

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

CITY OF CHICAGO

and

**POLICEMEN'S BENEVOLENT &
PROTECTIVE ASSOCIATION, UNIT 156
SERGEANTS**

CASE NOS.: Grv. No. Sgt. 11-033
Arb. Ref. 11.373
(Furloughs)

OPINION AND AWARD

I. ISSUE

Did the City of Chicago Department of Police ("City" or "Department") violate the collective bargaining agreement ("Agreement") between the City and PB&PA Unit 156 Sergeants ("Union") when it prohibited covered Sergeants from bidding on 5th Period Full and 5B Segment furloughs for 2012 and, if so, what shall the remedy be?

II. FACTS

The parties presented their positions and evidence prior to and at hearing on December 5, 2011. Due to the time sensitive nature of this dispute, I instructed the parties to proceed on an expedited basis with their presentations and arguments. I am therefore issuing this award on an expedited basis.

The Union represents sworn police officers in the rank of Sergeant under the Agreement which expires June 30, 2012.

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Sergeants receive four “baby furlough” and 25 working days of furlough (vacation) per year.¹ With respect to selection of furloughs, the Agreement provides that “[f]urlough shall be selected in accordance with this Agreement subject to operational needs”² The Agreement also provides a process for selecting furloughs (full or split in two equal segments).³ The Agreement further provides for a “maintenance of benefits” requirement that the Department “... agrees that the following benefits enjoyed by Sergeants covered by this Agreement will be maintained for the duration of the Agreement and shall not be diminished, modified or eliminated during the term of the Agreement, unless otherwise provided for in this Agreement ... Furloughs and compensatory (baby) furloughs.”⁴

On or about May 17-19, 2012, the G-8 and NATO Summits will be held in Chicago.⁵ Prior similar summit meetings have been met with organized protests, some violent. Indeed, by letter dated July 28, 2011, U.S. Department of Homeland Security Secretary, Janet Napolitano, advised Illinois Governor Pat Quinn that the G-8 and NATO Summits to be held in Chicago in May 2012 had been designated as “... a National Special Security Event (NSSE).” Further, according to Homeland Security Secretary Napolitano:

¹ Agreement at Sections 29.1 and 29A.2.

² *Id.* at Section 29.A.3

³ *Id.* at Section 23.2.

⁴ *Id.* at Section 31.4.

⁵ The G-8 consists of France, Germany, Italy, Japan, the United Kingdom, the United States, Canada and Russia. The North Atlantic Treaty Organization — NATO — consists of 28 countries (Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom and the United States).

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The NSSE designation allows federal agencies, state, and local law enforcement, and public safety agencies to coordinate pertinent operational security as well as contingency planning for this event. Specifically, the United States Secret Service will coordinate the development and implementation of the overall operational security plan; the Federal Bureau of Investigation will coordinate intelligence, crisis management, hostage rescue and counterterrorism planning; and the Federal Emergency Management Agency will coordinate emergency response and recovery planning.

The cooperative rapport among the many federal, state and local law enforcement and public safety agencies will greatly facilitate the security planning efforts for the G-8 and NATO Summits. ...

In preparation for the G-8 and NATO Summits, the Department, by notice dated August 17, 2011 (memorializing a meeting held August 12, 2011) advised the Union of its decision to "... not offer or 'black-out' the selection of a full 5th Period furlough or a 5B furlough segment for calendar year 2012 ...[and i]n addition, officers who are granted 5A furloughs are prohibited from extending the 5A furlough beyond 15 May 2012, no exceptions." Those black-outs for furloughs correspond to periods immediately prior to and after the G-8 and NATO Summits.⁶

The Union grieved asserting that the blacking out of the furlough periods from selection violated the Agreement and past practice.

⁶ The Union is not challenging the Department's right to limit the 5A furlough segment extensions beyond May 15th. Case-by-case consideration will be given to requests for time off due to individual hardships.

III. DISCUSSION

The provisions in the Agreement which come into conflict are the Sergeants' entitlements to select furloughs, but "subject to operational needs" and the maintenance of benefits provisions. Specifically, Section 29.A.3 provides that "[f]urlough shall be selected in accordance with this Agreement subject to operational needs ..." and the maintenance of benefits language found in Section 31.4 which requires that "... the following benefits enjoyed by Sergeants covered by this Agreement will be maintained for the duration of the Agreement and shall not be diminished, modified or eliminated during the term of the Agreement, unless otherwise provided for in this Agreement ... Furloughs and compensatory (baby) furloughs."

The G-8 and NATO Summits have carried a following of violent protests, so much so that the holding of both summits in Chicago in May 2012 has caused the Department of Homeland Security to designate the event as a "National Special Security Event." The G-8 and NATO Summits will present extraordinary security challenges as representatives from the member countries (including approximately 42 to 90 heads of state with their attendant security needs) and international media come to Chicago. While there will undoubtedly be lawful mass protests, the need for a large and visible uniformed police presence is not solely limited to those concerns.⁷

The parties have differing interpretations of the meaning of the phrase "operational needs" and the extent of the effect it may have on the furlough selection process. I need not resolve these differing interpretations in order to re-

⁷ For example, the 1996 Democratic Convention involved but one head of state in attendance.

