give the City the unfettered right to cancel all Police Officers RDOs without any justifications other than an “anticipated” emergency or an increase in crime on any given weekend.

By cancelling RDOs without a written determination by the Superintendent and the Mayor that a serious emergency condition exists and by cancelling RDOs inside the 28-day period, the City violated the CBA by depriving Police Officers of their collectively bargained days off. The Lodge is demanding expedited arbitration, pursuant to Section 9.3(B) of the CBA and for Arbitrator Roumell to hear this dispute. The Lodge demands that the City immediately cease and desist from cancelling Police Officers’ RDOs outside the 28-day period, especially around the weekends.

Additionally, the City’s most recent actions are in violation, at a minimum, of the spirit of the Settlement Agreement reached between the Parties in Grievance No. 129-21-007, thereby not only violating the contract, but also implicating serious safety concerns and the disruption caused to Officers by short-notice cancellations of RDOs. What the Department continues to do to Police Officers by regularly canceling

RDOs is wrong, dangerous, contrary to the Consent Decree, and, a violation of the intent, spirit and past practice of the Parties' contract.

Finally, if any Police Officer has been disciplined in any way or has suffered any economic hardship as a result of this mandate, the Lodge demands that any affected Officers be made whole.

Contract Sections Violated: Article 4; Article 8; Article 20; and all other related Articles, as well as the Settlement Agreement in Grievance No. 129-21-007.

Attached to this grievance was the settlement in Gr. No. 129-21-007 addressing deployment for certain holidays in the summer of 2022.

On November 23, 2021, the Lodge filed Gr. No. 129-21-019 which on its face read:

STATEMENT OF GRIEVANCE

See Attached Document titled, "Attachment to Class Action Grievance #129-21-019".

The Lodge is requesting this grievance to be combined with grievance #129-921-017 and the Settlement Agreement #129-21-007.

Attached to this Grievance was the following statement:

Attachment to Grievance #129-21-019

In May of 2021, the Lodge filed a grievance #129-21-007 disputing the cancellations of member's regularly scheduled days off (RDOs) among other violations of the CBA. On August 26, 2021, the parties met and with the assistance of Arbitrator George T. Roumell, Jr., an agreement was reached.

On or about November 8, 2021, Sgt. Victoria Marzullo "on behalf of Eric Carter", issued an AMC message cancelling the first of member's RDOs on November 12, 13, 14 of 2021. On or about November 13, 2021, Carter then extended cancellations "until further notice". There still was no written determination that an emergency existed. On November 16, 2021, the Lodge filed grievance #129-21-017. The arbitrator was contacted, and the parties received a tentative arbitration date in January of 2022.

On November 22, 2021, at 1:45PM, despite the pending arbitration date, officer Carter issued AMC message stating, *Effective 1st watch, 23-Nov-21, the Department will return to normal operations with regular days off*. **This relief only lasted 42 minutes!!** At 2:27PM, Carter issued another AMC, thereby cancelling "ONE RDO" "until further notice

beginning 26-Nov-21". Again, this was done without a declared "emergency", without notification to the Lodge, without seeking volunteers, without 21-days' notice, without justification, etc.

Not only is the department's (Carter's) method of cancelling members' much deserved, and much needed time off cruel, absurd, unsafe, unhealthy, and wrong, it also seems antagonistic, malicious and without consideration for those who are affected. Additionally, department's (Carter's) practice does not promote a harmonious work environment and is contrary o the Consent Decree.

The department continues this practice without fear of consequences. The affected offices demand to be compensated at a rate of "Triple time" (three times the regular pay) for every hour worked on their cancelled RDO. The affected officers further demand and order the department to provide each affected officer one additional day-off to be enjoyed in 2022 for every cancelled RDO that the affected member worked 5 hours or more.

Contract Sections Violated: Article 4; Article 8; Article 20; Section 23.6; and all other related Articles as well as the Settlement Agreement in Grievance #129-21-007.
(Emphasis and italics in original.)

As noted, beginning on November 12, 2021, the Department cancelled RDOs causing Units 156A, 156B and 156C to respond by each filing separate grievances each time an RDO was cancelled. Typical of the Units' grievances is the grievance filed by Unit 156A on December 17, 2021, which read:

MEMBER'S GRIEVANCE

On or about December 15, 2021 the City issued a Department Order via AMC Message 274957. This order canceled one RDO for each member beginning December 17, 2021 until December 22, 2021. This order was made subsequent to the previously filed grievances (grvs. Nos. 545-21-033, 545-21-043 & 545-21-046) which were filed over a similar practice and subsequently settled and fully executed by all parties. Additionally, Grievances 545-21-076, 545-21-080, and 545-21-087 were filed over a similar practice.

All of the grievances were denied, resulting in this consolidated arbitration hearing.

Issue Presented

The Lodge has set forth the issue as:

Whether or not the City violated Articles 20 and 4 of the Parties' Collective Bargaining Agreement when, beginning in November 2021, the Department, contrary to past practices, and against the spirit of the recently executed Settlement Agreement in Case No. 129-21-007, created an unsafe work environment by regularly cancelling regular Days Off (RDO) for non-emergency, arbitrary and/or capricious reasons, with limited notice, and without first seeking volunteers, thereby impacting Police Officers' mental, emotional, and physical wellness. If so, what shall be the remedy?

