

**BEFORE ARBITRATOR STEVEN M. BIERIG**

<b>IN THE MATTER OF ARBITRATION BETWEEN:</b>	<b>GRIEVANT: CLASS ACTION</b>
<b>CITY OF CHICAGO, DEPARTMENT OF POLICE</b>	<b>ISSUE: OVERTIME PAY FOR SIXTH AND SEVENTH DAY OF WORKWEEK DURING 2012 NATO SUMMIT</b>
<b>AND</b>	<b>GRIEVANCE NO. 129-12-010</b>
<b>FRATERNAL ORDER OF POLICE, CHICAGO LODGE #7</b>	<b>ARB. NO. 12-145</b>

**Before:** Steven M. Bierig, Arbitrator

**APPEARANCES:**

**For City of Chicago:** Richard H. Schnadig  
Special Asst. Corporation Counsel

Jeffrey M. Brown  
Assistant Chief Labor Negotiator

Patrick Polk  
Assistant Corporation Counsel

**For Fraternal Order of Police,  
Chicago Lodge #7:** Paul D. Geiger, Union Counsel

**Location of Hearing:** Fraternal Order of Police, Chicago Lodge #7  
1412 West Washington Blvd.  
Chicago, Illinois

**Dates of Hearing:** February 25, 2013  
April 22, 2013

**Date Briefs Exchanged:** June 25, 2013

**Date of Award:** September 22, 2013

**AWARD:**

**For the reasons stated in this Opinion and Award, the Arbitrator finds:**

**The Grievance is sustained. The City of Chicago violated the Contract when it failed to compensate the relevant officers at the overtime rate for working a sixth or a sixth and seventh consecutive day of work on May 25 and May 26, 2012, after they had been paid overtime for working their regular days off on May 20 and 21, 2012. All affected officers will be made whole.**

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**Steven M. Bierig, Arbitrator  
September 22, 2013**

**I. INTRODUCTION**

The Hearings in this matter took place on Monday, February 25, 2013 and Monday, April 22, 2013 at the Fraternal Order of Police, Chicago Lodge #7 located at 1412 West Washington Boulevard, Chicago, Illinois. The Hearings commenced at 10:00 a.m. and 1:00 p.m. respectively. The Hearings took place before the undersigned Arbitrator who was selected to render a final and binding decision in this matter. At the Hearings, the parties were afforded a full opportunity to present such evidence and arguments as desired, including examination and cross-examination of all witnesses. Transcripts were prepared for both Hearings; however, they were not numbered consecutively.<sup>1</sup> The parties prepared Post-Hearing Briefs that were exchanged through the Arbitrator on or about June 25, 2013, at which time the evidentiary portion of the Hearing was declared closed.

**II. ISSUE**

Did the City violate Section 20.3 of the Contract in May 2012 by failing to pay overtime for a sixth and seventh workday, when prior overtime compensation had been paid in the same workweek for officers who had worked on their regular days off?

If so, what is the appropriate remedy?

(Feb. Tr. 4-5)

**III. RELEVANT CONTRACT PROVISIONS**

**ARTICLE 4 - MANAGEMENT RIGHTS**

The City has and will continue to retain the right to operate and manage its affairs in each and every respect. The rights reserved to the sole discretion of the City shall include, but not be limited to, rights:

- A. to determine the organization and operations of the Department of Police;

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<sup>1</sup> The transcript cites will be identified either with a prefix of "Feb." or "Apr." to note the Hearing date associated with the transcript.

- B. to determine and change the purpose, composition and function of each of its constituent departments, and subdivisions;
- C. to set standards for the services to be offered to the public;
- D. to direct the officers of the Department of Police, including the right to assign work and overtime;
- E. to hire, examine, classify, select, promote, restore to career service positions, train, transfer, assign and schedule officers;
- F. to increase, reduce or change, modify or alter the composition and size of the work force, including the right to relieve employees from duties because of lack of work or funds or other proper reasons;
- G. to contract out work when essential in the exercise of police power;
- H. to establish work schedules and to determine the starting and quitting time, and the number of hours to be worked;
- I. to establish, modify, combine or abolish job positions and classifications;
- J. to add, delete or alter methods of operation, equipment or facilities;
- K. to determine the locations, methods, means, and personnel by which the operations are to be conducted, including the right to determine whether goods or services are to be made, provided or purchased;
- L. to establish, implement and maintain an effective internal control program;
- M. to suspend, demote, discharge, or take other disciplinary action against officers for just cause; and
- N. to add, delete or alter policies, procedures, rules and regulations.

