



AGENDA OF THE PERSONNEL COMMITTEE

TUESDAY, JANUARY 26, 2021, 4:30 PM

Virtual Meeting. Public may join via Zoom.

A. Zoom Meeting Information.

- I. This item contains documents which provide call in information and instructions for the Zoom meeting.

B. Roll Call.

- I. Members: Ald. Bill Galvin, Ald. Barbara Dorff, Ald. Veronica Corpus-Dax, Ald. Brian Johnson

C. Approval of the Agenda.

D. Approval of Minutes.

- I. Approval of the minutes from January 12, 2021.

E. Regular Business.

- I. Consideration with possible action on the request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.
 - a. Building Maintenance Technician - Public Works
2. Consideration with possible action to approve the 2021-2023 labor agreement between the City of Green Bay and Local 420, Bus Mechanics.
3. Consideration with possible action on grievances #2020-003 and #2020-004 filed by the Green Bay Professional Police Association regarding the flexing of schedules for specialty team training.

The Committee may convene in closed session pursuant to Section 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governing body. The Committee will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

4. Consideration with possible action on grievance #20-005 filed by the Green Bay Professional Police Association regarding the removal of an officer from the K-9 Unit.

The Committee may convene in closed session pursuant to Section 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governing body. The Committee will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

5. A request by Ald. Brian Johnson to the Personnel Committee for an update on the alderperson orientation program that was submitted approximately two years ago.

F. Informational.

1. Report of routine personnel actions for regular employees.
2. Next meeting date: February 9, 2021

G. Adjournment.

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
- 2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Personnel Committee meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.

Virtual Meeting Instructions



Personnel Committee

Zoom Meeting Information

Join Zoom Meeting

<https://us02web.zoom.us/j/86846491807?pwd=K3NJQ1NxdXU1cjB2RlR0TWVTUkJYdz09>

Meeting ID: 868 4649 1807

Passcode: 298054

One tap mobile

+19292056099,,86846491807#,,,,*298054# US (New York)

+13017158592,,86846491807#,,,,*298054# US (Washington D.C)

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 868 4649 1807

Passcode: 298054

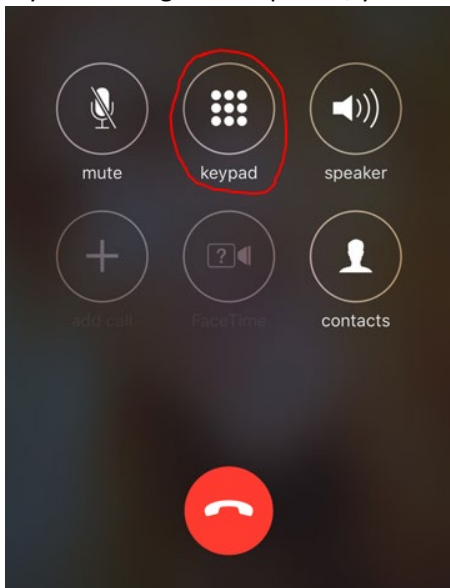
Find your local number: <https://us02web.zoom.us/j/86846491807?pwd=K3NJQ1NxdXU1cjB2RlR0TWVTUkJYdz09>

Additional Information

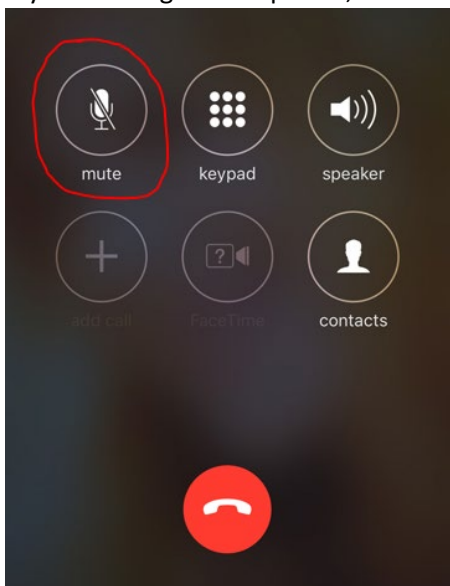
1. Wisconsin Open Meetings Law still applies
 - a. Persons interested in speaking to an item must give their name and address
 - b. Committee/Commission/Board members will still follow *Roberts Rules of Order*
2. All zoom meetings will have a password in the instructions. Please enter when prompted.
3. Please log into the Zoom meeting 10 minutes before the meeting starts to ensure proper technology is working.
 - a. If you are a Board Member, please log into [CivicClerk](#) with a computer, laptop, or tablet device.
4. Once you are in the meeting please mute yourselves.
 - a. You may unmute yourself when you are called upon to speak.
5. Waiting room
 - a. When you call in, all callers/participants will be placed in a “waiting room.”
 - b. Persons on the agenda will be admitted to the meeting, and then once the item is concluded, the host will permanently mute you from the meeting (you can still hear the meeting).
6. Using Zoom with a tablet or computer
 - a. Tablet—you will be asked to sign in. Download the app either with the Apple Store or the Play Store
 - b. Computer—you will be asked to sign in. You may download the app or click on the link to open Zoom in your browser.
7. Registering
 - a. The host may ask you to register for the meeting. A registration link will be sent to you along with the invite. You’ll receive another email confirming that you’re registered for the meeting.
 - b. If you’re using a phone, your registration will still be tied to an email.
8. Raising your hand
 - a. Committee members—you can either use CivicClerk and request to speak or you can “raise your hand” in the zoom meeting (you’d need to use a computer or tablet) to let the host know you’d like to speak. You can also un-mute yourselves and start speaking.
 - b. Persons on the agenda—you can “raise your hand” but you’d need to use a computer. You will be allowed to speak, per Wisconsin Open Meetings Rules, once the committee has “opened the floor for interested parties to speak.” Once the committee is finished with your agenda item, the host will mute you permanently, unless the committee opens the floor again.
9. What devices should I use?
 - a. Smart phone (please see more detailed instructions on page 3)
 - b. Land line
 - c. Tablet—well in advance of the meeting, please download the Zoom Meeting app before you join a meeting by using either the Apple Store or the Play Store. You will be asked to input your name, thus identifying you for the meeting. You’ll also be asked to verify your email.
 - d. Computer—well in advance of the meeting, please download the Zoom Meeting app, but you can also click on a link to open the Zoom Meeting in your browser. You will be asked to input your name, thus identifying you for the meeting.
 - e. For tablet and computer users—if you download the app you will be asked to verify your email.
10. Zoom etiquette
 - a. Muting yourselves when you’re not talking will prevent your background noise from interfering with others’ ability to listen to and participate in the meeting.
 - b. If you’re using a telephone, please identify yourself with your phone number and name before you speak. Zoom meeting hosts can see only your telephone number and will ask you to identify yourselves.
11. Closed session
 - a. Persons in the Zoom meeting will be put into a waiting room while the committee meets in Closed Session. Participants will be admitted back into the Zoom meeting once the committee reconvenes in Open Session.
 - b. Persons watching live on YouTube will see a gray screen with the City logo during closed session.
12. Persons interested in attending anonymously or listening to the meeting may call in by dialing *67 followed by the phone number above.

Calling into the Zoom meeting using a smartphone

1. Dial the phone number listed at the beginning of this document.
2. When prompted, enter the Meeting ID number followed by #
 - a. If you're using a smartphone, you can access the keypad by clicking "Keypad" on your screen



3. Once you are in the meeting, notify the meeting host that you are in and state your name.
4. If you do not need to talk, please make sure your phone is on **Mute**
 - a. If you're using a smartphone, look at your screen and click the Mute button



- b. If you're using a computer, you should see a Mute button in the Zoom application





Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 26, 2021

PREPARED BY

AGENDA ITEM # E.1

Consideration with possible action on the request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.

a. Building Maintenance Technician - Public Works

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Request to Fill Memo 1.26.2021
2. Building Maintenance Technician - R. Johnson 01.15.21

MEMORANDUM



Human Resources Department

To: Personnel Committee
Joe Faulds, Human Resources Director

From: Sarah Fidler
Human Resources Generalist

Re: Request to Fill Vacant Positions

Date: January 26, 2021

The Human Resources Department is requesting authorization to fill the following replacement positions approved as part of the 2021 budget and all subsequent vacancies resulting from internal transfers. The justification reports are attached.

- Public Works Building Maintenance Technician – Replacement position due to the resignation of Rick Johnson effective January 15, 2021. Salary range: \$20.36 - \$23.96 per hour.

**Position Fill Request
Justification Report
January 8, 2021**

Position Title: Building Maintenance Technician (BMT)
DPW Operations Division/Buildings and Grounds Section

- 1. If this position is a replacement position, please indicate the reasons for the vacancy. If this is not a replacement position, please indicate the reasons for requesting the position.**

 X **Replacement Position** **Not a Replacement Position**

This position is vacant as a result of the resignation of Rick Johnson effective January 15, 2021.

- 2. Is this position included in the current budget? If not, please list how this position will be funded (grant, internship, etc.). Please list the salary range of the position.**

Yes, this position is currently funded in the DPW operating budget. The current wage range for this position is \$20.36 to \$23.96 per hour (\$42,349 to \$49,837 annually)

- 3. Please list the functions and any special information regarding this position.**

DPW's Building Maintenance Technician staff cleans and maintains all DPW facilities. They provide 24-hour on-site duty coverage on weekdays and 24-hour first-response on-call service on weekends. BMT's serve as DPW's first responders to emergency calls received from the DPW emergency line and Police Department. BMT job duties include but are not limited to building cleaning and maintenance, first-response barricading, supplemental incident traffic control, securing DPW facilities after hours, and crash debris clean-up.