The PBPA Units have set forth the issue as:

Whether the City of Chicago ("City") violated the sections 20.6 and 20.7 of the Sergeants, Lieutenants, and Captains contracts titled Day Off Changes and Section 20.11 and 20.12 of the same three contracts titled Change of Schedule when it repeatedly changed members schedules by cancelling days off. If so, what is the appropriate remedy?

The City has set forth the issue as:

At issue is whether the City violated Article 4 of the Agreements, or Section 20.9 of the Lodge Agreement, 20.7 of the PBPA/Sergeants' Agreement, and 20.6 of the PBPA/Lieutenants' and Captains' Agreements, when it periodically assigned sworn members for duty on their regular days off at certain points between November 2021 and early January 2022.

Relevant Contract Provisions

The grievances now before this Arbitrator involve the application of four separate Collective Bargaining Agreements between the City and the four Unions representing the non-exempt sworn members of the Chicago police Department, namely, the FOP Chicago Lodge No. 7 and Units 156A, 156B and 156C agreements. Each of the three post-hearing briefs filed on behalf of the Unions and the City cite and quote for the most part the same or similar provisions appearing in the respective CBAs.

At pages 24-37 of the City's brief, the relevant contract provisions from each CBA are set forth in detail. Said pages are set forth as Attachment A of this Opinion for reference.

Each CBA provides for time and one-half regular paid for all approved overtime. Each

CBA provides “the employer’s right to assign [Officers, Sergeants, Lieutenants and Captains] while on regular day off status is unrestricted and unchallenged. The Employer agrees, however, that in each such event it will pay [the Officer, Sergeant, Lieutenant and Captain] so assigned the optimal premium time under Article 20 of the agreement”. There are some exceptions not relevant to this dispute.

There is also the limitation on the Arbitrator’s jurisdiction and that the Arbitrator may not add to or subtract from the language of the contracts.

In summary, Article 4, “Management Rights”, “rights reserved to the sole discretion of the Employer”, include the Department’s ability to “determine the organization and operations”, the right to assignment of work”, “assign and schedule Officers, Sergeants, Lieutenants and Captains” and “determine the locations, methods, means and personnel by which the operations are to be scheduled as well as “assign work and overtime” and “to establish work schedules”. In addition, certain changes to schedules after the commencement of the 28 day police period will result in premium pay.

Background

The organization of the Chicago Police Department is based upon bureaus, the largest of which is the Bureau of Patrol responsible for patrol operations for the entire City of Chicago.

Within the Patrol Bureau, the City is divided into five areas and the central control group which consists of the central business district.

Chief of Patrol Brian McDermott leads the Bureau with six Deputy Chiefs reporting to him and he reports to the Superintendent and First Deputy Superintendent. There are 22 Districts within the areas, each of which is led by a Commander. In addition to the Deputy Chiefs and

Commanders, approximately 20 Captains, 181 Lieutenants, 633 Sergeants and 5,653 Police Officers as well as approximately 200 Officers assigned to the Citywide Community Safety Team and the Critical Incident Response Team reporting to the Chief of Patrol are in the Bureau of Patrol.

In addition to the Bureau of Patrol, the Department consists of several Bureaus led by Chiefs who report to the Superintendent and First Deputy Superintendent.

The Department has a total of approximately 11,717 sworn members. Within the Bureau of Patrol, the number of sworn Officers assigned to each District varies from approximately 175 to 300. Currently, the Bureau of Patrol is not operating with all budgeted positions filled. The Bureau of Patrol is short about 1,400 Officers. Overall, the Department is down about 1,700 Officers. Excluding the Bureau of Patrol, there are approximately 4,850 sworn members assigned to specialized units throughout the remaining Bureaus.

Sworn Officers are assigned to one of four watches. The first watch, midnights, usually starts at 10 p.m. and 11 p.m.; the second watch, days, usually starts at 7 a.m. and 8 a.m.; the third watch, afternoons, usually starts between 3 p.m. and 5 p.m. The fourth watch includes the Department's tactical teams consisting of approximately 400 Officers who have varying start times and flexible hours.

Within the Bureau of Patrol, Officers usually work a "four and two schedule" with four days on and two days off, and work a nine hour shift with a one-half hour unpaid lunch.

This is the basic structure of the Department in November 2021-January 2022.

The RDO Cancellations

Under the date of November 8, 2021, First Deputy Superintendent Eric M. Carter

distributed to the Superintendent and all Bureau Chiefs a document referenced as “Weekend Deployment Plan”.