Inherent managerial functions, prerogatives and policymaking rights, whether listed above or not, which the City has not expressly restricted by a specific provision of this Agreement are not in any way, directly or indirectly, subject to the grievance and arbitration procedures contained herein, provided that no right is exercised contrary to or inconsistent with other terms of this Agreement.

**ARTICLE 9 – GRIEVANCE PROCEDURE**

**Section 9.7 - Authority of the Arbitrator.**

A. Except as specified in Subsection C below, the Arbitrator shall have no right to amend, modify, nullify, disregard, add to, or subtract from the provisions of this Agreement. . .

**Section 9.8 - Expense of the Arbitrator**

The fee and expense of the arbitrator shall be borne by the party whose position is not sustained by the Arbitrator. The Arbitrator in the event of a decision not wholly sustaining the position of either party, shall determine the appropriate allocation of his or her fees and expenses. . .

## **ARTICLE 20**

### **Section 20.2 - Compensation for Overtime**

All approved overtime in excess of the hours required of an officer by reason of the officer's regular duty, whether of an emergency nature or of a non-emergency nature, shall be compensated for at the rate of time-and-one-half.

### **Section 20.3 - Sixth and Seventh Day Work**

An officer who is in pay status for six (6) or seven (7) consecutive days within the pay period Sunday through Saturday will be compensated at the rate of time-and-one-half for work performed on the sixth (6th) day and seventh (7th) day. An officer who performs work on a regular day off which has been cancelled, will receive a minimum of eight (8) hours compensation or compensation at the rate of time-and-one-half times the actual hours worked, whichever is greater. Voluntary schedule changes will be exempt from this provision.

(Jt. Ex. 1)

## **IV. STATEMENT OF FACTS**

### **A. Introduction**

The instant case involves a dispute between the Fraternal Order of Police, Chicago Lodge #7 (the "Union") and the City of Chicago, Department of Police (the "City" or the "Department"). Specifically, the instant dispute arose out of a Grievance filed by the Union alleging that the City violated the Collective Bargaining Agreement (the "Contract") when the Department failed to pay overtime to an undetermined number of Chicago Police Officers for their sixth and seventh days of work during the week of May 20, 2012, when the Regular Days Off ("RDOs") of said officers were cancelled on Sunday and Monday, May 20 and 21, 2012. (Jt. Ex. 1)

In May 2012, foreign delegations gathered in Chicago for the North Atlantic Treaty Organization ("NATO") Summit hosted by President Barack Obama. The major events of the Summit were held on Sunday, May 20, 2012 and Monday, May 21, 2012. To ensure security for the event and related protests, the Department scheduled all available police officers to work, and cancelled their RDOs for an

unspecified number of officers for Sunday, May 20, 2012 and Monday, May 21, 2012. The Department paid overtime to the officers whose RDOs were cancelled. However, in addition to working their RDOs, an unknown number of officers worked their regularly scheduled workdays on Friday, May 25, 2012 or Friday, May 25 and Saturday, May 26, 2012 in the same workweek. The officers who had been paid overtime for May 20 and May 21 were not paid overtime for May 25 and May 26, 2012. The instant Grievance seeks overtime pay for those officers who worked their RDOs in addition to their regularly scheduled workdays of Friday, May 25 or Friday, May 25 and Saturday, May 26 and were not paid overtime for May 25 or May 25 and May 26. (Jt. Ex. 2)

**B. Section 20.3 and Officer Schedules**

The payment of overtime for the sixth and seventh days of the workweek is governed by Section 20.3. Section 20.3 has been present in contracts between the parties since 1989. Section 20.3 provides that the workweek starts on Sunday. Specifically, Section 20.3 provides as follows:

**Section 20.3 - Sixth and Seventh Day Work**

An officer who is in pay status for six (6) or seven (7) consecutive days within the pay period Sunday through Saturday will be compensated at the rate of time-and-one-half for work performed on the sixth (6th) day and seventh (7th) day. An officer who performs work on a regular day off which has been cancelled, will receive a minimum of eight (8) hours compensation or compensation at the rate of time-and-one-half times the actual hours worked, whichever is greater. Voluntary schedule changes will be exempt from this provision.