- 4. Does the position generate revenue or reduce expenses? If so, provide an estimated amount.**

This position does not generate revenue for the City. But the use of in-house labor and equipment reduces the need to contract out for those services.

- 5. Please explain why current staff is unable to absorb duties of this position.**

Each of the three (3) BMT's work five (5) 8-hour shifts on-site Monday through Friday. Then they rotate first-response on-call duty for the entire weekend on a three week rotation. If the current BMT staff is reduced then overtime must be expended to maintain proper BMT coverage. This would increase the potential of BMT burnout.

- 6. If duties of position are presently being done, how are they done?**

When a Building Maintenance Technician vacancy occurs, DPW either pays overtime to other BMT staff or modifies the work schedule of DPW Laborers from other sections to fill vacant BMT shifts. Vacant weekday (7:00 a.m. to 3:00 p.m. Monday to Friday) BMT shifts are not filled because the rest of DPW field staff is present for emergency response.

7. What service would be reduced or eliminated if this position is not filled?

DPW will continue to perform all of its core services. However, a reduction in staffing can result in a lower level of service to residents and potentially increase the amount of time required to complete the services. If a BMT position is eliminated, DPW plans to change to an on-call BMT service on weekends. First responder actions will still be performed. But it response will dispatch from the BMT's private residence instead of from a DPW facility.

8. What are the alternative methods and costs of accomplishing the work?

See response to item 7 above

9. Are there union issues?

No

10. Other supporting comments.

None



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 26, 2021

PREPARED BY

AGENDA ITEM # E.2

Consideration with possible action to approve the 2021-2023 labor agreement between the City of Green Bay and Local 420, Bus Mechanics.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Bus Mechanics TA - Personnel Committee
2. Bus Mechanics Cost Out 12-2020 - 2% Increase
3. Bus Mechanics TA(1)

TENTATIVE AGREEMENT

August 14, 2018

Between

City of Green Bay, Wisconsin

And

International Union of Operating Engineers, AFL-CIO, Local 420

Green Bay Metro Bus Mechanics

On January 15, 2021 the City and the Bus Mechanics union reached a tentative agreement for a 3-year contract which is set to expire on December 31, 2023. It is recommended that the Personnel Committee recommend approval of the contract. The following is a summary of the terms of the contract.

ISSUE	COST
Term of Agreement: 3 Year (January 1, 2020 – December 31, 2023)	
ECONOMIC ISSUES: <u>Wages:</u> 2021 - Base Salary Cost Increase \$4,202 2% - Effective with the start of the pay period in which October 1, 2021 occurs. \$1,758 - Employee step increases effective December 1, 2021 <u>\$441</u> 2021 COST \$6,401 2022 - Base Salary Cost Increase \$15,314 2% - Effective with the start of the pay period in which October 1, 2022 occurs. \$1,817 - Employee step increases effective December 1, 2022 <u>\$456</u> 2022 COST \$17,587 2023 - Base Salary Cost Increase \$15,720 2% - Effective with the start of the pay period in which October 1, 2023 occurs. \$1,877 - Employee step increases effective December 1, 2023 <u>\$471</u> 2023 TOTAL COST \$18,067	
<u>Clothing Allowance</u> Increase annual work boot allowance from \$120 to \$150	\$900 (over 3 Years)
TOTAL CONTRACT COST	\$42,955

GREEN BAY METRO MECHANIC'S WAGE INCREASE COST OUT

# of Employees	10
Base Payroll	\$523,266
Avg Salary	\$52,327

2% Increase for Each Year of the Contract

2020 Base Wages	\$523,266
2021 Annual Base Wages	\$527,467
Base Salary Cost Increase	\$4,202
2% Increase 10/1/2021	\$1,758
Step Increase 12/1/2021	\$441
\$ Increase over Base	\$6,401
% Increase over Base	1.2%
2021 Cost	\$529,666
2021 Cost	\$529,666
2022 Annual Base Wages	\$544,981
Base Salary Cost Increase	\$15,314
2% Increase 10/1/2022	\$1,817
Step Increase 12/1/2022	\$456
\$ Increase over Base	\$17,587
% Increase over Base	3.3%
2022 Cost	\$547,253
2022 Cost	\$547,253
2023 Annual Base Wages	\$562,973
Base Salary Cost Increase	\$15,720
2% Increase 10/1/2023	\$1,877
Step Increase 12/1/2023	\$471
\$ Increase over Base	\$18,067
% Increase over Base	3.3%
2023 Cost	\$565,320

AGREEMENT

Between

CITY OF GREEN BAY

And

CITY OF GREEN BAY

INTERNATIONAL UNION OF OPERATING ENGINEERS,
AFL-CIO, LOCAL 420

BUS MECHANICS

Tentative Agreement

January 1, 2021 ~~2018~~ through December 31, 2023 ~~2020~~

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AGREEMENT

This Agreement has been made and entered into between the City of Green Bay, hereinafter referred to as the "City" and Local Union No. 420 of Operating Engineers (AFL-CIO), hereinafter referred to as the "Union".

ARTICLE 1 RECOGNITION

- 1.1 The City agrees to recognize representatives of the Union, as the exclusive bargaining agent for all issues specifically addressed in this Agreement for employees of the Bus Garage Department of the City through the level of Mechanic.
- 1.2 Dues Deduction:
 - 1.2.1 Membership in the Union is not compulsory. An employee may voluntarily join the Union and maintain membership therein consistent with its constitution and by-laws. No employee will be denied membership because of race, color, creed, sex, or handicap. This Article is subject to the duty of the Wisconsin Employment Relations Commission to suspend the application of this Article whenever the Commission finds that the Union has denied an employee membership because of race, color, religion, age, marital status, family status, national origin, sexual orientation, creed, sex, or handicap.
 - 1.2.2 The Union will represent all of the employees in the Bargaining Unit, members and non-members, fairly and equally as dictated by state statute and state and federal law.
 - 1.2.3 Upon written authorization, by the employee that they have voluntarily joined the union and voluntarily request a payroll deduction for such dues, the City agrees to deduct the amount of dues certified by the Union and pay the amount deducted to the Union on or before the end of the month in which deduction is made. Payroll deduction of dues will begin with the pay period following receipt of the employee's written authorization, the City will not be responsible for retroactively deducting dues for any time prior to receipt of the written authorization.
 - 1.2.4 The Union agrees to hold harmless the City from any disputes between the Employee and the Union regarding dues.

ARTICLE 2 MANAGEMENT RIGHTS

- 2.1 The City retains all rights, powers or authority except as modified by this Agreement. The City reserves the unilateral right to modify and change any past practices, memorandums

of understanding, or policies that are not specifically modified by this Agreement. The City retains the right to determine and schedule working hours and determine assignments.

- 2.2 The City will have the right at all times during the existence of this Agreement, and subject to provisions herein, to conduct its affairs according to its best judgment and the orders of competent authority, including the power of establishing policy to hire all employees, to dismiss and discipline for just cause, to lay off in accordance with section 7.3 and to determine the methods, means and personnel by which City operations are to be conducted.
- 2.3 The City agrees it will not use these rights to interfere with the employee's rights established by law or by this Agreement.

ARTICLE 3 MEMBER RIGHTS

- 3.1 The City agrees not to discharge or discriminate against any member of the Union because of lawful Union activities or to bargain individually with any member of the Union.

ARTICLE 4 EMPLOYMENT STATUS

- 4.1 Upon resignation by an employee, the City will pay all money due the employee, and upon request, may furnish the employee with a letter of recommendation insofar as circumstances permit.
- 4.2 An employee who is physically and mentally able to work but fails to do so for 3 consecutive work days or more, unless on approved leave or due to circumstances beyond the employee's control will be considered to have voluntarily resigned from employment.
- 4.3 New employees who do not possess required licenses or certifications prior to the end of probation may be discharged from employment.
- 4.4 All employees who drive a commercial vehicle at any time must have a Commercial Driver's License and the appropriate endorsements required to operate that equipment. Loss or suspension of license and/or endorsements may subject the employee to disciplinary action up to and including discharge.
- 4.5 The City of Green Bay has implemented a Drug and Alcohol policy in accordance with the requirements of State and Federal regulations. Bus mechanics will be subject to this policy.

ARTICLE 5
UNION COOPERATION

- 5.1 The Union agrees at all times, as far as it is within its power, to further the interest of the City.

ARTICLE 6
LEAVE OF ABSENCE

- 6.1 Leaves of absence will be in accordance with the City's Personnel Policies and Procedures.
- 6.2 Military, Jury Duty and Civil Leave will be in accordance with the City's Personnel Policies and Procedures.

ARTICLE 7
SENIORITY

- 7.1 Seniority Date: Seniority will commence upon an employee's most recent date of hire as a full time regular employee by the City.
- 7.2 Master List: There will be one master seniority list for all employees of the Union. The master seniority list will be maintained and updated on a regular basis, and a copy provided to the Union. Employees starting on the same day will have their starting times varied (as determined by the flip of a coin) so that there will be no ties in terms of seniority.
- 7.3 Lay Off: The City may lay off an employee whenever such action is necessary. In the event of multiple layoffs in the same position/job title within a department, lay off will be based on the inverse order of seniority in that position/job title within the department, as long as the least senior employee does not possess special skills, knowledge and ability for the position.

A laid off employee will have rights to recall to the same position from which the employee was laid off for up to 1-year following the lay off. Recall will be based on seniority in that position/job title within the department.

- 7.4 Probation: New employees will be considered probationary employees for the first 12 months of their employment. Any employee on probation may be terminated at the sole discretion of the City without any reference to recall or rehire. After new employees have completed probation, they will be considered regular employees.
- 7.5 Seasonal Employees: Seasonal employees are those hired for less than 6-months of employment in any calendar year. Seasonal employees are not represented under this Agreement.