On November 8, 2021 at 15:26, First Deputy Superintendent Carter caused a message to be sent through police communications announcing “all sworn fully duty members who are RDO on Friday 12 November, Saturday 13 November, Sunday 14 November will have their first RDOs cancelled on all three watches”. Both Chief of Patrol Brian P. McDermott and First Deputy Superintendent Carter testified that the reason for the Department-wide cancellation was due to an increase in homicides in the City and in anticipation of any possible civil unrest stemming from the Rittenhouse trial in Wisconsin which at the time was about to commence. Chief McDermott testified that the previous weekend there were 12 homicides as compared to 10 during the same period in 2020. (Tr. 523-524, 698).¹

On Saturday, 13 November 2021 at 14:37, the First Deputy Superintendent’s Office issued an announcement which stated “effective immediately and until further notice” full duty sworn members will have one RDO cancelled, namely, members first RDO will be cancelled”. Chief McDermott testified that the reason for the cancellation was a concern about a backlash following the verdict in the Rittenhouse trial which was ongoing and the verdict was expected the following week and the Department wanted to be prepared. In addition, the Chief noted that at the time there was another high profile racially charged trial taking place in Georgia having gained national attention, causing concern to the Department. The Chief also highlighted as a reason an increase in “violence” and the need for Officers for crowd control involving the Festival of Lights parade that would take place on 20 November 2021 and the tree lighting

¹ “Tr.” is a reference to the transcript of the arbitration hearing.

ceremony in Millennium Park that was to take place on November 19, 2021. (Tr. 527, 528).

On 22 November 2021 at 3:45, the First Deputy's Office sent a general message entitled "return to normal operations" that read "Effective 1st watch 23 Nov 21 (Monday night for Tuesday) the Department will return to normal operations with regular days off."

Forty-two minutes after sending the 22 November 2021 announcing returning to normal operations on 22 November 2021 14:27, the First Deputy's Office sent an announcement stating that beginning with the first watch 20 November 21 (Thursday night for Friday) all sworn full duty members will have one RDO cancelled until further notice with the member's first RDO being cancelled.

Both First Deputy Superintendent Carter and Chief McDermott explained that this RDO cancellation was related to a caravan based looting incident in the 006th District on November 19 and concern that the caravan was heading to the Central District to engage in looting; that the particular concern was that the day after Thanksgiving was known as Black Friday, a heavy shopping day, and that Los Angeles and San Francisco had experienced looting of retail stores and, based upon the 2020 experience in Chicago, the Department was taking proactive measures to address any potential looting. (Tr. 532-534, 696-697, 756).

On 29 November 2021 12:53, an announcement was sent advising that effective first watch 30 November 2021 (Monday night to Tuesday), the Department would return to normal operations with regular days off.

On 06 December 2021 17:20, a general message was sent out reading "Beginning 1st watch on 9 Dec 21 (Wednesday night for Thursday) all sworn, full duty members will have one RDO cancelled, the Department will return to normal operations with regular days off effective

2nd watch 06 December 21". Obviously, the referenced return to normal operation date was a typographical error. Twelve minutes later on 06 December 2021 17:32, an announcement was issued setting forth the return to normal operations effective the second watch 13 December 2021 with regular days off. This corrective announcement did provide for the cancellation of one RDO, namely, the member's first RDO.

Both First Deputy Superintendent Carter and Chief McDermott testified that the reason for this December weekend was the result of reviewing the prior week's crime statistics, noting that the previous year there were three homicides as between December 3-5, 2021, and there were nine homicides within the City which they described as a 200% increase over the same period the previous year. (Tr. 538, 609, 700). They also explained that on December 4, 2021 there was a large gathering of the teens at Millennium Park resulting in a disturbance requiring police action, including 20 arrests, and the teens were planning to again appear at Millennium Park the weekend of December 11, 2021. (Tr. 655, 700).

On 15 December 2021 10:23, a message was sent announcing "Beginning 1st watch 17 December 2021 (Thursday night for Friday), all sworn duty members will have one RDO cancelled; the Department will return to normal operations with regular days off effective 2nd watch 22 December 2021. The members' first RDO will be cancelled ...". Again, both First

Deputy Superintendent Carper and Chief McDermott testified that the reason for these cancellations was a continued increase in homicides, noting that for the previous weekend, December 10-12, there were seven homicides compared to three in the same period in 2020, or an increase of 133%. (Tr. 539, 614, 700-701, 765).

On 23 December 2021 12:31, the following message was sent: "Beginning 2nd watch,

Friday 31 December 2021 RDOs will be cancelled for all sworn full duty members; the Department will return to normal operations with regular days off effective 2nd watch, Sunday 02 January 2022 ...”. This message cancelled both RDOs during the weekend involved. The reason explained for these cancellations was concern over shootings, homicides and large gatherings and parties on New Year’s Eve throughout the City as well as hotel parties and visitors in the downtown area. (Tr. 543, 611, 701-702, 767). The RDOs of Officers assigned to downtown were restored when it was determined that the traffic was light due to weather conditions. (Tr. 619).

On 5 January 2022 17:06, the following announcement was sent: “Beginning 2nd watch 07 January 2022 all sworn full duty members will have one RDO cancelled; the Department will return to normal operations with regular days off effective 2nd watch 10 January 2022. The member’s first RDO will be cancelled ...”. The reason given for the cancellation was because there were 10 homicides between January 1 and January 4, 2022 compared to eight in the same period in 2021 for an increase of 20% and an increase in shootings of 33%. (Tr. 620, 702, 769).