(Jt. Ex. 1)

Three different schedules for officers exist within the Department. Officers on the "4 and 2" schedule work 9-hour shifts for 4 days, are off 2 days, and then the pattern repeats. Officers on the 10-hour schedule work a 10-hour shift with rotating days off. The remaining officers are on a traditional

schedule of five days on and two days off. This schedule system was implemented with the start of the current Contract; however, Section 20.3 of the Contract was not revised. (Feb. Tr. 24-26)

Commander Donald J. O'Neill of the Department's Management and Labor Affairs Section testified regarding Section 20.3. According to O'Neill, Section 20.3 ensures that police officers adversely affected by changes to their Day-Off Groups ("DOGs") are compensated at overtime rates. Day-Off Group refers to a group of officers who have the same days off. Prior to 2012, DOGs were changed every four weeks on Thursdays; some DOGs were informed of their new days off just prior to the Thursday changeover day. As a result, officers whose RDOs changed potentially had to work six or seven consecutive days during the changeover week. Thus, according to O'Neill, Section 20.3 entitled officers to overtime pay if they work six or seven consecutive days due to the changeover. However, according to O'Neill, the sixth and seventh days of that workweek would not be Friday and Saturday, but rather Thursday and Friday. This is because under the Department's calculation method the regular workdays of Sunday, Monday, Tuesday, Wednesday and Saturday would be counted as days one through five and the cancelled RDOs of Thursday and Friday would be counted as sixth and seventh days. (Er. Ex. 3; Feb. Tr. 71-72; Apr. Tr. 12-15)

According to Commander O'Neill, the RDOs cancelled due to the changeover occurred regularly before the changeover day was switched to Sunday in 2012. O'Neill testified that changing the changeover day from Thursday to Sunday rendered Section 20.3 meaningless. O'Neill testified that when he raised the issue with Union Vice President Bill Dougherty, Dougherty replied that Section 20.3 should remain in the Contract until the full ramifications of a Sunday changeover day became clear. (Feb. Tr. 73, 86, 90; Apr. Tr. 15)

As a result of the Department's method of determining sixth and seventh days for Section 20.3 overtime, Commander O'Neill testified that the sixth or seventh workday in a week could fall on any day of the week. (Apr. Tr. 18)

In contrast, Union Financial Secretary and Grievance Chairman Richard Aguilar testified that pursuant to Section 20.3, the first day of the workweek is Sunday; thus, the sixth day of the workweek is Friday and the seventh day is Saturday. (Feb. Tr. 48-49)

**C. The Department's Payment of Overtime in Weeks with Cancelled RDOs**

The Department presented evidence to show that it has historically not paid sixth and seventh day overtime to officers whose RDOs were cancelled during the same week. Commander O'Neill testified that he previously served as an Area 5 Unit Representative for the Union. In 1993, while in that position, O'Neill was asked by a fellow Union member to file a grievance alleging that the Department violated Section 20.3 when it did not pay overtime for Friday and Saturday worked as the sixth and seventh days. O'Neill testified that during a conversation with then Union Grievance Committee Chair Sheila Burke, Burke explained the multi-step process for interpreting Section 20.3. First, the officer's regularly scheduled workdays within a given workweek are counted, and then any additional days the officer worked, including cancelled RDOs even if not consecutive, are counted. If the total was six or seven, overtime was due regardless of the weekday on which the additional days fell. The additional days did not have to be on Fridays and Saturdays. According to O'Neill, the Union did not file the grievance. Burke did not testify at the Hearing. (Feb. Tr. 55-62, 83-84, 91-92)

O'Neill's June 1, 2012 letter to Aguilar regarding the instant Grievance explained the City's position:

Consistent with past practice, a timekeeper identifies the five (5) consecutive regularly scheduled workdays that a member works within the pay period (work week) Sunday - Saturday. If a member works a sixth or seventh consecutive workday in the Sunday - Saturday work week, he or she is entitled to overtime for said day(s) per Section 20.3.

RDO cancellations are compensated with a minimum of eight (8) hours or time and one-half for the actual hours worked, whichever is greater, also per Section 20.3. The member is compensated for the sixth and



seventh consecutive workday. It is in lieu of and not in addition to. There is no pyramiding of overtime compensation.

(Jt. Ex. 2)

O'Neill also testified that since serving as a Union Representative, this same procedure for applying Section 20.3 has occurred each year due to events such as the Taste of Chicago, the Chicago Marathon, Chicago Bulls Championship celebrations, and mandatory police officer training. According to O'Neill, the Department has consistently applied this Section 20.3 interpretation of not paying sixth and seventh day overtime in weeks with cancelled RDOs. (Feb. Tr. 62-64)

Conversely, former Union President Bill Nolan testified regarding overtime payments to officers. He testified that if police officers have an RDO cancelled, the officer is entitled to overtime for the RDO, and additionally if the officer continued to work into a sixth and seventh workday, the officer would also get overtime for those days. Nolan also testified regarding a hypothetical workweek in which an officer's RDOs were Tuesday and Wednesday. If the officer worked Sunday, the start of the workweek, and Monday, then worked his cancelled RDOs of Tuesday and Wednesday, then finished the week working his regular workdays of Thursday, Friday and Saturday, the officer is entitled to sixth and seventh day overtime for working Friday and Saturday, in addition to his RDO overtime for Tuesday and Wednesday. (Apr. Tr. 25-28)