ARTICLE 8
GRIEVANCE PROCEDURE

- 8.1 Definition: A grievance is defined as a dispute or misunderstanding regarding the interpretation or application of a specific provision of this Agreement.
- 8.2 Procedure: A regular employee represented under this Agreement, may file a grievance in accordance with the following:
- 8.2.1 Prior to filing a written grievance, employees should discuss any problem or complaint with their immediate supervisor to see if settlement is possible. If the problem is not resolved, then the aggrieved party may file a written grievance with the department head, but not later than 15 work days from the date the grievant first became aware of the condition causing the grievance. The department head will respond in writing no later than 15 work days from the date the grievance was received.
- 8.2.2 If the grievance cannot be settled by the department head or designee, the grievance may be submitted in writing to the Human Resources Director or designee within 15 work days from receiving the department head's decision. The meeting to discuss the grievance will be held at a mutually agreeable time. Following this meeting, the Human Resources Director will respond within 15 work days, in writing.
- 8.2.3 If the grievant is not satisfied with the Human Resources Director's response, the grievant may file an appeal for a hearing before an impartial hearing officer within 15 work days from receiving the Director's response. The appeal must be put in writing and filed with the Human Resources Department. The impartial hearing officer will be selected from a list of 3 hearing officers provided by the WERC. The Union will strike the first name from the list and the City will strike the second name and the remaining individual will serve as the hearing officer. Any costs for the impartial hearing officer's services will be borne equally by the parties.
- 8.2.4 The decision of the hearing officer concerning any matter referred to it will be final and conclusive upon the employees, the Union and the City.
- 8.3 Employee Representation: An employee is entitled to a representative of his/her choice.
- 8.4 Time Limits: All of the time limits set forth in this Article may be extended by mutual agreement of the parties.

ARTICLE 9
DISCIPLINE AND DISCHARGE

- 9.1 The City will not discharge or suspend any employee without just cause. Discharge or

suspension will be in writing with a copy to the Union and to the employee affected.

ARTICLE 10
JOB TRANSFERS

- 10.1 Job transfers will be conducted in accordance with the City's Personnel Policies and Procedures and applicable Department procedures.

ARTICLE 11
HOLIDAYS

- 11.1 The following are recognized paid holidays:
- o New Year's Day
 - o ½ Day Friday Before Easter
 - o Memorial Day
 - o Independence Day
 - o Labor Day
 - o Thanksgiving Day
 - o ½ Christmas Eve Day
 - o Christmas Day
 - o ½ New Year's Eve Day
 - o 1 floating holiday (in lieu of the Day after Thanksgiving)

ARTICLE 12
VACATIONS

- 12.1 In accordance with the following schedule, an eligible employee will accumulate vacation leave with pay to a maximum of 240 hours. Generally vacations will not be permitted during an employee's first 6 months of service with the City unless approved by the Supervisor. Vacations will be scheduled to meet the operating requirements of the City, and, as practical, the preferences of employees. Vacation leaves with pay may be used only with the prior approval of the supervisor.

- | | |
|---|-----------|
| • Start through end of 5 th year | 80 hours |
| • 6 th through end of 10 th year | 120 hours |
| • 11 th through end of 15 th year | 136 hours |
| • 16 th through end of 20 th year | 160 hours |
| • 21 st year plus | 200 hours |

- 12.2 Vacation will be appropriately prorated for employees who work less than a calendar year.
- 12.3 An employee cannot carryover more than 240 hours of vacation at the end of the calendar year. Employees who have December vacations canceled due to emergency call-ins will be

allowed to reschedule such vacation during the first 3 months of the following year or add it to their carryover balance provided that balance remains at or below 240 hours.

- 12.4 Upon separation from City service, an employee will be paid for any unused accumulation of vacation leave.
- 12.5 Employees who are earning more than 200 hours of annual vacation as of March 25, 2011 will be grandfathered and redlined at their current amount of vacation accumulation while employed by the City.
- 12.6 An employee employed prior to March 25, 2011, may during their last three years of employment convert up to 80 hours per year of earned vacation days to an escrow account, said conversion of vacation to be at the current salary at the time of conversion. In addition, at the time an employee separates from City service by eligibility and acceptance to the State Retirement system, the employee may escrow all or a part of their accumulated vacation leave. This provision will not apply to those employees employed after March 25, 2011.
- 12.7 Personal Leave: Regular full time employees will be eligible for 24-hours of personal leave annually. Personal leave must be used during the calendar year earned and may not accumulate from year to year. Personal leave will be scheduled in the same manner as vacation. Personal leave may not be converted to escrow. Personal leave will be appropriately prorated for employees who work less than a calendar year.

ARTICLE 13 SICK LEAVE OR EMERGENCY LEAVE

- 13.1 Accumulation: Each full-time employee of the City will accumulate sick leave at the rate of one day per month for each month of service to a maximum of 1152 hours.
- 13.2 Notification and Verification: Employees who intend to be absent from work due to illness or injury must notify their supervisor prior to the start of the workday. If the absence continues beyond one day, the employee is expected to keep the supervisor informed of his/her condition and anticipated return date. At the employer's discretion, the employee may be required to provide medical verification.

The City reserves the right to have an employee examined by the City's medical professional, at City cost, to determine fitness for duty. The City's right to have employees examined by the City's medical professional does not in any way limit the employee's rights to be treated by a medical professional of their choice.

Nothing in this article will limit the City's right to deem leave taken as leave provided for under the State or Federal Family Medical Leave Acts.

- 13.3 Use: An employee may use accumulated sick leave for absences necessitated by the employee's injury or illness or an immediate family member's serious illness/injury or hospitalization. For purposes of this article, "immediate family" will mean spouse, parents, stepparent, child, stepchild, foster child or sibling who lives at home.
- 13.4 Medical Appointments: Employees, when possible, will schedule medical appointments outside of normal working hours. When medical appointments are scheduled during normal working hours, employees will be charged sick leave for actual time lost for the medical appointment. However, employees will not be charged from sick leave for absences from work necessitated by follow-up doctor visits due to workers compensation related injuries or illnesses.
- 13.5 Escrow Account: Employees employed prior to March 25, 2011 who terminate employment by eligibility and acceptance to the State Retirement system will have accumulated sick leave, up to a maximum of 688 hours, placed in an escrow account and used to pay health insurance premiums. This provision will not apply to those employees employed after March 25, 2011.

ARTICLE 14 WORKER'S COMPENSATION

- 14.1 An employee injured on the job will be made whole for the remainder of the working day in which the injury occurred based on medical verification that the employee is unable to perform available work. The injured employee, at his/her option, can make himself/herself whole for the difference between the payment from Worker's Compensation and the regular rate of pay through use of sick leave or vacation for all subsequent days off due to the work related injury as long as the payment does not exceed the normal rate of pay.

ARTICLE 15 FUNERAL LEAVE

- 15.1 Employees will be allowed up to 3 days off with pay for absences necessitated by a death in the employee's immediate family (including spouse, parent, stepparent, child, stepchild, foster child, sibling, guardian, ward, parent-in-law, grandchild or grandparent). In circumstances which require an employee to attend a funeral of a member of the immediate family at a travel distance in excess of 300 miles from Green Bay, up to 2 additional days may be granted. A request for additional vacation, personal, compensatory time or other leave time must be communicated to the immediate supervisor as soon as practicable. If a funeral is delayed or a service is held at a date beyond the limits of this policy, the employee may attend, but will not be paid for more funeral leave days than outlined in this policy. Funeral leave is not provided for dealing with wills or estates.

Employees will be allowed 1 day off with pay to attend the funeral of the spouse's grandparents or of a son-in-law, daughter-in-law, sister-in-law, brother-in-law, aunt or uncle of the employee or spouse.

- 15.2 In the event of the death of a current co-worker, employees working in the same department and location having a close working relationship and others who worked closely with this individual on a regular basis, in the sole discretion of the department head, may be allowed up to 3 hours of administrative leave for attendance of a local funeral and related event. All others and time beyond this amount will be required to be accounted for by using compensatory time or personal leave or other appropriate accumulated leave with the approval of the Supervisor.

ARTICLE 16
HEALTH AND DENTAL INSURANCE

- 16.1 Selection of any provider for health and dental insurance and determination of coverage and benefit levels will be at the discretion of the City.
- 16.2 Employees will pay 15% and the City will pay 85% of the single or family premium for health care insurance benefits.
- 16.3 Employees will pay 12.5% and the City will pay 87.5% of the single or family premium for Humana dental insurance benefits.
- 16.4 Employees regularly scheduled to work less than 37.5 hours per week will have the City's contribution appropriately prorated.
- 16.5 Employees will be entitled to reduce their health insurance premium contribution by 2.5% per year by successfully participating in the Wellness Incentive Program. All Wellness Incentives must be completed in the prior year to receive the 2.5% reduction in the following year.

To receive the health insurance premium reduction, the spouse of an employee must participate in the Wellness Incentive Program. The spouse of an employee will not be required to participate in the Wellness Incentive Program if the spouse has a health risk assessment screening conducted at the spouse's employer, however, the spouse must comply with the age-specific requirements. If the spouse of an employee or an employee with family coverage does not participate in the Wellness Incentive Program, the health insurance premium reduction will be 1.25%.

- 16.6 Life Insurance: The City will provide and carry, at no cost to the employee, life insurance for each regular full-time employee in an amount equal to the employee's base salary for all employees regularly scheduled to work a minimum of 37.5 hours per week. Employees will have the option to purchase supplemental life insurance for self, spouse and eligible dependent(s). Employees will pay all premium costs for the optional supplemental life insurance through payroll deductions. (This provision will be effective starting with the pay period following approval of the contract by both parties).