It was also stipulated that during the seven instances of City-wide RDO cancellations from November 2021 through January 2022, there were 3,600 requests either to retain RDOs or use personal or compensatory time off which had been restricted and that 3,219 requests had been granted based on such issues as pre-planned family events or travel plans. (Tr. 671-672).

Discussion

It is important to recognize that this is not an interest arbitration, but rather a grievance arbitration addressing the fundamental issue of whether the Department violated existing contract language by its actions in cancelling RDOs as described previously in this Opinion. In

addressing this fundamental issue, this Arbitrator is faced with crosswinds or competing interests among the parties.

Officer wellness is a major concern to the Police Unions and their membership. The Unions presented the testimony of Dr. Carrie Steiner, a psychologist and former Chicago Police Officer whose practice includes treating Chicago Police Officers. Dr. Steiner testified that more Chicago Police Officers have come to her practice in 2021-2022 “because they are stressed out from their work hours and cancelled days off and shift schedule, and increase in hours”. (Tr. 105, 134).

There is no question that being a Chicago Police Officer is a difficult job requiring the Officer to be rested so as to be alert as the Officer is called upon at times to make split-second decisions involving various circumstances.

There are examples both in the CBAs and the operations of the Department addressing Officer wellness. The popular four days on and two days off after working four nine-hour days is one example. The provisions set forth in Sections 20.7 and 20.9 providing as a general proposition that days off assigned on change day shall remain unchanged during the 28 days of police period subject to exceptions is another example.

It also could be argued that the Section 20.2 and 20.9 provisions for premium pay when RDOs are cancelled, as suggested by longtime FOP General Counsel Thomas Pleines, are a deterrent to cancelling RDOs. (Tr. 58-59).

Mayor Lightfoot and Superintendent Brown, based on statements in press conferences, support the need for considering Officer wellness.

On the other hand, as explained by First Deputy Superintendent Carter, managing the

Department's response to up ticks in crime, crowd control and other matters of police concern have resulted in the cancellation of RDOs either on an area-wide basis or on a District basis. (Tr. 683-684). First Deputy Superintendent Carter noted that, as a result of the George Floyd incident and the reaction in Chicago, RDOs were cancelled. He also recalled that RDOs were cancelled Department-wide during the Bulls championship, during a NATO conference and when President Trump visited the Illinois Association of Police Chiefs meeting in Chicago. (Tr. 688).

There is no question that the core responsibility of the Department and its managers is to be able to utilize the Department's resources and personnel to respond to matters of police concern.

What this Arbitrator has set forth is the underlying competing interests that are the underpinnings of these grievances and the Department's responses.

The significance of the above discussion concerning the competing interests is to bring into focus the contract issue at stake. Any suggestion that these grievances are governed by the concept of past practice as such, based upon the argument that the Department has not in the past had a Department-wide cancellation of RDOs as was the case between November 2021 and January 2022, is not persuasive. Past practice can be utilized when the contract language is ambiguous, general, nonexistent or, in the rare case, modifying clear language. *See, Mittenthal, Past Practice in the Administration of Collective Bargaining Agreements*, 59 Mich L R 1017 (1961).

The language in each CBA is specific. Not only does the right to "assign work and overtime" appear in the Management Rights article but, to repeat, each CBA provides "the employer's right to assign [Officers, Sergeants, Lieutenants and Captains] while on regular day

off duty status is unrestricted and unchallenged". Nor can it be claimed that this is an example of a case modifying clear language. What occurred in the Chicago Police Department is what the legendary Umpire Harry Shulman noted in *Ford Motor Company*, 19 LA 237, 241-243 (1952), when referring to practices he wrote:

... But there are other practices which are not the result of joint determination at all. They may be mere happenstance, that is, methods that developed without design or deliberation. Or they may be choices by Management in the exercise of managerial discretion as to the convenient methods at the time. In such cases there is no thought of obligation or commitment for the future. Such practices are merely present ways, not prescribed ways, of doing things. The relevant item of significance is not the nature of the particular method but the managerial freedom with respect to it. ...

What this classical past practice analysis means is just because the Department chose in the past not to utilize a Department-wide cancellation of RDOs to address certain situations requiring police presence, given the specific language permitting RDO cancellations does not prevent the Department as such from doing so subsequently.

Likewise, the decisions of Arbitrator Doering in *Gr. No. 129-88-018* (1990) and Arbitrator Meyers in *Gr. No. 129-89-348* (1991) do not necessarily serve as guides in resolving the grievances now before this Arbitrator as both decisions address the issue of the payment of premium time when RDOs are cancelled. There are no claims before this Arbitrator that the affected members whose RDOs were cancelled were not paid the contractually required premium overtime rate.