Additionally, the Department presented evidence of a prior grievance regarding the interpretation of Section 20.3. O'Neill testified that in 2002, the Union filed a grievance on behalf of an Officer Lee, alleging that he worked 14 consecutive days (November 1 through November 14, 2002) and was due overtime pay for working his seventh consecutive day in the workweek ending on Saturday, November 9, 2002. Lee's RDOs on Thursday, November 7, 2002 and Friday, November 8, 2002 were cancelled due to training and he was paid overtime for both days. Following a letter from the

Department denying the grievance because Lee was compensated at time and a half for November 7 and 8, the Union withdrew the grievance. (Er. Ex. 1)

**E. The Instant Grievance**

The instant Grievance was filed by Aguilar as a class-action Grievance on behalf of officers who worked during the 2012 NATO Summit and believe they were not properly compensated. Aguilar testified that he did not believe the Grievance was seeking pyramiding of overtime because the Union was not seeking double compensation for the same hours worked. (Feb. Tr. 21)

The Grievance progressed through the grievance procedure and was heard in Arbitration on February 25 and April 22, 2013. (Jt. Ex. 2)

**V. POSITIONS OF THE PARTIES**

**A. The Union**

The Union contends that the City violated Section 20.3 by failing to provide officers with overtime pay for sixth and seventh workdays in May 2012 during the NATO Summit. First, the Union contends that I should conform to the decision of Arbitrator Peter Meyers in *PBPA Unit 156-A Lieutenants and The City of Chicago, Department of Police*, Grievance No. LTS-12-020, 021 (Grievant: Michael F. Ryan) (Meyers, 2013) ("*Meyers Award*"). In that case, Arbitrator Meyers heard a grievance regarding the same issue as that in the instant case, a failure by the Department to pay overtime to Lieutenants for who worked a sixth day during the NATO workweek, on Friday, May 25, following the cancellation of their days off on Sunday, May 20 and Monday, May 21. The Lieutenants' contract had language identical to Section 20.3 regarding payment of sixth and seventh day overtime.

Arbitrator Meyers rejected the City's argument that compensating the grievants with premium pay for their sixth day off would constitute pyramiding of overtime. Arbitrator Meyers instead found that the grievants were contractually entitled to premium pay for their work on Friday, May 25 and it did not constitute pyramiding because "The payment of premium pay in connection with May 20 and/or May 21 has nothing to do with, and has no impact upon, the lieutenants' entitlement to premium pay for working a sixth consecutive day ..." (*Meyers* at 29)

The Union asserts that just as premium payment to the Lieutenants was not pyramiding, overtime payment to the officers for work on May 25 or May 25 and May 26 would not constitute pyramiding because overtime pay for the cancelled RDOs are days other than the sixth and seventh consecutive workdays. Because the officers are seeking overtime pay for May 25 and May 26, not May 20 or May 21, there is no double payment of overtime.

Further, the Union contends that Arbitrator Meyers rightly determined that pursuant to Section 20.3, the sixth and seventh days of a workweek are Friday and Saturday, and could not fall on other days of the week, as the City argued. "Pursuant to the contractual definition of the normal work week, a sixth consecutive day of work during a single work week may occur only on a Friday, and a seventh consecutive day of work during a single work week may occur only on a Saturday." (*Meyers* at 29)

The Union contends that I should also reject the City's argument that sixth and seventh workdays could fall on other days of the week. The Union contends that it would be irrational to count Sunday, May 20 and Monday, May 21 as the sixth and seventh days of the workweek, when they are in actuality the first and second days of the workweek. As a result, the officers should be paid for overtime for their work on Friday, May 25 and Saturday, May 26.

Second, the Union contends that the language of Section 20.3 is clear and unambiguous, and as a result there is no need to look beyond the language of the Contract to determine its

meaning. The Union asserts that Arbitrator Meyers found that the identical language in Section 20.3 of the Lieutenant's contract was "... clear and unambiguous, and there can be no serious dispute about its meaning." (*Meyers* at 27) Additionally, the Union contends that Commander O'Neill's testimony that Section 20.3 was not ambiguous confirms the Union's position. Therefore, the Union contends that Bill Nolan's testimony regarding Section 20.3, and Commander O'Neill's testimony regarding Sheila Burke's interpretation of Section 20.3 should not be considered, as there is no reason to consider any evidence outside of the Contract.