ARTICLE 17
RETIREMENT CONTRIBUTION

- 17.1 Employees are subject to a retirement contribution in an amount equal to one-half of all actuarially required contributions approved by WRS.

ARTICLE 18
WAGES AND RATES

- 18.1 Attached hereto and marked Schedule A and Schedule B are schedules showing the classifications and wage rates of the employees covered by this Agreement. It is mutually agreed that said Schedules and the contents hereof will constitute a part of this Agreement.
- 18.2 All members of the bargaining unit will be subject to mandatory direct deposit of their paychecks.
- 18.3 An employee that is called in for work outside of the regular work day will be paid for a minimum of 2-hours pay.

ARTICLE 19
HOURS OF WORK

- 19.1 The City will establish the hours of work for employees in the bargaining unit, and agrees to provide notice to the Union and an opportunity to meet and discuss schedule changes prior to implementation when administratively feasible.
- 19.2 The City will endeavor to schedule work hours consisting of consecutive work days and no split shifts unless mutually agreed upon by the City and the Union.
- 19.3 In accordance with the Fair Labor Standards Act (FLSA), non-exempt employees will receive overtime at the rate of 1½ times the employee's regular hourly rate and will be paid for all hours actually worked in excess of 40 hours per week. Vacation, personal days, compensatory time, holiday time, funeral leave, jury duty leave and paid military leave will be considered actual hours worked for the purpose of determining eligibility for overtime. Overtime hours must be approved by the Supervisor.
- 19.3.1 Overtime shall be assigned by seniority unless the work falls within 2 hours prior to a qualified employee's regular shift or within 2 hours following the employee's regular shift.
- 19.4 Overtime hours are subject to prior supervisory approval.
- 19.5 Employees working holiday hours, in accordance with Article 11, will be eligible to receive double time pay.
- 19.6 Per calendar year, employees may bank up to 80 hours of overtime earned in a

compensatory time bank. Employees may request the use of compensatory time off at the rate at which such time is earned.

- 19.7 In the event that compensatory time is not used prior to the end of the calendar year in which it is earned, the employee's compensatory time will be paid out at the employee's current rate of pay.
- 19.8 All benefits covered by this Agreement will be appropriately prorated for employees who work less than fulltime.

ARTICLE 20 CLOTHING ALLOWANCE

- 20.1 The City will annually pay each employee ~~\$150~~ ~~\$120~~ in the last payroll in January for the purchase of approved leather work shoes or safety shoes required by the City. The allowance will be appropriately prorated for a new employee.
- 20.2 The City will provide back supports as required for lifting.
- 20.3 The City shall provide the initial complement of clothing, which shall include:
- up to 12 shirts (long or short sleeve)
 - up to 6 trousers
 - 1 insulated coverall (for mechanics, fueler, janitor/groundskeeper)
 - 1 jacket
 - 1 winter parka
 - 1 Sweater or vest (for Bus Cleaner & Parts Room Asst)

The City will provide an annual allowance of \$35 effective January 1st of each year to each member for work-related clothing not covered by the above.

Clothing will be replaced by the City as needed. Clothing which has been replaced will be turned in to the City. No employee will wear any part of the uniform for any reason other than performing their duties as City employees. The City will outfit probationary employees as it deems necessary.

- 20.4 Where required by the City, employees will be provided with 1 pair of safety glasses per year including prescription glasses. (This does not include the cost of the examination. Glass will be in "regular frames" i.e. W.O.S.) City will replace or repair required safety glasses broken or damaged on the job. Other employees can participate at their own expense.

- 20.5 Each member of the bargaining unit will be offered a rental uniform. A supply of 2 weeks clothing and once a week laundry service will be provided. Uniforms will be provided to members as soon as the procurement process is completed.
- 20.6 The City will, upon submission of a receipt, pay the difference between a regular driver's license and a CDL (including required endorsements) where required by the City.

ARTICLE 21

SEPARABILITY AND SAVINGS CLAUSE

- 21.1 If any Article or Section of this Agreement or of any Rider thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending a final determination to its validity, the remainder of this Agreement and of any Rider hereto, or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained, will not be affected thereby.
- 21.2 In the event that any Article or Section is held invalid or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby will enter into immediate collective bargaining negotiations, upon the request of the Union, for the purpose of arriving at a mutually satisfactory replacement. Either party will be permitted all legal or economic recourse in support of its demands, notwithstanding any provision in this Agreement to the contrary.
- 21.3 It is understood and agreed that if any Article or portion of this Agreement is in conflict with the Statutes of the State of Wisconsin governing municipalities, such Article or portion will be declared invalid and negotiations will be instituted to adjust such Article or portion.

ARTICLE 22

DURATION OF AGREEMENT

- 22.1 This Agreement will become effective as of the date of signature, and will remain in force and effect to and including December 31, ~~2023, 2020.~~

This Agreement was approved by both parties on:

For the Union

City of Green Bay

Alex Tetzlaff, Business Manager

Mayor ~~Eric C. Genrich James J. Schmitt~~

Ronald LaPlante, Union Steward

Melanie Falk, HR Operations Manager
Attest:

City Clerk

APPENDIX A – Wages

~~NEW~~ PAY SCHEDULE

~~Effective the first day of the pay period in which January 1, 2018 occurs.~~

Placement on a step of the ~~new~~ pay plan is in accordance with the procedures approved by the City Council, ~~for placing employees on a step of the new City Pay Plan.~~

CLASSIFICATIONS IN ACCORDANCE WITH CITY PAY PLAN January 1, 2018	
Pay Grade H ✦ Mechanic	Pay Grade F ✦ Maintenance Technician
Pay Grade E ✦ Maintenance Clerk	Pay Grade D *(Effective September 11, 2018) ✦ Fueler
Pay Grade C *(January 1, 2018 September 11, 2018) ✦ Fueler ✦	Pay Grade B ✦ <u>Bus Cleaner</u>

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WAGES IN ACCORDANCE WITH CITY PAY PLAN

Effective October 1, 2021 (2% Increase)

10/1/21 Pay Grades & Pay Schedules									
Pay Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Performance Range	
H	\$25.23	\$25.96	\$26.69	\$27.45	\$28.18	\$28.93	\$29.67	\$29.68	\$34.12
F	\$20.77	\$21.39	\$21.99	\$22.61	\$23.23	\$23.84	\$24.44	\$24.45	\$28.11
E	\$19.10	\$19.67	\$20.23	\$20.79	\$21.35	\$21.92	\$22.48	\$22.49	\$25.87
D	\$18.00	\$18.53	\$19.05	\$19.58	\$20.11	\$20.64	\$21.18	\$21.19	\$24.35
B	\$15.43	\$15.88	\$16.33	\$16.79	\$17.25	\$17.70	\$18.16	\$18.17	\$20.88

Effective October 1, 2022 (2% Increase)

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	10/1/22	Pay Grades & Pay Schedules								Form
	Pay Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Performance Range	
	H	\$25.73	\$26.48	\$27.22	\$28.00	\$28.74	\$29.51	\$30.26	\$30.27	\$34.80
	F	\$21.19	\$21.82	\$22.43	\$23.06	\$23.69	\$24.32	\$24.93	\$24.94	\$28.67
	E	\$19.48	\$20.06	\$20.63	\$21.21	\$21.78	\$22.36	\$22.93	\$22.94	\$26.39
	D	\$18.36	\$18.90	\$19.43	\$19.97	\$20.51	\$21.05	\$21.60	\$21.61	\$24.84
	B	\$15.74	\$16.20	\$16.66	\$17.13	\$17.60	\$18.05	\$18.52	\$18.53	\$21.30

Effective October 1, 2023 (2% Increase)

10/1/23		Pay Grades & Pay Schedules							
Pay Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Performance Range	
H	\$26.24	\$27.01	\$27.76	\$28.56	\$29.31	\$30.10	\$30.87	\$30.88	\$35.50
F	\$21.61	\$22.26	\$22.88	\$23.52	\$24.16	\$24.81	\$25.43	\$25.44	\$29.24
E	\$19.87	\$20.46	\$21.04	\$21.63	\$22.22	\$22.81	\$23.39	\$23.40	\$26.92
D	\$18.73	\$19.28	\$19.82	\$20.37	\$20.92	\$21.47	\$22.03	\$22.04	\$25.34
B	\$16.05	\$16.52	\$16.99	\$17.47	\$17.95	\$18.41	\$18.89	\$18.90	\$21.73

~~Reclassify Fuelers from Pay Grade C (\$19.96/hour) to pay grade D (\$20.56/hour). New wage rate will be effective upon ratification of the contract (September 11, 2018).~~

The 2% wage increases in ~~2021, 2022 and 2023~~ 2018, 2019 and 2020 will occur on the first date of the pay period in which October 1 occurs.

Employee step increases will be ~~subject to satisfactory performance in accordance with procedures approved by the City Council. implemented on December 1, 2018. Employee step increases will be effective December 1, 2019 and December 1, 2020 for those with satisfactory performance.~~

- a. In addition to the employee's regular wage rate, a shift premium will be paid for work performed in the job classification. The shift premium rates will be:

Evening Shift	25 cents per hour
Night Shift	30 cents per hour
Day Shift	None

- b. The Day Shift is that shift in which 50% or more of the regularly scheduled work hours fall between 7:00 a.m. and 3:00 p.m.
- c. The Evening Shift is that shift in which 50% or more of the regularly scheduled work hours fall between 3:00 p.m. and 11:00 p.m.
- d. The Night Shift is that shift in which 50% or more of the regularly scheduled work hours fall between 11:00 p.m. and 7:00 a.m.
- e. Employees who work additional hours outside of their regularly scheduled shift will receive the applicable shift premium in addition to any applicable overtime premium pay on the base rate.
- f. Shift premium will be paid only for the time actually worked.