After setting forth the above analysis and comments, this Arbitrator comes to the contractual issue that determines the resolution of these grievances in *Gr. No. 129-09-007* (2011). Arbitrator Benn at page 15, while recognizing that the management rights language gave sole discretion to management of a matter, held that the exercise of management's actions must

not be arbitrary, capricious or taken in bad faith. As Arbitrator Platt noted in *South Central Bell Telephone Co.*, 52 LA 1104, 1109 (1969), “In general ... action is arbitrary when it is without consideration and disregard of facts and circumstances of the case, without rational basis, justification or excuse”. Here, these grievances raise the issue as to whether the Department acted arbitrarily, capriciously or in bad faith when cancelling Department-wide RDOs during the 28 day police periods over weekends between November 2021 and January 2022.

In answering this question, the Police Unions rely on the past responses to events by the Department to argue that between November 2021 and January 2022 the Department’s actions were either arbitrary, capricious or in bad faith, or all three. Such an argument does not conflict with the classical contractual past practice argument discussed by this Arbitrator as the actions of the Department in response to past police situations is for the purpose of gauging whether the exercise in the situations now before this Arbitrator of management rights were arbitrary, capricious, or in bad faith.

In this regard, the Unions note that the Department has never cancelled weekend RDOs due to the Festival of Lights parade or the tree lighting ceremony or over the New Year’s weekend.

The Unions also argue that the statistics the Department relied on in support of the reason to cancel RDOs Department-wide between November 2021 and January 2022 illustrate that the Department’s actions were arbitrary, capricious, and in bad faith. Joint Exhibit 38 is the following chart setting forth shooting incident total for the City of Chicago in 2016-2021:

Year	Incidents	Fatal Incidents ²
2016	3,547	663

2017	2,766	548
2018	2,376	450
2019	2,146	426
2020	3,259	673
2021	3,555	716

Note²: "Fatal incidents" indicates the number of shooting incidents that included at least one fatal.

The Unions note that comparing 2016 with both 2020 and 2021, the incidence and fatal incidents were similar and yet in 2016 and 2020 there were no Department-wide cancellations over weekends of RDOs. Similarly, the Unions challenge the reason advanced by the Department based upon an increase in homicides, noting that in the past there has been a similar number of homicides that did not result in Department-wide cancellations of RDOs. In making this argument, the Unions emphasized that the increases relied on by the Department were limited.

What this Arbitrator has set forth in the last few paragraphs was to pinpoint the issue and question to be addressed in resolving these contract grievances. After doing so, this Arbitrator observes that this is a monumental contract dispute between the parties and not the run-of-the-mill grievances as evidenced by the fact that there were four days of hearings resulting in over 800 pages of transcript, over 125 pages of post-hearing briefs, and approaching 65 exhibits. The tension between the concern for Officer wellness and the Department's ability to management was front and center and obvious.

Having made certain findings, observations and comments thus far in this Opinion, this Arbitrator must now determine whether, after considering the arguments of all parties, the Department, when ordering the cancelling of RDOs Department-wide between November 2021

and January 2022, acted arbitrarily, capriciously or in bad faith.

Recognizing that these grievances only address Department-wide RDO cancellations, at a minimum the Department exercised its management right arbitrarily and in bad faith when cancelling RDOs Department-wide due to the Festival of lights parade and tree lighting ceremony and for the New Year's Eve weekend as these events were known to be upcoming before the commencement of any 28 day police period. Though Section 20.9 in the FOP CBA and the equivalent provision in the PBPA CBA do provide the Department with the right to cancel RDOs, the Section also provides that after the change date RDOs are usually to remain unchanged. Likewise, the fact that the Patrol Bureau may have 1,400 unfilled positions is not a basis to overlook the concept of change date when the events at issue are known in advance.

This conclusion is buttressed by the fact that there was an operational calendar published for 2021, Joint Exhibit 35, laying out the 28 day police periods into 13 sections setting forth Police Officers' day-off groups. 95% of Officers keep their day-off group throughout the year. (Tr. 354).

Thus, at a minimum, this Arbitrator will issue a Preliminary Interim Award that will provide that if the Department intends to cancel RDOs Department-wide for a known event, the Department shall give 28 days notice at the beginning of the police period involved.

Furthermore, in the case of such Department-wide RDO cancellations, the Department shall continue granting exceptions to the cancellations of individual members on the same basis that the Department did during the November 2021-January 2022 Department-wide cancellations.

Note that this Arbitrator has deliberately used the phrase in the preceding paragraph "at a minimum". As the parties are aware, this Arbitrator participated in the arbitration involving the

cancellation of RDOs during summer holidays whereby the parties reached an agreement, this Arbitrator interpreted the agreement, and the parties negotiated a remedy for violations.

Given this history, recognizing the Department's right to manage in pursuit of its mission, as well as the need to address Officer wellness, the award requires some additional provisions beyond the minimum set forth by this Arbitrator. Recognizing this need for additional provisions in a final award, using the history involving the summer holidays, this Arbitrator concludes that the parties, before a final award is issued, should have an opportunity to mutually agree on additional provisions as they were able to do so in addressing the summary holidays.

Thus, the parties shall have until October 12, 2022 to either reach mutual agreement as to additional provisions to be incorporated in the final award or to advise this Arbitrator that no such agreement has been reached. If this Arbitrator does not hear from the parties by October 12, 2022, this Arbitrator will presume that no agreement has been reached and will issue a final award with whatever additional provisions he concludes are appropriate.