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solve this dispute. This is not a sporting event, parade or other special event of the type which have been held in the past without the need for the Department to black out furlough periods as it did here. The G-8 and NATO Summits have all the earmarks of potential violent confrontations between protesters and police and other security forces. The Department clearly needs to have as many officers available for duty as possible. In this circumstance — and limited solely to this circumstance — I find that the Department has the authority due to operational considerations to black out the furlough periods in dispute.

The parties must understand the limitation of this award. This award cannot be cited as precedent to allow the Department to black out furlough periods in the future. This is a special circumstance — a one of a kind event. This award is therefore limited solely to the upcoming G-8 and NATO Summits.

However, the covered Sergeants' entitlement to furloughs as negotiated and maintained in the Agreement cannot be ignored. As an arbitrator I have broad discretion with respect to formulation of remedies.

The Department acknowledges that blocking out 5th Period Full and 5B Segment furloughs necessarily triggered an obligation to provide alternative furlough selection opportunities for the Sergeants. What the Department did was to increase the furlough allocation percentages in the preferred summer months by 2/3 of a percentage point.⁸ However, the evidence shows that this increase in the furlough percentage results in enhanced summer furlough opportunities only in units above a certain critical mass in assigned personnel. For example, in Narcotics (32 assigned Sergeants on one watch), there is an enhanced furlough selection benefit. However, most Sergeants are assigned to

⁸ That increase is more than the Department has ever allowed in the past. The Department distributed the 8% allocation over the remaining 12 furlough periods.

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units where the increased furlough percentage has no discernable impact. For example, in District Law Enforcement, most watches in a District will have six assigned Sergeants competing against each other for furloughs. This number six is simply too small to benefit from the increased furlough percentage offered by the Department.

Therefore, pursuant to my remedial authority, I instructed the parties to craft a revised furlough selection process for 2012 that will provide meaningful opportunities for the bargaining unit, to mitigate the harm. The fruits of the parties' labors are attached hereto as Attachment A.

Therefore, in order to maintain the furlough benefit as required by the Agreement, the Department shall be allowed to black out the furlough periods provided that it permits affected Sergeants the opportunity to bid on similarly desirable furlough periods outside of full 5th Period furlough or a 5B furlough segment for calendar year 2012 as shown in Attachment A (which will require furloughs to be bid commencing December 8, 2011).

The Department will therefore make available an additional furlough opening(s) to the Sergeants currently selecting furloughs in the districts and units on Attachment A.

I will retain jurisdiction for any disputes which may arise under the terms of the Award.

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

Edwin H. Benn
Arbitrator

Dated: December 5, 2011

ATTACHMENT A

District Law Enforcement

AREA ONE

Watch

District	<u>1st</u>	<u>2nd</u>	<u>3rd</u>
002	6A/8A	6B/8B	7A/9A
007	7B/9B	6A/8A	6B/8B
021	7A/9A	7B/9B	6A/8A
009	6B/8B	7A/9A	7B/9B
008	6A/8A	6B/8B	7A/9A

AREA TWO

003	7B/9B	6A/8A	6B/8B
004	7A/9A	7B/9B	6A/8A
005	6B/8B	7A/9A	7B/9B
006	6A/8A	6B/8B	7A/9A
022	7B/9B	6A/8A	6B/8B

AREA THREE

018	7A/9A	7B/9B	6A/8A
019	6B/8B	7A/9A	7B/9B
020	6A/8A	6B/8B	7A/9A
023	7B/9B	6A/8A	6B/8B
024	7A/9A	7B/9B	6A/8A

AREA FOUR

001	6B/8B	7A/9A	7B/9B
011	6A/8A	6B/8B	7A/9A
012	7B/9B	6A/8A	6B/8B
010	7A/9A	7B/9B	6A/8A
013	6B/8B	7A/9A	7B/9B

AREA FIVE

014	6A/8A	6B/8B	7A/9A
015	7B/9B	6A/8A	6B/8B
016	7A/9A	7B/9B	6A/8A
017	6B/8B	7A/9A	7B/9B
025	6A/8A	6B/8B	7A/9A

Specialized Units

124	(2 nd Watch)	6B
166	(2 nd Watch)	9A
193		7B
311		9B
312		6A
313		9A
314		6B
315		9B
353	3 rd Watch: 8B	4 th Watch: 7A
610	2 nd Watch: 6A	3 rd Watch: 9A
620	2 nd Watch: 9B	3 rd Watch: 6B
630	2 nd Watch: 9A	3 rd Watch: 6A
640	2 nd Watch: 6B	3 rd Watch: 9B
650	2 nd Watch: 9B	3 rd Watch: 6B