

CASE: BROWN #4

In the Matter of the Arbitration
Between

OPINION AND AWARD

UNION

-and-

EMPLOYER

Grievance of
Lt. George PLATT

The undersigned, Barry C. Brown, was mutually selected by the parties to render an opinion and award in the matter of the Grievance of Lt. George PLATT of the SOMEPLACE County Sheriff's Department. The hearing was held in SOMEPLACE, Michigan on May 6, 1975.

APPEARANCES

For the Board:

For the Union:

Asst. Corporation Counsel
Sheriff, SOMEPLACE County
Labor Relations Analyst,
Inspector, SOMEPLACE County
Sheriff's Department

President, UNION
George PLATT, Grievant,

The parties' briefs were received by May 30, 1975 and thereafter the record was closed.

ISSUE:

Was Lt. PLATT improperly denied overtime work during September, 1974? If so, should he receive 86 hours of premium pay as compensation?

ARTICLE XX -- OVERTIME

Section S.

Scheduled overtime shall be distributed as equally as possible within those department areas where overtime work may be necessary among the employees competent to perform the required overtime work.

Section 6.

Emergency overtime work may be performed by any available qualified employee when the Employer is unable to properly schedule such overtime because of unforeseen circumstances.

SUPPLEMENTAL AGREEMENT NO. 1 TO MASTER AGREEMENT

Section 2.

D. Pre-scheduled overtime shall be assigned insofar as possible an equal basis among sergeants and lieutenants with greater seniority qualified to perform the required duties, within those divisions where overtime work may be necessary to the proper operation of the division.

E. Emergency overtime work may be performed by any available and qualified employee.

STATEMENT OF FACTS:

On September 19, 1974, General Order No. 74-21 was issued by Inspector Henry Berry of the SOMEPLACE County Sheriff's Department, Airport

Division that read as follows:

"All Patrolmen will be working overtime from Saturday, September 21, 1974 and will continue through September 29, 1974 with a possibility of extension. The men will be work 12 hours shifts.

7:00am to 7:00 pm 4:00pm to 4:00am 7:00pm to 7:00am

Temporarily, all Leave Days will remain the same as on the schedule. Detectives will work regular shifts and regular days off. Uniform Sergeants will work regular shifts and regular days off. Patrolman Kenneth BOAT will be working 9:00am to 9:00pm on the Bomb Detail.

The following men will be working the following shifts:
(sheet attached)."

On September 20, 1974 the Grievant, Detective Lieutenant George PLATT (seniority date 1/26/47) initiated a grievance that by this order he was excluded from working overtime on two weekends and one evening although he had specifically requested the assignment. Also, others not assigned to the airport and with less seniority did work. The total number of hours he claimed he should have worked was 86 hours and the total overtime pay sought by the grievant was \$894.68 (per amendment at hearing).

On December 23, 1974 Robert CADDY stated the employer's reasons for denying the grievance as follows:

"The grievance as submitted by Lt. PLATT alleges violation of Article XX, Section 5 of the Master Agreement with Council 23 and SOMEPLACE County.

This section provides that scheduled overtime be distributed as equally as possible within those department areas where overtime work is necessary among employees competent to perform the work. The union also alleges violation of Sec. 2-D of the Supplemental Agreement which requires that pre-scheduled overtime shall be assigned on an equal basis among Sergeants and Lieutenants with greater seniority qualified to perform the required duties, within those divisions where overtime work may be necessary to the operation of the division.

The 1971 contract which the Board of SOMEPLACE County Road Commission and the Sheriff have entered into specifically state in Section 11, The Sheriff shall be obligated at no expense to the Board, to provide police for visiting dignitaries, riots, and crowd control. Such personnel shall be utilized from Off Airport employees.

Facts pertaining to this grievance show that five Lieutenants were assigned to Delta Command to police World Energy Conference arrivals, etc. from September 21, 1974 through September 29, 1974. These men were drawn from throughout the

Sheriff's Department as required by the Contract with the Board of Road Commissioners.