As a guide to the parties, this Arbitrator as a suggestion to the parties should consider Paragraphs 2, 3 and 6 of the proposed remedies suggested at page 45 of the FOP brief. This Arbitrator will not consider any proposed monetary relief for two reasons, namely, any monetary relief is premature and arguably is a matter for contract negotiations and, if necessary, interest arbitration.

The Award that follows is a preliminary or interim award and is not a final award. This Arbitrator will continue jurisdiction until he issues his final award as discussed in the Opinion.

Preliminary/Interim Award

1. This Arbitrator remands these grievances back to the parties with directions that

they attempt, as set forth in the Opinion, to negotiate provisions to be incorporated in a final award in addition to the minimum provision that this Arbitrator has announced that he will include in a final award.

2. The parties shall have until October 12, 2022 to advise this Arbitrator whether they have reached agreement as to such additional provisions and to submit these additional provisions to this Arbitrator by October 12, 2022.

3. If no such additional provisions are submitted to this Arbitrator by October 12, 2022 or the parties have not advised this Arbitrator that they have failed to reach agreement by October 12, 2022, this Arbitrator will proceed to issue a final award setting forth the provisions/ remedy he deems appropriate.

4. This Arbitrator will continue jurisdiction until he issues a final award.

George T. Roumell, Jr.
GEORGE T. ROUMELL, JR.
Arbitrator

September 27, 2022

**VOLUNTARY ARBITRATION TRIBUNAL
Before George T. Roumell, Jr., Arbitrator**

*In the Matter of the
Arbitration between:*

CITY OF CHICAGO, CHICAGO
POLICE DEPARTMENT

-and-

FRATERNAL ORDER OF POLICE
CHICAGO LODGE NO. 7

Gr. Nos. 129-21-017 and 129-21-019
(Consolidated)

POLICEMEN'S BENEVOLENT &
PROTECTIVE ASSOCIATION OF ILLINOIS,
UNITS 156 A, B, C – SERGEANTS
LIEUTENANTS and CAPTAINS

Gr. Nos. SGTS 545-21-076 *et al*
LTS 546-21-029 *et al*
CPTS 548-21-012 *et al*

ARBITRATOR'S OPINION AND FINAL AWARD

APPEARANCES:

**FOR CITY OF CHICAGO POLICE
DEPARTMENT:**

Jennifer A. Dunn, Special Asst. Corp. Counsel

**FOR FRATERNAL ORDER OF
POLICE CHICAGO LODGE NO. 7:**

Pasquale A. Fioretto, Attorney
Catherine M. Chapman, Attorney
Rebecca L. Andruzzi, Attorney

FOR PBPA UNITS 156A, B & C:

Donna M. Dowd, Attorney
Jason W. Lee, Attorney

On September 27, 2022, this Arbitrator issued a Preliminary/Interim Award in this matter where, beginning at page 18 and continuing, this Arbitrator wrote:

Thus, at a minimum, this Arbitrator will issue a Preliminary Interim Award that will provide that if the Department intends to cancel RDOs Department-wide for a known event, the Department shall give 28 days notice at the beginning of the police period involved. Furthermore, in the case of such Department-wide RDO cancellations, the Department

shall continue granting exceptions to the cancellations of individual members on the same basis that the Department did during the November 2021-January 2022 Department-wide cancellations.

Note that this Arbitrator has deliberately used the phrase in the preceding paragraph "at a minimum". As the parties are aware, this Arbitrator participated in the arbitration involving the cancellation of RDOs during summer holidays whereby the parties reached an agreement, this Arbitrator interpreted the agreement, and the parties negotiated a remedy for violations.

Given this history, recognizing the Department's right to manage in pursuit of its mission, as well as the need to address Officer wellness, the award requires some additional provisions beyond the minimum set forth by this Arbitrator. Recognizing this need for additional provisions in a final award, using the history involving the summer holidays, this Arbitrator concludes that the parties, before a final award is issued, should have an opportunity to mutually agree on additional provisions as they were able to do so in addressing the summary holidays.

Thus, the parties shall have until October 12, 2022 to either reach mutual agreement as to additional provisions to be incorporated in the final award or to advise this Arbitrator that no such agreement has been reached. If this Arbitrator does not hear from the parties by October 12, 2022, this Arbitrator will presume that no agreement has been reached and will issue a final award with whatever additional provisions he concludes are appropriate.

As a guide to the parties, this Arbitrator as a suggestion to the parties should consider Paragraphs 2, 3 and 6 of the proposed remedies suggested at page 45 of the FOP brief. This Arbitrator will not consider any proposed monetary relief for two reasons, namely, any monetary relief is premature and arguably is a matter for contract negotiations and, if necessary, interest arbitration.

The Award that follows is a preliminary or interim award and is not a final award. This Arbitrator will continue jurisdiction until he issues his final award as discussed in the Opinion.

Preliminary/Interim Award

1. This Arbitrator remands these grievances back to the parties with directions that they attempt, as set forth in the Opinion, to negotiate provisions to be incorporated in a final award in addition to the minimum provision that this Arbitrator has announced that he will include in a final award.