APPENDIX B

Health 1265

Members of the International Union of Operating Engineers, AFL-CIO, Local 420 who carry City sponsored insurance may participate in the City's Health 1265 program for the following periods and will be eligible to receive a reduced premium contribution of 11.5% for the following calendar year if they achieve 1265 points under the City's program.

- ~~November-December~~ 1, 20~~2018~~ - October 31, 20~~2119~~ – 11.5% reduced premium contribution for the 20~~2220~~ calendar year if the employee achieves 1265 points under the program.
- ~~November~~ 1, 20~~2119~~ - October 31, 20~~2220~~ – 11.5% reduced premium contribution for the 20~~231~~ calendar year if the employee achieves 1265 points under the program.

Upon enrollment in myInertia as part of the Health 1265 program, eligible employees will receive \$55 toward the cost of a fitness tracker and be eligible for the incentives under the program.



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 26, 2021

PREPARED BY

AGENDA ITEM # E.3

Consideration with possible action on grievances #2020-003 and #2020-004 filed by the Green Bay Professional Police Association regarding the flexing of schedules for specialty team training.

The Committee may convene in closed session pursuant to Section 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governing body. The Committee will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. City's Step 3 Response - Personnel Committee 1-12-2021
2. Step 2 - HR Director Response - 11-23-2020
3. Chief Smith Step I Grievance Response Updated
4. Specialty Unit Training and Flexing of hours
5. GBPPA 20-003.004 STEP III



*The City of Green Bay is a leader in employee health and wellness with its **Health | 1265** program and a goal to engage all employees in their own health and well-being*

January 6, 2021

Personnel Committee
City of Green Bay
100 N. Jefferson Street
Green Bay, WI 54301

RE: Grievance 20-003, 20-004 (Flex Workday to Attend Training)

Dear Personnel Committee,

This correspondence is in response to the Step 3 Grievance 20-003 and 20-004 submitted by the Green Bay Professional Police Association (“GBPPA”). In addition, please see the enclosed documents for the Personnel Committee’s consideration:

1. Chief Andrew Smith Step 1 Response – 10/13/2020
2. Human Resources Director Joe Faulds Step 2 Response – 11/23/2020
3. Commander Kevin Warych – Specialty Team Training and Flexing Hours – 09/22/2020

The City requests that the Personnel Committee deny the Association’s grievance asking for the City to allow police officers to flex one’s schedule to attend specialty team training without supervisor approval.

For the sake of brevity, the City asks the Committee to review Chief Smith’s Step 1 response and HR Director Faulds’s Step 2 Response for the rationale on why the Committee should deny the GBPPA’s grievance. In summary, an officer is unable to flex his or her work schedule without supervisor approval because (1) the Police Department retains the management right to schedule officers for their workday, (2) the interpretation of the contract does not allow for flexing of a schedule without supervisor approval, (3) there is no unequivocal past practice that demonstrates officers are able to flex one’s schedule without supervisor approval, and (4) asking officers to request approval from a supervisor to flex one’s schedule is a reasonable work rule.

Moreover, supervisors approving an employee’s schedule and the flexing of one schedule is a common practice throughout the City and any other employer. The GBPPA’s request to allow an officer to flex one’s schedule with no notice to the supervisor is unworkable and undermines how the City as an organization works. If the Committee rules in favor of the GBPPA, then the officers will be able to control their schedules for specialty team training—and to a certain extent their regular schedules—with no input or approval from a supervisor.

To exemplify this concern, these are scenarios for an officer under the GBPPA’s interpretation:

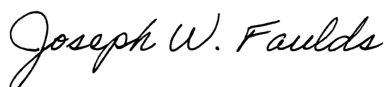
- An officer is scheduled to work 7:00am-3:30pm Monday through Friday.
- The officer has specialty training from 11:00am to 7:30pm.
- This officer may:
 - o Work the officer's regular schedule from 7:00am to 3:30pm without attending specialty training and *without communicating to the supervisor* whether he or she is going to be working from 7:00am to 3:30pm or attending specialty team training; or
 - o Arrive at 7:00am, work until 11:00am in his/her regular capacity and then stop working one's core schedule to flex his or her schedule to attend specialty team training from 11:00am to 9:30pm *without any notice or communication to the supervisor*; or
 - o *Without any communication to the supervisor*, flex his or her core schedule and arrive at work at 11:00am to attend training until 9:30pm; or
 - o Arrive at work at 7:00am, flex one's schedule to attend specialty team training at 11:00am and stop specialty team training at 3:30pm *without communicating to his/her supervisor whether the officer is attending training or not and what time the officer will stop training at*.

As you can see from the GBPPA's interpretation, an officer can flex his or her schedule to attend training or not attend training *without any communication or notice to one's supervisor*. The GBPPA's interpretation allows for an officer to show up to work and leave (as long as it is for specialty team training) when he or she chooses to do so without any notice to the supervisor. This interpretation creates an unworkable policy and undermines the ability of the Police Department to schedule and manage officers.

The City's position is to interpret the contract as written, specifically, to allow officers to flex one's schedule to attend specialty training with supervisor approval and subject to the staffing parameters outlined in section 7.21. Presently, the direction to supervisors is to generally grant flexing provided that sufficient notice is provided (10 days), it is in writing, and that other staffing needs are covered. This is sound, logical practice, and in the described case above, every scenario could be appropriate for an officer's specific situation and could be scheduled for an officer *with supervisor approval*. The City is not denying any officer the ability to flex one's schedule, the City is merely noting that the officers are required to obtain supervisory approval, which includes appropriate notice that one is requesting to flex his or her schedule to attend training.

Overall, the grievance should be dismissed because the City retains the management right to establish an officer's schedule and to approve whether that officer can flex his or her schedule to attend specialty team training.

Respectfully submitted,



Joseph W. Faulds
Human Resources Director

Cc: GBPPA Representative Phil Scanlan (via email only)



*The City of Green Bay is a leader in employee health and wellness with its **Health 1265** program and a goal to engage all employees in their own health and well-being*

November 23, 2020

Detective Kevin Kempf
Detective Phil Scanlan
Officer Tim Kenney
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

Sent via email: kevin.kempf@greenbaywi.gov

Sent via email: phil.scanlan@greenbaywi.gov

Sent via email: tim.kenney@greenbaywi.gov

RE: Step 2 – Grievance Response 20-003, 20-004 (Flex Workday to Attend Training)

Dear Detectives Kempf and Scanlan and Officer Kenney,

The following is my review of the grievances (20-003, 20-004) regarding the flexing of a workday to attend training. The language pertinent to this grievance is 1.2, 2.1, 2.2., 7.4.1.e, 7.7.1, and 7.21.

Article 1 – Recognition/Management Rights

1.2 MANAGEMENT RIGHTS. The Union recognizes the prerogative of the City, subject to its duties to collectively bargain, to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not abridged, delegated or modified by this Agreement, are retained by the City, including the power of establishing policy to hire all employees, to determine qualifications and conditions of continued employment, to dismiss, demote, and discipline for just cause, to determine reasonable schedules of work, to establish the methods and processes by which such work is performed. The City further has the right to establish reasonable work rules, to delete positions from the Table of Organization due to lack of work, lack of funds, or any other legitimate reasons, to determine the kinds and amounts of services to be performed as pertains to City government and the number and kinds of classifications to perform such services, to change existing methods or facilities, and to determine the methods, means and personnel by which City operations are to be conducted. The City agrees that it may not exercise the above rights, prerogatives, powers or authority in any manner which alters, changes or modifies any aspect of the wages, hours or conditions of employment of the Bargaining Unit, or the terms of this agreement, as administered, without first collectively bargaining the same or the effects thereof.

Article 2 – Purpose of Agreement

2.1 GENERAL. It is the intent and purpose of the parties hereto that this agreement shall promote and improve working conditions between the City and the Green Bay Police Department (GBPD) Bargaining Unit and to set forth herein rates of pay, hours of work, and other terms and conditions of employment to be observed by the parties hereto. In keeping with the spirit and purpose of this agreement, the City agrees that there shall be no discrimination by the City against any employee covered by this agreement because of membership or activities in the Bargaining Unit, nor shall the City interfere with the right of such employees to become members of the Bargaining Unit. The City retains all rights, powers, or authority that it had prior to this Agreement.

2.2. DISCRIMINATION. Neither the Employer nor the Union shall discriminate in any manner whatsoever against any employee as defined in Section 111.32 et seq. of Wisconsin Statutes.

7.4 SWAT TEAM

7.4.1.e The SWAT Team may train up to 12¾-hours per calendar month. Hours may not be carried over outside the calendar month except the SWAT Commander may grant exceptions on a case-by-case basis to facilitate special training needs. The compensation for this training shall be actual hours at time for time via payback for those on their off time. All training plans and schedules must be approved by SWAT supervisory personnel. SWAT Team officers may flex their workday to attend training in accordance with 7.21.

7.7 DIVE TEAM

7.7.1.d. Members may flex their work day or receive payback compensation for attending or conducting dive related meetings and/or training on their work day. Members attending or conducting dive related meetings, equipment maintenance and/or training on their off time shall be compensated at time for time payback. Supervisor approval shall be required prior to any member flexing their hours or performing duties on their off time.

7.21 MAINTENANCE OF 2-PERSON BUFFER

7.21.1 For those teams where it is specifically referenced in Article 7, officers may flex their workday to attend training dependent upon the maintenance of a 2-person buffer above the current safety staffing numbers. Compensation for training will be actual hours at time for time via payback for those on their off time.