Third, the Union contends that the City should provide the list of officers who were not paid overtime for the sixth and seventh workdays. The City, not the Union, has the records to identify these officers and the Union's failure to identify all of those officers does not defeat the Grievance.

Finally, the Union contends that the City did not establish a past practice of not paying overtime for sixth and seventh workdays in weeks that officers were paid overtime for their cancelled RDOs. The Union contends that none of the criteria for establishing a past practice are present. According to the Union, the City's evidence of the Lee grievance is insufficient to establish a past practice.

As a result, the Union requests that the Grievance be sustained and that all affected officers be made whole.

## **B. The City**

The City contends the Union has failed to establish that the City violated Section 20.3 of the Contract. The City asserts that the Union has the burden of proof to establish a contract violation. The City further contends that in contract interpretation cases, there is a presumption of contract compliance, which the grieving party must overcome before it can prevail. Here, the City contends that there is no evidence that the parties have interpreted Section 20.3 in the manner the Union alleges.

First, the City contends that the language of Section 20.3 is ambiguous and therefore, past practice must be considered to determine its meaning. According to the City, the language of Section 20.3 is constructively ambiguous because it could be interpreted to mean either that officers are paid overtime if they work six or seven consecutive days in the same week, as the Union argues, or that officers receive overtime pay when they work six or seven consecutive days, but it does not require that they specifically receive overtime pay for work performed on Friday or Saturday, as the City asserts.

The City bases its interpretation of Section 20.3 on the word “consecutive” to modify only the first mention of the sixth and seventh days. Section 20.3 states, in relevant part:

An officer who is in pay status for six (6) or seven (7) consecutive days within the pay period Sunday through Saturday will be compensated at the rate of time-and-one-half for work performed on the sixth (6th) day and seventh (7th) day.

Because Section 20.3 does not specify the sixth and seventh day must occur at the end of the workweek, the City contends that the sixth or seventh days could fall on any day of the workweek, including any day that an officer received overtime for having his/her RDO cancelled. In this case, the officers’ cancelled RDOs of Sunday, May 20 and Monday, May 21 should count as the sixth and seventh workdays of that workweek. Because they already received overtime pay on those days, they are not entitled to additional overtime pay. According to the City, Section 20.3 does not require that the sixth and seventh days for overtime occurs consecutively with the other days worked that week; instead, the officer must have six or seven consecutive days of work.

The City makes this argument in contrast to the Union’s interpretation, which is that Section 20.3 applies on the actual sixth and seventh days of a given workweek. The City contends that if Section 20.3 was intended to apply only to Friday and Saturday, then the parties would have used the words “Friday and Saturday” instead of sixth and seventh day.

Further, the City contends that Section 20.3 contains a latent ambiguity because even if the language is clear, extrinsic evidence is necessary for interpretation. According to the City, when the Department revised the changeover day of officers' four-week schedules from Thursday to Sunday, a latent ambiguity arose because the purpose of Section 20.3 had been to address officers who worked six or seven consecutive days as a result of the Thursday changeover.

The City contends that past practice shows that the Union has accepted that officers are not paid overtime for sixth and seventh days when their RDOs are cancelled in the same workweek. According to the City, since 1993, it has used the same overtime calculation procedure for the NATO Summit, the Taste of Chicago, the Chicago Marathon, Chicago Bulls Championship celebrations, and mandatory police officer training. The City asserts that the Union was aware of these multiple instances, proving a mutually agreed practice.

Commander O'Neill testified that Sheila Burke explained her interpretation of Section 20.3. According to the City, this is the same procedure it has employed for years. Additionally, the City contends that O'Neill's testimony regarding Burke's interpretation is unrebutted because the Union failed to call Burke as a witness.

Further, the City contends that the Union's withdrawal of the Lee Grievance in 2002 demonstrates that the Union accepted its interpretation of Section 20.3. The Lee Grievance involved a similar claim for seventh day overtime payment where Lee was paid overtime for two cancelled RDOs in the same week.

Fourth, the City contends that even if I were to find that the language of Section 20.3 is clear and unambiguous in the Union's favor, past practice has modified the meaning of the language. Commander O'Neill testified that Section 20.3 has never been applied in the manner asserted by the Union. As a result, the parties' long-standing practice shows that the parties have set aside the plain

meaning and have adopted the City's application of Section 20.3. The City contends that if I were to sustain the Grievance, I would be modifying the Contract in violation of Section 9.7 of the Contract.