2. The parties shall have until October 12, 2022 to advise this Arbitrator whether they have reached agreement as to such

additional provisions and to submit these additional provisions to this Arbitrator by October 12, 2022.

3. If no such additional provisions are submitted to this Arbitrator by October 12, 2022 or the parties have not advised this Arbitrator that they have failed to reach agreement by October 12, 2022, this Arbitrator will proceed to issue a final award setting forth the provisions/ remedy he deems appropriate.

4. This Arbitrator will continue jurisdiction until he issues a final award.

The City asked for an extension of the October 12 date because of the unavailability of a Department member necessary to participate in such negotiations due to unavoidable personal circumstances. This Arbitrator concluded that the request was reasonable but, following his practice, he arranged for a telephone conference with Counsel for all parties to discuss the request. During this conference call, this Arbitrator learned that in any event the parties would not be able to negotiate an agreement as to RDOs as urged in this Opinion. Thus, this Arbitrator, as set forth in the Preliminary/Interim Award, is obligated to issue a Final Award resolving the dispute as to RDOs that was presented. This Arbitrator now proceeds to do so.

The reason this Arbitrator issued a Preliminary/Interim Award was because, pursuant to Article 4, Management Rights, the Department has retained the right to schedule Officers based on need; that the only reason this matter is before this Arbitrator is a finding that the Department under the circumstances exercise its rights arbitrarily; and that it was best if the parties could mutually come to an understanding to address the issue as the parties are more intimately familiar with the policing issues in a large municipality than a neutral.

Having made the above statement and noting that the parties would not be able to negotiate an agreement, nevertheless the parties have provided by their actions guidance as to a remedy consistent with the concerns of the Unions and the Department's right to manage.

On September 23, 2021 and October 4, 2021, the Department and the Unions entered into an agreement addressing the assignment of RDOs for four holidays during the summer of 2022. These were known events, a term referenced by this Arbitrator in the Preliminary/Interim Opinion.

On August 30, 2022, approximately one month prior to the issuance of the Preliminary/Interim Opinion and Award but after four days of hearing and the filing of post-hearing briefs, the following message was issued on behalf of Superintendent Brown:

Effective immediately, the Department is implementing the following changes to scheduling: For all non-probationary sworn members (except those members assigned to the 4th and 5th watches and members in specialized units): 1. No more than one RDO will be cancelled per work week except during the following operational periods, when two RDOs maybe cancelled: Memorial Day, Father's Day, 4th of July, Labor Day, Thanksgiving, and New Year's Eve. 2. Members on a 4-2 schedule will not be required to work more than 10 consecutive days. Members on a 5-2 schedule will not be required to work more than 12 consecutive days. 3. Members will be guaranteed two consecutive days off each police period. 4. Members will have a minimum of nine hours between shifts. For all members, including probationary police officers and officers assigned to 4th and 5th watch, including specialized units: Members will have a minimum of nine hours between shifts.

Between the summer 2022 RDO agreement and the Superintendent's August 30, 2022 message, the Unions and the Department have defined known events as referenced by this Arbitrator in requiring advance notice. Besides the holidays set forth in the summer RDO agreement, the Superintendent has acknowledged that Thanksgiving and New Year's Eve are known events. In addition, based upon the testimony, the Festival of Lights and tree lighting ceremony are likewise known days referenced in the Preliminary/Interim Award.

The Award follows the notice provisions of the summer 2022 holidays for all known events and in effect provides that the summer 2022 agreement is permanent. Because of the timing of the following Award only for the three known events occurring in November 2022,

namely, Thanksgiving, the tree lighting ceremony and the Festival of Lights, the 28 days notice will be waived, but the 14 day notice will remain during which period the Department will seek volunteers and officers can seek substitutes. For all other known events including the November events beyond 2022, the 28 day-14 day notice requirements as outlined in the summer 2022 RDO settlement will be set forth in the Award.

The Superintendent's general message of August 30, 2022 addressing certain commitments as to working schedules in general will be incorporated in the Award.

The Superintendent in his general message exempted Officers assigned to the 4th and 5th watches and Officers in specialized units as well as Probationary Officers. This Arbitrator notes that in the summer 2022 agreement these Officers were included in that agreement. Further, there seems to be no reason to exclude Probationary Officers. So that this Arbitrator is not overlooking the operational needs of the Department, this Arbitrator will keep jurisdiction to permit the Department to file a statement by November 30, 2022 with this Arbitrator explaining the need to exclude Officers assigned to the 4th and 5th watches and to specialized units from this Award with copies to the Unions' Counsel, who shall respond by December 20, 2022. Such statements should be limited to five pages, if possible, and this Arbitrator will subsequently rule.

The Award will provide that the Department continue to grant Officers, based on the Officer's circumstances, the right to utilize their RDO despite the cancellation.

The premise of the Opinion and Award is that notice could only be given if the event causing the cancellation was known. This was the premise of the summer 2022 agreement.