- i. Officers may be cancelled from training outside of 24-hours prior to the start of their regular shift in order to maintain the 2-person buffer.
- ii. If the training occurs during all or part of the officers' regular working hours, the officer may be pulled from training at any time to resume regular duties.
- iii. If the training does not occur during any part of the officer's regular working hours, the officer may not be pulled from the training within 24-hours prior to the start of

their regular affected shift.

- iv. The Shift Commander has the discretion to allow attendance below the 2 person buffer on a case-by-case basis, dependent upon the work environment present at the time the training is to begin.

These are the material facts for the grievances filed:

- Detectives Kempf and Scanlan are members of the SWAT Team.
- On August 6, 2020 Detectives Kempf and Scanlan were scheduled to attend SWAT training from 11:00am to 7:30pm.
- Detectives Kempf and Scanlan have a workday schedule from 7:00am to 3:30pm.
- Neither Detective Kempf nor Detective Scanlan notified their supervisor, Lt. Keith Gering, that they intended to start work at 7:00am and attend SWAT training from 11:00am to 7:30pm.
- Lt. Gering told both Detective Kempf and Detective Scanlan that they were unable to attend the full training and would be dismissed at 3:30pm as working from 7:00am to 3:30pm resulted in a full shift of work.
- Officer Kenney is a member of the Dive Team.
- On August 11, 2020 Officer Kenney, a member of the Dive Team was scheduled to attend Dive Team training from 11:00am to 7:30pm.
- On August 11, 2020 Officer Kenney was scheduled to work his regular shift beginning at 6:15am.
- Officer Kenney was told by his supervisor that since he began working at 6:15am he would be dismissed from training at 2:45pm.
- Officers who had an off day on both August 6, 2020 (SWAT Team Training) and August 11, 2020 (DIVE Team Training) were allowed to attend the full Specialty team training and receive payback.
- In 2014, then Operations Captain Paul Ebel sent out a memo addressing the ability of officers to flex his/her schedule to attend specialty unit training.

After reviewing the grievance, the grievance is denied for the following reasons.

I. INTERPRETATION OF THE CONTRACT DOES NOT PERMIT AN OFFICER TO FLEX A WORK SCHEDULE TO ATTEND TRAINING WITHOUT SUPERVISORY APPROVAL.

First, the interpretation of the pertinent contract language does not permit the officers to flex their workday to attend training without the proper notification or supervisory approval from a supervisor. In regards to the language pertaining to flexing of hours for SWAT Team training, this language is found in Article 7.4. Article 7.4 states “*All training plans and schedules must be approved by SWAT supervisory personnel. SWAT Team officers may flex their workday to attend training in accordance with 7.21.*” (emphasis added). The SWAT supervisory approves all training plans and schedules for the SWAT Team. Neither Detective Scanlan nor Detective Kempf notified the supervisor of their intent to start work at 7:00am and attend the full duration of the training. This allowed Lt. Gering to determine if the officers were allowed to attend the training past their regularly scheduled workday. In addition, neither Detective Scanlan nor Detective Kempf provided anything in the grievance that the flexing of hours was done in accordance with 7.21.

For Officer Kenney and attending Dive Team training, the contract states in 7.7.1.d.: *Supervisor approval shall be required prior to any member flexing their hours or performing duties on their off time.* (emphasis added) The facts indicate that Officer Kenney did not receive supervisor approval to flex his work schedule to attend Dive Team training.

Based on the contract language and the failure to obtain supervisor approval to flex the workday and attend Specialty team training, the grievances are denied.

II. PAST PRACTICE

Unambiguous contract language cannot be modified by past practice. *See Madison Teachers Inc. v. Madison Metro. Sch. Distr.*, 2004 WI App 54 ¶ 15. As stated above, the contract language is unambiguous that the officer on the SWAT Team may flex his or her schedule in accordance with Article 7.4 and 7.21 and for the Dive Team may flex his or her schedule in accordance with Article 7.7.1.d.

In the alternative, if the contract language is determined to be ambiguous, then the past practice must be 1) unequivocal; 2) clearly enunciated and acted upon, and; 3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by the parties. *City of Cumberland*, Case 18 No. 55310 MA-9976 (Meier, 4/23/98).

Detectives Kempf, Scanlan, and Officer Kenney stated that the past practice has been unequivocal and are relying on a Memo from 2014 to show that the past practice has been to allow officers to flex their schedule to attend specialty team training. As stated above, the City is not bound by the memo from 2014 as the contractual language controls how officers can flex or not flex their schedule to attend specialty team training.

Even if the 2014 memo from then Operations Captain Ebel is relevant in determining that a past practice has been established, the 2014 memo does not clearly establish a past practice. The 2014 memo requires officers to notify their supervisors at least 10 days prior to a specialty training to indicate whether an officer is asking to flex his/her schedule to attend specialty training. The grievants did not follow the guidelines posted in the memo and the alleged past practice that they rely on. It cannot be an unequivocal past practice if officers in the past have given a 10 day notice before a schedule is flexed and now the officers do not give any notice. That would not be a consistently applied practice.

Moreover, the reliance on the memo shows that the alleged past practice was not clearly enunciated and acted upon or that it has been an established practice accepted by the parties. The memo stated that notice should be given at least 10 days prior to when an officer asked to flex his or her schedule. If that is the past practice that is enunciated between the parties, it was not followed or acted upon here.

Therefore, if the language is determined to be ambiguous, there still is not an established past practice that allows the grievants the ability to attend specialty training and flex their workday without giving the proper notice to a supervisor.

III. WHETHER THE SUPERVISOR'S DECISION IS A REASONABLE WORKPLACE RULE OR DISCRIMINATORY.

The supervisors asking the grievants to leave specialty training early because the proper notice was not given to flex one's work schedule and foregoing payback was reasonable and not discriminatory. This is a reasonable work rule based on the rationale listed above, the management rights listed in Article 1.2 and the contract language in Article 7. If supervisors and management are unable to ask for notice and determine whether an officer can flex one's schedule, this will cause disruption in scheduling including the concern of scheduling enough officers to meet the safety staffing levels.

If the interpretation of the grievants is upheld, this will undermine a supervisor's authority to set the schedule and will create an unworkable environment. Based on the grievants' interpretation of the contract, the grievants do not have to give any notice to the supervisor of an officer's intent to flex one's schedule to attend specialty training. This interpretation of the contract usurps the authority of a supervisor to create and set schedules and from a practical manner makes managing schedules and specialty training very difficult to do.

In addition, there is no discrimination because officers who were on their off day could attend specialty team training and receive payback. Supervisors set the schedule to minimize the number of officers who could attend training on one's off day. For the grievants who wanted to attend specialty team training on their work day, they failed to give notice and work with the supervisor to attend the specialty team training on their workday. I'm not aware of any other officers who were similarly situated who could attend the full specialty team training and earned payback. Thus, the action was not discriminatory.

For the foregoing reasons, the grievance is denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph W. Faulds". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph W. Faulds
Human Resources Director

Cc: Police Chief Andrew Smith (via email only)
Attorney Jon Cermele (via email only)
GBPPA Representative Phil Scanlan (via email only)



Green Bay Police Department
Operations Division



Captain Paul Ebel

Email: pauleb@greenbaywi.gov

920-448-3186

Date: June 2, 2014

Ref: Training and Flexing of shifts, special units

Special Unit Commanders

Each of the special unit teams that are assigned to you has a shift flexing component attached to the officer who is attending training on a regularly scheduled work day. The officer has the ability to flex their schedule in order to attend the training or they may choose to work their shift up to the start of the training then attend the scheduled training. Their attendance at training depends on a safety staffing level that maintains a two person buffer on shift. In order to assist the effected shifts with planning their staffing levels 6 days out please have the officers assigned to your teams inform you of their intent to flex their shift or work their shift at a minimum of 10 days prior to any scheduled training.

INTRADEPARTMENTAL CORRESPONDENCE

Date: October 13, 2020

To: Detective Kevin Kempf, Green Bay Police Department Detective
Detective Phil Scanlan, Green Bay Police Department Detective

From: Chief of Police

SUBJECT: RESPONSE TO GRIEVANCE NO. 2020-003

I received Green Bay Professional Police Association (PPA) Contract Violation Form, alleging a contract violation occurred on August 6 2020. Please see below for my grievance response.

TIMELINESS

The time limits for initiating grievance was waived while Commander Warych researched the matter. This grievance is determined to be within time limits.

GRIEVANCE

Per the Grievants' Information Form, Grievance No. 20-003: *"This grievance alleges a violation of article 7, section 4 of the labor agreement and/or department policy pertaining to: the requirement to flex their workday to attend training. The grievance also alleges a violation of articles 2.1 and 2.4, as the department is applying their new directive in a discriminatory fashion."*

On August 6, 2020 Detectives Kempf and Scanlan were scheduled in Telestaff to attend SWAT training from 1100 hours to 1930 hours. They did not notify their supervisors of their intent to work an extended workday on August 6th, 2020, despite being notified of their training schedule in person by Lieutenant Gering. Detective Scanlan and Detective Kempf began their workday on their regularly scheduled time of 0700 hours. They were advised by their supervisor that since they had started their shift at 0700 hours they would be dismissed from training at 1530 hours. They were dismissed from training at 1530 hours by their SWAT supervisor.

FINDINGS

The grievance is denied.

RATIONALE

The grievance is denied on the following basis: The Green Bay Police Department is committed to serving the Green Bay community as effectively and efficiently as possible. Training is scheduled by management (Contract Article 1.2) to provide the maximum effectiveness with the least possible fiscal impact. Training is not scheduled for the personal financial gain of any individuals. The fact that other, junior members, working patrol assignments on shifts different than the grievants' received payback is irrelevant.