The City contends that the Union's interpretation of Section 20.3 would result in pyramiding of overtime. The City contends that because the affected officers received overtime for their cancelled RDOs on Sunday, May 20 and Monday, May 21, they should not also be entitled to overtime for working their regularly schedule days on Friday, May 25 and Saturday, May 26, even though the officers worked six or seven days in the same workweek. According to the City, these officers would be getting overtime for four days of work, when they were entitled to overtime for only two of those days; essentially getting double overtime for having worked the NATO shifts. According to the City, this violates the Contract's prohibition against overtime pyramiding.

Sixth, the City contends that I am not bound to follow the *Meyers Award* and I should reject Arbitrator Meyers' interpretation of Section 20.3. The City contends that the instant Grievance is distinguishable from the facts in the *Meyers Award* because, here, the parties had a long-standing practice of not paying sixth and seventh day overtime for weeks with cancelled RDOs. In contrast, the Lieutenants did not have such a long-standing practice because RDOs are more frequently cancelled for officers than for Lieutenants. Additionally, Sheila Burke's instruction to O'Neill regarding the overtime calculation procedure was not present in the Lieutenants case. Further, the City contends that *stare decisis* does not apply in arbitration awards, particularly where, as here, the parties are different.

As a result, the City requests that the Grievance be denied.

## **VI. DISCUSSION AND FINDINGS**

### **A. Introduction**

After a complete and thorough review of all the evidence and argument presented in this case, I find that the City violated the Contract by failing to pay overtime to officers who worked a sixth or seventh day during the week of May 20, 2012. Section 20.3 of the Contract unambiguously provides that an officer who works six or seven consecutive days in a workweek shall be paid overtime for work performed on the sixth and seventh days. In this case, officers who worked six or seven consecutive days in the workweek of May 20, 2012 were not paid overtime on May 25 and May 26, 2012, which were the sixth and seventh days of that week. The fact that officers were paid for working their cancelled RDOs earlier in the same workweek does not affect this result. Therefore, the Grievance is sustained and the City shall pay overtime for the sixth and seventh consecutive workdays to the affected officers.

### **B. Discussion**

The instant dispute arose out of a Grievance filed by the Union alleging that the City violated the Contract when the Department failed to pay overtime for officers who worked the sixth and seventh days of their workweek during the 2012 NATO Summit held the week of May 20, 2012, when the RDOs of said officers were cancelled on Sunday and Monday, May 20 and 21, 2012. The major events of the Summit were held on Sunday, May 20, 2012 and Monday, May 21, 2012. The Department paid overtime to the officers whose RDOs were cancelled. However, in addition to working their RDOs, an unknown number of officers worked their regularly scheduled workdays on Friday, May 25, 2012 or Friday and Saturday, May 25 and May 26, 2012 in the same workweek. The officers who had been paid overtime for May 20 and May 21 were not paid overtime for May 25 and May 26, 2012. The instant Grievance seeks overtime pay for those officers who worked their RDOs in addition to their regularly



scheduled workdays of Friday, May 25 or Friday and Saturday, May 25 and May 26, and were not paid overtime for May 25 or May 25 and May 26.

According to O'Neill, Section 20.3 ensures that police officers adversely affected by changes to their DOGs are compensated at overtime rates. Prior to 2012, DOGs were changed every four weeks on Thursdays. As a result, officers whose RDOs changed potentially had to work six or seven consecutive days during the changeover week. According to O'Neill, Section 20.3 entitled officers to overtime pay if they worked six or seven consecutive days due to the changeover. However, according to O'Neill, the sixth and seventh days of that workweek would not be Friday and Saturday, but rather Thursday and Friday. This is because under the Department's calculation method the regular workdays of Sunday, Monday, Tuesday, Wednesday and Saturday would be counted as days one through five and the cancelled RDOs of Thursday and Friday would be counted as sixth and seventh days.

According to Commander O'Neill, the RDOs cancelled due to the changeover occurred regularly before the changeover day was switched to Sunday in 2012. O'Neill testified that changing the changeover day from Thursday to Sunday rendered Section 20.3 meaningless. As a result of the Department's method of determining sixth and seventh days for Section 20.3 overtime, Commander O'Neill testified that the sixth or seventh workday in a week could fall on any day of the week.

In contrast, Union Financial Secretary and Grievance Chairman Richard Aguilar testified that pursuant to Section 20.3, the first day of the workweek is Sunday; thus, the sixth day of the workweek is Friday and the seventh day is Saturday.

The Department presented evidence to show that it has historically not paid sixth and seventh day overtime to officers whose RDOs were cancelled during the same week. Commander O'Neill testified that in 1993, O'Neill was asked by a fellow Union member to file a grievance alleging that the Department violated Section 20.3 when it did not pay overtime for Friday and Saturday worked as the sixth and seventh days. O'Neill testified that during a conversation with Sheila Burke, Burke explained

the multi-step process for interpreting Section 20.3. First, the officer's regularly scheduled workdays within a given workweek are counted, and then any additional days the officer worked, including cancelled RDOs even if not consecutive, are counted. If the total was six or seven, overtime was due regardless of the weekday on which the additional days fell. The additional days did not have to be on Fridays and Saturdays.