However, a concern expressed by the Unions in the hearings is that RDOs were being cancelled by a modest increase in shootings over a previous period or was not as high as in

previous years when there were no RDO cancellations. Yet, the Department is concerned over any increase in crime. Balancing the respective interests in this issue, the Award will provide that if the Department decides to cancel RDOs on a Department-wide basis because crime has increased based on a statistical analysis, the Department must give 14 days notice so as to permit a survey for volunteers and officers to obtain substitutes. This notice requirement is of a short duration so that the Department can address the crime situation. Furthermore, this notice requirement does not apply if the cancellation is limited to an area or unit and is only applicable to a Department-wide cancellation.

As to any proposed monetary relief for any violation of the provisions of the Award, as pointed out in the Preliminary/Interim Award, a request for monetary relief depends on whether there is a violation of the Award and in such case a remedy may be sought. Further, if the Unions wish to enshrine a particular monetary remedy over that now in their contracts, this would be a matter for current and upcoming contract negotiations.

The Award will follow the lead of the summer 2022 holidays and provide as a general proposition the notice provisions are subject to change to respond to Department operational needs that were not anticipated. The Award will reiterate the provision in Section 20.7 of the FOP CBA, namely, that the provisions of the Award do not apply if the Superintendent and the Mayor determine in writing that a serious emergency condition exists.

A W A R D

1. The notice requirement set forth in Paragraphs 2 and 3 of this Award shall apply to Memorial Day, Father's Day, Juneteenth, July 4th, Labor Day, Thanksgiving, New Year's Eve, Festival of Lights, Tree Lighting Ceremony and any other known event.

2. No less than twenty-eight (28) days before the effective date of deployment, except where operational needs preclude doing so, for each of the four Holidays above, the Department will send an Anticipatory Notice apprising Officers of the then-anticipated deployment needs. It is understood that this Notice is anticipatory and subject to change. The Notice shall be communicated to the official email accounts of Officers. In addition, an AMC message will be sent and will be required to be read at roll call, if applicable. As part of the Notice, Officers will be offered the opportunity to volunteer to work on days during the scheduled deployment they are not scheduled to work (e.g., RDO or furlough). In the event of a need for additional manpower for the Department, the Department will first utilize the Officers who volunteered to work pursuant to the Anticipatory Notice.

3. No less than fourteen (14) days in advance of the scheduled deployment, the Department will send (via email and AMC message) an Effective Notice, containing the then-anticipated length of the deployment, whether RDOs will be cancelled, which units will be subject to the deployment, and whether 12-hour workdays will be implemented. It is understood that this Notice is subject to change in order to respond to operational needs that were not anticipated.

4. The notice requirements of Paragraphs 2 and 3 are subject to change in order to respond to operational needs that were not anticipated. Further, as explained in the Opinion, the 28 day notice for the 2022 Thanksgiving, Festival of Lights and Tree Lighting Ceremony will be waived but for such days the 14 day notice will remain during which period the Department will seek volunteers and Officers can seek substitutes.

5. If the supply of such Officers who volunteered pursuant to Paragraphs 2-4 is not

sufficient, the Department may cancel RDOs. If RDOs are cancelled, the Department will make a reasonable effort to maintain the normal (8.5 hours or 10 hours) schedule of RDO-cancelled Officers and assign them as needed, which could be 3rd watch, while in cancelled RDO status.

6. Officers represented by the FOP who have had both RDOs cancelled pursuant to one of the deployments referenced above will receive priority treatment of time due requests submitted pursuant to the negotiated time due MOU between the City and the FOP. This priority will extend through the first full police period following the deployment.

7. Officers whose RDOs are being cancelled pursuant to the deployment will be given the opportunity to find another Officer on furlough to work in their stead.

8. The Department will continue the practice of giving good faith consideration to Officers who request to retain their RDO where good cause is shown. An Officer whose request is denied by his or her exempt Commanding Officer may appeal the denial to the appropriate Deputy Chief and Chief.

9. Officers on a 4/2 schedule will not be required to work more than ten (10) consecutive days. Officers on a 5/2 schedule will not be required to work more than twelve (12) consecutive days. Officers will have a minimum of nine (9) hours off between shifts.

10. As to Officers assigned to the 4th and 5th watch, including specialized units, this Award remands the issue of whether such Officers are included as part of this Award based upon the statements made at page 5 of this additional Opinion, which are incorporated by reference. However, Probationary Officers are covered by this Award and the nine (9) hour minimum between shifts will apply to Officers assigned to the 4th and 5th watch, including specialized units.

11. If the Department decides to cancel RDOs on a Department-wide basis because

crime has increased based on the statistical analysis, the Department must give fourteen (14) days notice so as to permit a survey for volunteers and Officers to obtain substitutes.

12. The notice provisions are subject to change to respond to Department operational needs that were not anticipated.

13. The provisions of the Award do not apply if the Superintendent and the Mayor determine in writing that a serious emergency condition exists.

14. The comments made in this additional Opinion explaining the rationale for the Awards are incorporated by reference.

15. As the City did not prevail in the grievance, the Arbitrator's fees and expenses shall be paid by the City.

George T. Roumell, Jr.
GEORGE T. ROUMELL, JR.
Arbitrator

November 1, 2022