Both Detective Kempf and Detective Scanlan were advised by their SWAT supervisor Lieutenant Gering that they were prescheduled to begin their workday at 1130 hours in order to attend SWAT practice. Both elected to come in at their regular 0700 hours start of watch times. There were no exigent circumstances or workload issues requiring their 0700 hours start of watch time and neither communicated to their supervisor in advance of any need or of their intent to begin work at 0700 hours. They were appropriately sent home by their supervisor after they completed a full work day at 1530 hours.

No PPA member is entitled to determine their work schedule in order to maximize their personal financial gain without the permission of the Department. It is clear and codified in the PPA Labor Agreement (Contract) that all SWAT training plans and schedules must be approved by SWAT supervisory personnel. Detectives Kempf and Scanlan failed to notify their supervisor of their plan to work their regular schedule and attend scheduled training, which blatantly conflicted with the notification and direction given to them by their SWAT Commander, and the contract language which requires that schedules be approved by SWAT supervisory personnel -Contract Article 7.4.1 (e).

The Department and City always reserve the right to send officers home if their workday has been completed.

CLARIFICATION OF DEPARTMENT POSITION

- The City of Green Bay is under considerable financial strain and all City department managers have been directed to initiate cost saving measures when practicable.
- Officers may flex their time in order to attend SWAT training, subject to SWAT supervisory personnel approving the schedule.
- In order to provide SWAT training in the most efficient manner, Lieutenant Gering was directed to modify the SWAT training day to accommodate the greatest number of personnel without the accumulation of earned Payback time.
- SWAT practice, and membership on the SWAT team are both voluntary assignments.
- Both Detective Scanlan and Kempf worked a complete workday, and were compensated appropriately for their work hours.
- The Department and City reserve the right to limit the earning of "payback time" using the management discretion to establish schedules when it is in the best interest of the City and Department.
- Detective Kempf and Detective Scanlan failed to notify or obtain permission from their supervisors to work an extended work schedule on August 6th, 2020. Their actions directly conflicted with direction and notification given to them by their supervisor.
- Lieutenant Gering notified the Detectives in advance that they would be dismissed at 1530 hours.
- Lieutenant Gering appropriately dismissed Detectives Kempf and Scanlan from SWAT practice at 1530 hours after their full workday was completed on August 6, 2020.

RELEVANT CONTRACT LANGUAGE

- Contract Article 1.2 Management Rights. The Union recognizes the prerogative of the City....to determine reasonable schedules of work.
- Contract Article 7.4.1(e) All training plans and schedules must be approved by SWAT supervisory personnel.
- Contract Article 7.21.1 For those teams where it is specifically referenced in Article 7, officers may flex their workday to attend training dependent upon the maintenance of a 2-person buffer above the current safety staffing numbers.
- Contract Article 29.1: Any officer accepting a position requiring specialized training/school for the position shall flex their workday and workweek to attend such training.

The Department management does not discriminate against PPA members who seek to enforce the terms of the labor agreement. Employment and scheduling decisions are made in the best interests of the community we serve and the individuals we employ. Consideration of Department and City financial concerns is appropriate in determining schedules and there is nothing discriminatory in doing so.



ANDREW J. SMITH
Chief of Police



Green Bay Police Department Operations Division



Commander Kevin Warych

920-448-3200 ext 0919

To: Patrol Supervisor/Specialty Unit Supervisors

Date: September 22, 2020

REF: Training and Flexing of shifts, special units

Below are the guidelines that each specialty unit supervisor shall follow. Our goal is to continue to provide training for our specialty units in a consistent and fiscally responsible manner.

- Department/Specialty Unit supervisors set the schedule to specialty unit training.
- The specialty unit training shall be scheduled on a date that minimizes the number of officers training off-duty.
- Officers will need to obtain direct supervisory approval to flex their schedule to attend training. The officer shall notify the specialty unit supervisor and the shift commander (Buchman, J. Allen, Atlas only) via email about his/her request to flex his/her schedule to attend the training.
- The officer shall notify the specialty unit supervisor and shift commanders above at least 10 days before the scheduled training.
- The notice shall be in given via email. If an officer approaches you and verbally tells you they intend to flex, then you need to remind them to send it to the supervisors stated above in writing otherwise it will not be approved.
- Generally, an officer is allowed to flex his or her schedule to attend the training. Exceptions to this is to ensure that there is minimum staffing for patrol officers and handling the Canine Unit. We will follow-up with the Canine Units on how to schedule the Canine Unit consistently with these guidelines.
- The Department has the right to dismiss officers early from training days at the conclusion of their work day to limit the accumulation of overtime and/or payback time.

Regardless of the position, if an officer does not give you notice to flex his or her schedule to attend training, then the officer will be working the normal shift and may attend the training for the amount of time that does not exceed 8.5 hours in a full day, workload permitting.

We will discuss this at our next supervisory meeting on September 30th (SGT) and Oct 1st (Lt.) Please contact me with any questions.

Cmdr. Kevin Warych

Grievance #20 - 003

Green Bay Professional Police Association Contract Violation Information Form

Date of Occurrence: 08-06-2020	Grievance step - check one 1 ☐ 2 ☐ 3 ☒
Officer's Name/Rank: (If association as a whole write GBPPA) Phil Scanlan-Detective; Kevin Kempf Detective, among others	Division/Assignment: Operations/SWAT

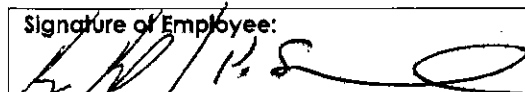
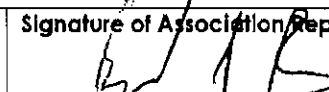
This grievance alleges a violation of article 7.2 section 7.4 of the labor agreement and/or department policy pertaining to: the requirment to flex their workday to attend training. The grievance also aleges a violation of articles 2.1 and 2.4, as the department is applying their new directive in an discriminatory fashion.

Description of Grievance - state all facts including time, place of incident, persons involved, etc.

See attached documentation

Relief Sought:

Same as Step 1. See attached

Signature of Employee: 	Signature of Association Representative: 	Date Filed: 12-14-2020
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Employer Representative Response:

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Employers representative signature	Title	Date Grievance received:	Date Answered

Matter resolved: Yes ☐ No ☐ If yes, How?

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Grievance #20 - 004

Green Bay Professional Police Association Contract Violation Information Form

Date of Occurrence: 08-11-2020	Grievance step - check one 1 ☐ 2 ☐ 3 ☒
Officer's Name/Rank: (If association as a whole write GBPPA) Tim Kenney, among others	Division/Assignment: Operations/DIVE TEAM

This grievance alleges a violation of article 7.2 section 7 of the labor agreement and/or department policy pertaining to: the requirment to flex their workday to attend training. The grievance also aleges a violation of articles 2.1 and 2.4, as the department is applying their new directive in an discriminatory fashion.

Description of Grievance - state all facts including time, place of incident, persons involved, etc.

See attached documentation

Relief Sought:

Same as Step 1. See attached

Signature of Employee: 	Signature of Association Representative: 	Date Filed: 12-14-2020
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Employer Representative Response:

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Employers representative signature	Title	Date Grievance received:	Date Answered

Matter resolved: Yes ☐ No ☐ If yes, How?

Green Bay Professional Police Association Contract Violation Information Form

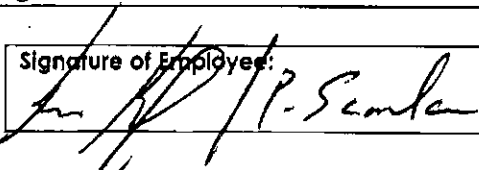
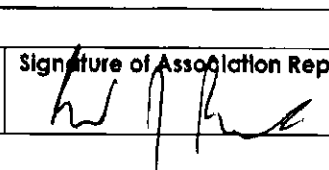
Date of Occurrence: 08-06-2020	Grievance step – check one 1 ☒ 2 ☐ 3 ☐
Officer's Name/Rank: (If association as a whole write GBPPA) Phil Scanlan -Detective; Kevin Kempf Detective, among others.	Division/Assignment: Operations / SWAT
This grievance alleges a violation of article 7 section .4 of the labor agreement and/or department policy pertaining to: <u>the requirement to flex their workday to attend training.</u> <u>The grievance also alleges a violation of articles 2.1 and 2.4, as the department is applying their new directive in a discriminatory fashion.</u>	

Description of Grievance – state all facts including time, place of incident, persons involved, etc.

See attached documentation

Relief Sought:

1. Allow all SWAT team members to attend scheduled training on their off time with compensation being time for time payback.
2. Make SWAT members Kempf and Scanlan whole for the time they were not allowed to attend training while other members were allowed to attend and earn time for time payback.
3. Cease and desist from discriminating against GBPPA members who seek to enforce the terms of the labor agreement.

Signature of Employee: 	Signature of Association Representative: 	Date Filed: 9-23-2020
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Employer Representative Response:

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Employers representative signature	Title	Date Grievance received:	Date Answered

Matter resolved: Yes ☐ No ☐ If yes, How?

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09-22-2020

GBPPA Grievance 20-003

Summary:

On 08-06-2020, Dets. Kempf and Scanlan were working on-duty during their normal scheduled workday. Dets. Kempf and Scanlan had SWAT training scheduled on that same date from 11:00a-7:30p. At about 8:00 am, Lt. Gering approached Det. Scanlan at his desk and asked Det. Scanlan if he obtained permission to come in at 7am that morning. Det. Scanlan answered no, as 7am is Det. Scanlan's normal scheduled workday. Lt. Gering also confirmed that Det. Kempf also started his day at 7am. Lt. Gering explained that because Det. Scanlan and Det. Kempf didn't ask permission to start their workday at 7am, they would be sent home from SWAT training at 3:30pm to avoid being paid payback for training from 3:30 pm - 7:30pm.