O'Neill's June 1, 2012 letter to Aguilar regarding the instant Grievance explained the City's position:

Consistent with past practice, a timekeeper identifies the five (5) consecutive regularly scheduled workdays that a member works within the pay period (work week) Sunday - Saturday. If a member works a sixth or seventh consecutive workday in the Sunday - Saturday work week, he or she is entitled to overtime for said day(s) per Section 20.3.

RDO cancellations are compensated with a minimum of eight (8) hours or time and one-half for the actual hours worked, whichever is greater, also per Section 20.3. The member is compensated for the sixth and seventh consecutive workday. It is in lieu of and not in addition to. There is no pyramiding of overtime compensation.

O'Neill also testified that since serving as a Union Representative, this same procedure for applying Section 20.3 has occurred each year due to events such as the Taste of Chicago, the Chicago Marathon, Chicago Bulls Championship celebrations, and mandatory police officer training. Conversely, former Union President Bill Nolan testified that if police officers have an RDO cancelled, the officer is entitled to overtime for the RDO, and additionally if the officer continued to work into a sixth and seventh workday, the officer would also get overtime for those days.

The instant dispute relates to the payment of overtime for officers whose RDOs had been cancelled on Sunday, May 20, 2012 and Monday, May 21, 2012 due to the NATO Summit. It is uncontested that these officers were paid overtime for those days. The same officers worked their normal assigned workdays during the remainder of the workweek, which included Friday, May 25,

2012 or both Friday, May 25, 2012 and Saturday, May 26, 2012. The affected officers were not paid overtime for that Friday and Saturday, even though they worked six or seven consecutive workdays in the workweek of May 20, 2012.

The Union argues that officers should be paid overtime for the sixth and seventh consecutively-worked days because Section 20.3 of the Contract unambiguously provides that officers who work six or seven consecutive days in a workweek will be compensated overtime for the sixth and seventh days of work. According to the Union, the sixth and seventh days can only be Friday and Saturday of a workweek that begins on Sunday. That is, to work six or seven consecutive days, the sixth or seventh day would have to be at the end of the numerical progression. Compensation for the sixth and seventh days must be paid in addition to the overtime paid for working cancelled RDOs in the same workweek; said cancelled RDOs are not the same days as the sixth and seventh consecutive workdays of the same workweek.

The City, however, asserts that the parties have historically applied a different procedure to calculate Section 20.3's meaning of the sixth and seventh days. According to the City, in a week of six or seven consecutive days of work, any regular workdays are counted first, and then any cancelled RDO are counted last to become the sixth and seventh days. The actual days upon which the sixth and seventh days fall is irrelevant. If an officer has been paid overtime on these last-counted days, or cancelled RDOs, then the officer is not entitled to sixth and seventh day overtime because it would be pyramiding, or payment of double overtime. According to the City, this has been a long-standing procedure that the Union has knowledge of and agreed to, as demonstrated by Commander O'Neill's testimony regarding his instructions from Sheila Burke, the withdrawal of the Lee Grievance, the parties' understanding of the changeover day procedure, and the practice of not paying overtime for cancelled RDOs from other special events, like the Chicago Marathon and Taste of Chicago.

I have carefully reviewed all the facts and circumstances of this case. I find that the City violated the Contract by failing to compensate the affected officers at the overtime rate for working a sixth or a seventh day on Friday, May 25 and Saturday, May 26.

Because this matter involves the interpretation of Section 20.3 of the Contract, I must first determine whether Section 20.3 is ambiguous or whether I can determine its meaning from the plain language of the provision. Section 20.3 provides:

An officer who is in pay status for six (6) or seven (7) consecutive days within the pay period Sunday through Saturday will be compensated at the rate of time-and-one-half for work performed on the sixth (6th) day and seventh (7th) day. An officer who performs work on a regular day off which has been cancelled, will receive a minimum of eight (8) hours compensation or compensation at the rate of time-and-one-half times the actual hours worked, whichever is greater. Voluntary schedule changes will be exempt from this provision.

I find that Section 20.3 is clear and unambiguous. The workweek starts on Sunday. The sixth and seventh consecutive days of work within the workweek will result in overtime compensation. Based on the plain language here, and because the parties chose to include no other language that states otherwise, it is logical to presume that in a sequence of six or seven consecutive days, the sixth and seventh days can only fall at the end of that sequence. Thus, given that Sunday is the first day of the workweek, the sixth day can be a Friday or a Saturday, and the seventh day can only be a Saturday.