The Lieutenants assigned and specific responsibilities were:

Lt. William APPLE - Helicopter Patrol
Lt. Arnold PIE - Bomb Disposal
Lt. Richard PRAM - Principle Security
Lt. Charles SKIFF - Night Platoon Commander
Lt. Donald MANN - Day Platoon Commander

The Lieutenants assigned to the detail were chosen from within the department for specific skills which they possess and training which they have received and conducted. Specifically Lieutenants APPLE and PIE have skills in highly specialized areas and these skills are possessed by no other Lieutenants in the department.

Lieutenants SKIFF and MANN have conducted and are the instructors and Platoon leaders of the Riot Control Unit of the Sheriff's Department and had command of the extra personnel assigned. Lieutenant PRAM has had specialized training in Principle Security and is always assigned to this type of assignment at the Airport.

The decision to not include the Detective Bureau at the Airport in any prescheduled overtime arrangements was made on the basis of the Contract with the SOMEPLACE County Road Commission and the action of the SOMEPLACE County Board of Commissioners to allocate additional monies to provide security personnel for the World Energy Conference.

The Article XX Section 5 violation fails as the overtime was equally distributed within the area where the overtime work was necessary. The Section 2D violation also fails for the same reason. This grievance is denied."

DISCUSSION:

The World Energy Conference was held in SOMEPLACE, Michigan during September of 1974. Five Thousand top political, business and professional leaders from all over the world were scheduled to attend. The scheduled attendees included representatives from warring nations (such as Israel and the Arab countries), from Communist nations and also many American leaders including the President of the United States. The security needs

during this conference were apparent and awesome. Therefore Sheriff William PEARS set up an operation called "Delta Command", which was to focus the full Sheriff's Department resources on the safety of the dignitaries at the airport and at the conference site and at the hotels utilized during the conference. The budgetary arrangements and the exact number of conferees who would use the airport or come to the conference was uncertain. After the conference had started it was learned only 2,500 dignitaries used the SOMEPLACE County Metropolitan Airport.

As Inspector Berry's order indicates all personnel at the airport were utilized in Delta Command except those in the Airport Detective Bureau. The decision was made by the Sheriff that the Bureau was already overworked and he didn't want to shut down any operation of the Department during the conference. He reasoned that the men in the Bureau at the airport were not qualified for the work involved and it would be inefficient to use them on the Delta Command operation on an overtime basis after they had completed their regular assignments.

The non-airport division command officers employed on the Delta Command operation had specialized experience on helicopters, bomb removal and anti-sniper -- V.I.P. surveillance operations. Lt. PLATT had no special experience or training in these fields.

The agreement between the County and the Road Commission which operates the airport is that the Road Commission will pay for the wages of the Sheriff's personnel assigned to the airport but such airport personnel cannot be assigned elsewhere within the Sheriff's Department. Thus, airport personnel are effectively barred from overtime assignments in other divisions by this agreement.

The fact that there were some uncertainties regarding the number who would actually use the airport during the conference and how the cost would be handled does not make this situation an emergency under either Section 6 of the Master Agreement or Section 2(E) of the Supplemental Agreement. The circumstances requiring overtime work cannot be said to be "unforeseen." At the time of Inspector Berry's order the Department knew that some overtime work had to be scheduled. The seniority standing of Lt. PLATT would have entitled him to work if only a few in his division were to work. He would also have had prior rights to work before the many others who were actually scheduled to work from other divisions unless he was not eligible for the assignment for other reasons.

The contract is clear that overtime work is assigned on an equal basis among qualified sergeants and lieutenants within divisions. There is no practice or basis for an interpretation that the Detectives Bureau at the airport or any other "area" is a separate unit for overtime assignments. The specific and more recent language of the Supplemental Agreement must be controlling. The division for overtime work assignments for Lt. PLATT is the airport division. The fact that the World Energy Conference was a massive undertaking affecting the whole Sheriff's Department does not change the employer's duty to honor the overtime provisions of the agreement in each division that is affected by the total operation. The jail and court division were not affected by Delta Command, thus there were no overtime operations undertaken in those divisions. There is no basis for an unilateral determination by the employer that the Delta Command involved the entire department and therefore the division overtime requirement and practice could be abandoned.