Section 20.3 does not provide an exception for the payment of sixth and seventh day overtime in weeks where officers are paid overtime for cancelled RDO days. By its calculation procedure of counting regular workdays first and then counting cancelled RDOs as the sixth and seventh days of the workweek, even when those RDOs fall on days Sunday through Thursday, the City has created an exception that is not present in the plain language of the Contract.

I agree with Arbitrator Meyers, who in finding that Section 20.3 of the Lieutenants' contract was clear and unambiguous, rejected the City's contention that the dates of cancelled RDOs should be deemed the sixth or sixth and seventh consecutive days of work. Arbitrator Meyers stated:

The problem for the City in making this argument is that the plain and ordinary language of Section 20.3 expressly states that premium pay will be paid "for work performed on the sixth and seventh day." This language leaves no serious question that premium pay is to be paid for the sixth and/or seventh day in the sequence of consecutive days that a lieutenant works in a single work week, and not for any other days in that sequence. The first and second days of the work week are just that, and they cannot reasonably be characterized as the sixth and seventh days of the workweek. There is no opening or ambiguity in the language of Section 20.3 that logically would allow for such an unusual interpretation of when the sixth and seventh day in a work week occurs.

*(Meyers Award 28-29)*

Similar to the Lieutenants' contract, the instant Contract provides that overtime will be paid for work performed on the sixth and seventh day. Section 20.3 does not provide that the sixth and seventh days would be counted after an officer's regularly scheduled workdays. Instead, its meaning is clear that in a workweek of six or seven consecutive days, overtime is paid for the sixth and seventh days of the sequence; thus, the sixth and seventh days fall on Friday or Friday and Saturday.

Having found that Section 20.3 is plain and unambiguous, there is no need for me to look beyond the words of the Contract to determine its meaning. As a result, I do not need to consider the City's evidence regarding Sheila Burke's instructions to Commander O'Neill, the withdrawal of the Lee grievance, the parties' understanding of the changeover day procedure, and the practice of not paying overtime for cancelled RDOs from other special events, such as the Chicago Marathon and Taste of Chicago.

I find that as the language of Section 20.3 is plain, officers who work a sixth and seventh day of a workweek are paid overtime. In addition, officers who work on their cancelled RDOs are also entitled to overtime. The only situation in which an officer would not receive the benefit of overtime for both cancelled RDOs and sixth and seventh consecutive days worked within a workweek, is when the cancelled RDOs fall on the sixth or sixth and seventh days of the workweek. In that situation, the officer would only be entitled to overtime for one day at time and one-half, for each day in which the cancelled RDO overlaps with the sixth or sixth and seventh consecutive days worked in the same workweek. When an RDO coincides with a sixth or seventh workday within a workweek, paying overtime twice would be pyramiding, and therefore prohibited.

In the instant case, the officers separately worked cancelled RDOs and sixth, or sixth and seventh days of work in the same workweek. These were separate days in that Sunday, May 20 and Monday, May 21, were the cancelled RDOs, and Friday, May 25 and Saturday, May 26 were the sixth and seventh consecutive workdays of the same workweek. There is nothing in the Contract requiring that those separate days be counted as the same days. Rather, pursuant to the plain language of Section 20.3, Friday and Saturday were consecutive days six and seven, and should be paid as overtime as sixth and seventh days.

Thus, having found that Section 20.3 is clear and unambiguous, I find that the affected officers who worked the week of May 20, 2012 are entitled to overtime payment for Friday, May 25, or Friday, May 25 and Saturday, May 26, the sixth or sixth and seventh consecutive days of work of that workweek. Officers who had their RDOs of Sunday, May 20 or Sunday, May 20 and Monday, May 21, then worked Friday, May 25 or Friday, May 25 and Saturday, May 26, are entitled to their overtime for Friday, May 25 or Friday, May 25 and Saturday, May 26.

Therefore, I find that Section 20.3 was unambiguous and the Grievants are entitled to overtime pay. The Union has met its burden of proof and the Grievance is sustained.

**VII. AWARD**

For the reasons stated in this Opinion and Award, the Arbitrator finds:

The Grievance is sustained. The City of Chicago violated the Contract when it failed to compensate the relevant officers at the overtime rate for working a sixth or a sixth and seventh consecutive day of work on May 25 and May 26, 2012, after they had been paid overtime for working their regular days off on May 20 and 21, 2012. All affected officers will be made whole.

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**Steven M. Bierig, Arbitrator**  
**September 22, 2013**