Although the Delta Command operation was unusual in its scope and complexity it was not such a unique operation that it should cause the employer to bypass the contractual provisions that govern the wages, hours and conditions of work for the employees under its scope. In the past there have been other government leaders who have used the airport and the Sheriff had provided the needed special protection for them. In the future a national political convention or other major events in Detroit's new hotel and convention facilities will call for similar preparations and precautions. The overtime provisions of the union contract must be one of the matters considered by the Sheriff as he makes his plans for such circumstances. Thus the arbitrator concludes that the management rights clause is not operable here because there are specific overtime provisions that take precedence.

The union has argued that the Supplemental Agreement which recently ended the "specialties" under the contract also created the presumption that all command officers are interchangeable and thus all "qualified" for every situation and assignment. While it appears that full interchangeability is the union objective and will result if training and experience opportunities are universal, there are particular skills now possessed by some employees which others do not have. Radio and helicopter skills are apparent and require licensure. Modern police work also includes specialized units to combat narcotics traffic and organized crime activities through intelligence and other clandestine operations. Also, special units have been formed in most large police units to combine the use of special weapons and protective devices with personnel trained in V.I.P. surveillance, anti-sniper and anti-bomber team action. The Sheriff may assign certain personnel to some of the

specialized work described above because only those men have the requisite skills. Whether these special skills are fairly compensated and whether all members have had a fair opportunity to gain such skills are important topics but not a part of this grievance.

The language of Sections 5 and 6 of the Agreement and Section 2 of the Supplemental Agreement clearly require that the person to be assigned overtime work must be "competent" and "qualified" to perform the required overtime work. What was the nature of the overtime work at the airport division on the days in question?

First, all of the airport patrolmen were put on a heavy overtime schedule. Many of them were taken off their normal duties and given special surveillance assignments. Twenty-four hour surveillance procedures were implemented. The passenger flow increased greatly during this period. There was also an increase in the terminal traffic with many onlookers seeking a glimpse of world leaders. Overall security was tightened especially on the bomb detail.

In addition to these steps, five officers and thirteen patrolmen were called in from other divisions to perform the more specialized aspects of Delta Command. These men were trained as a team for anti-sniper, V.I.P. protection and bomb detection and disposal. These men had all had special training and several years of experience in performing as a team.

Lt. PLATT did not have the specialized training described above. However, he does have more than twenty-eight years experience in the Department and five years of command experience at the airport. He has worked previously on assignments concerning the protection of dignitaries at the airport. He is familiar with the airport bomb detail. He is very familiar

with the problems of airport crowd control and overall surveillance activity. Finally, the work load in his own bureau and the overall regular work load in the airport division was dramatically increased during the period in question. With so many patrolmen drained away to special functions there was a clear need for overtime work on non-specialized duties in his division during the period involved.

In summary, if there had been only the specialized work involved in the Delta Command operation at the airport then Lt. PLATT would not have been competent or qualified to do the work. The record clearly shows there was much work performed and needed that was well within the grievant's skill and experience.

The employer's assessment that the Detective Bureau at the airport was already "overworked" is not a sound basis for excluding it from overtime work in their division. There have been occasions when the work load in the jail and other divisions has been extremely demanding but the overtime assignments were still made according to the terms of the agreement. There was no adequate showing that Lt. PLATT could not have effectively worked the two weekends and one evening after his regular duties at the airport. It seems especially inequitable to use any basis to deny airport personnel overtime work in their division when the Sheriff has agreed with the airport management that he will not transfer these men to overtime work in other divisions of his Department.

Even though the original order of Inspector Berry did not assign men to work on their days off, it was established in the hearing that junior sergeants and lieutenants did work overtime on their leave days during this period. It has been previously established that the need for this overtime work was known far enough in advance to be foreseeable and to not be an "emergency". Therefore, Lt. PLATT was eligible to work on the two Saturday

and two Sundays where there was overtime work performed in his division.

AWARD

The Employer violated Article XX, Section 5 of the Master Agreement and Section 2(d) of the Supplemental Agreement by its refusal to assign overtime work to Lt. George PLATT. The Grievant shall be paid \$894.68 to compensate him for the 86 hours he should have worked under the terms of t Agreement.



BARRY C. BROWN, Arbitrator

Dated: June , 1975