In the past month, Lt. Gering has confronted Kempf about earning payback after 3:30pm. Lt. Gering had told Kempf that he & Scanlan would need to obtain permission to work their normally scheduled workday prior to SWAT training, as they are expected to flex their workday to avoid payback compensation for hours worked after 3:30pm. Kempf and Scanlan, on rare occasion, mutually agreed to flex their workday for training in accordance with article 7.4.1 (e) "SWAT team officers may flex their workday to attend training..." Lt. Gering later called Det. Scanlan into the Lt's Office following a training day and confronted Scanlan about not flexing his day for training and accruing payback for training. Lt. Gering explained that he was directed to reduce payback expenses for training and Scanlan was expected to flex his workday for training to avoid payback compensation. Scanlan, as the acting GBPPA President, explained the GBPPA's perspective that the contractual language stating that an officer "may flex" constitutes a mutual agreement between management and employees and that officers cannot be forced to flex their scheduled workday for monthly SWAT training. Scanlan also pointed out that he was not in violation of the 14.25 hour rule. Lt. Gering's response was that his directive was to reduce payback expense and that Scanlan needed to separate his position as "union president" from his "SWAT" assignment. Scanlan and Kempf have been day shift detectives for several years and have consistently worked day shift prior to SWAT training during that time, as had other members of the SWAT team before Scanlan and Kempf. In fact, it has been the norm that officers working their shift (before or after a SWAT training day), or on a day off would receive payback for training during their off time in compliance with the 14 1/4 hour rule since the inception of payback. Payback compensation for training (since payback was created in the labor agreement to reduce the cost of overtime) has been approved for actual hours trained during officers' respective off times. That past practice has been consistent since 2014. See then Operations Cpt. Ebel's memo addressed to specialty unit supervisors specifically addressing the issue and clarifying an officer's option to flex their hours to attend training or work their shift and then attend training. Lt. Gering's order requiring officers to flex their day for training purposes, or receive permission to not flex their day, is in direct contradiction to our contract language, past practice and now Commander Ebel's instructions.

Additionally, on 08-06-2020 other officers junior to Kempf and Scanlan were allowed to attend SWAT training on their work day, outside of their work hours, and still earn payback including, but not limited to, Officers Carlson and Eickholt.

Timeliness:

Following August 6th, 2020, GBPPA representatives met with Cmdr. Warych and Capt. Richgels in attempt to resolve this matter. Discussions were had regarding the topic and Cmdr. Warych agreed to waive timeless while he researched the matter. On 09-22-2020, Comdr. Warych notified the GBPPA of his decision and issued a memo for supervisors to regarding officers flexing their workday for training. Comdr. Warych also agreed (via email) to provide the GBPPA additional time to evaluate his decision and grieve the matter if need be. Therefore, this grievance is timely. (See attached Memo from Comdr. Warych).

Statement of Facts:

- Kempf and Scanlan are assigned to day shift Detectives 7a-3:30p.
- Kempf (SWAT Team Leader) and Scanlan (Assistant SWAT Team Leader) are members of the SWAT team in good standing.
- SWAT Command Staff schedules SWAT training; regular scheduled time is 11a-7:30pm.
- Members/former members of SWAT have attended training during part of their workday, or during their off time, or on a workday, or on an off-day, as a normal practice for years prior to and since the inception of payback. (See 2014 memo from then Capt. Ebel)
- The compensation for attending SWAT training for members including Kempf and Scanlan is straight time payback consistent with Article 7.4 of the labor agreement.
- The concept of ordering members of the GBPPA to change their work hours to make SWAT training (or any other monthly specialty unit training) their workday is a new concept which is completely inconsistent with the parties unequivocal past practice, and is not the result of being collectively bargained.
- In fact, the City specifically requested in bargaining the successor to the 2016-2019 labor agreement that officers flex their workday for training purposes; a proposal that was denied by the GBPPA.
- Kempf and Scanlan would not have been in violation of the 14 ¼ hour rule if they had worked their regularly scheduled shift and then attended training until 7:30p.
- Several other members of SWAT junior to Kempf and Scanlan were allowed to attend SWAT training on that date – while on their off time -- and accrue payback.
- Article 7.4 specifies that a member of SWAT “may” flex their day for training.
- Article 7.4 specifies that the compensation for training on a member’s off time is payback at the straight time rate.

- SWAT training has always been voluntary. Members of SWAT have not been disciplined, nor required to use vacation, personal time, sick or other paid time off when unable to attend scheduled SWAT trainings.

Rational:

Article 7.4 of the labor agreement specifies that an officer "may" flex their day for training. That provision has always been interpreted by the parties as providing an officer with the choice of doing so. Many members of the GBPPA have voluntarily done so in order to maintain compliance with the 14 ¼ hour rule. Article 7.4 also specifies that compensation for SWAT training for any member of the GBPPA on their off time is straight time payback.

The GBPPA recognizes the City's right to schedule SWAT training. The City chose to schedule training during a portion of Kempf and Scanlan's off time. To order Kempf and Scanlan (or any member of SWAT) to flex their day solely to reduce the amount of payback is at odds with the plain language of article 7.4. It also violates articles 2.1 and 2.4, and constitutes an unfair work rule, as the City is applying their new directive in a discriminatory fashion by allowing some GBPPA members (but not others like Kempf and Scanlan) to attend SWAT training on their off times and receive payback compensation.



Green Bay Police Department
Operations Division



Captain Paul Ebel

Email: pauleb@greenbaywi.gov

920-448-3186

Date: June 2, 2014

Ref: Training and Flexing of shifts, special units

Special Unit Commanders

Each of the special unit teams that are assigned to you has a shift flexing component attached to the officer who is attending training on a regularly scheduled work day. The officer has the ability to flex their schedule in order to attend the training or they may choose to work their shift up to the start of the training then attend the scheduled training. Their attendance at training depends on a safety staffing level that maintains a two person buffer on shift. In order to assist the effected shifts with planning their staffing levels 6 days out please have the officers assigned to your teams inform you of their intent to flex their shift or work their shift at a minimum of 10 days prior to any scheduled training.

Grievance #20 - 004

Green Bay Professional Police Association Contract Violation Information Form

Date of Occurrence: 08-11-2020	Grievance step - check one 1 ☒ 2 ☐ 3 ☐
Officer's Name/Rank: (If association as a whole write GBPPA) Officer Kenney, among others.	Division/Assignment: Operations /Dive Team
This grievance alleges a violation of article 7 section 7 of the labor agreement and/or department policy pertaining to: <u>the requirement to flex their workday to attend training.</u> The grievance also alleges a violation of articles 2.1 and 2.4, as the department is applying <u>their new directive in a discriminatory fashion.</u>	

Description of Grievance - state all facts including time, place of incident, persons involved, etc.

See attached documentation

Relief Sought:

1. Allow all DIVE team members to attend scheduled training on their off time with the compensation being time for time payback in accordance with 7.7.1.
2. Make DIVE team member (including Kenney) should be made whole for the time they were not allowed to attend training.
3. Cease and desist from discriminating among GBPPA members who seek to enforce the terms of the labor agreement.

Signature of Employee: T. Kenney (PS)	Signature of Association Representative: 	Date Filed: 9-23-2020
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Employer Representative Response:

Employers representative signature	Title	Date Grievance received:	Date Answered

Matter resolved: Yes ☐ No ☐ If yes, How?

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09-22-2020

GBPPA Grievance 2020-004

Summary:

On Tuesday August 11, 2020, the DIVE team had full team training. Training was scheduled by DIVE Team command staff, and scheduled for 11a-7:30p. Officer Kenney (Kenney) was assigned to his normal scheduled workday of 6:15a-2:45p as a day shift patrol officer.

Kenney as a member of the DIVE team was scheduled to participate in training that day. As Kenney and other officers have done in the past, Kenney worked his normal scheduled patrol shift from 6:15a - 10:30a at which time he would be removed from the road so as to attend training. This routine plan for Kenney to work before dive training day is consistent with Article 7.7.1 d of the contract between the City and the GBPPA which states, "Members may flex their workday or receive payback compensation for attending diver related meetings and/or trainings on their work day."

On that date Kenney was advised by DIVE team Lts. that he was not allowed to stay past 2:45 pm, the end of his scheduled workday, so as not to create payback. That direction from Lt. Manhonie was inconsistent with the terms of Article 7.7.1(d) of the labor agreement, as well as past practice, as Officer Kenney and other members of the dive team have been routinely allowed to choose to either work their shift prior to attending training or flex their work day, in accordance with a 2014 memo from then Cpt. Ebel. (See attached)

Additionally, Officer Kendal Herwald, another DIVE team member was allowed to attend training on his regular off day and was able to earn payback compensation. Herwald is junior to Officer Kenney in terms of bargaining unit seniority.

Timeliness:

Following August 6th SWAT training and Aug 11 DIVE training, GBPPA representatives met with Cmdr. Warych and Cpt. Richgels in attempt to resolve the matter. Discussions were had regarding the topic and Cmdr. Warych agreed to waive timelessness while he researched the matter. On 09-22-2020, Cmdr. Warych notified the GBPPA of his decision and issued a memorandum for supervisors to follow in regard to officers flexing their day for specialty unit training. Cmdr. Warych also agreed via email to provide the GBPPA more time to evaluate his decision and grieve the matter if need be. Therefore, this grievance is timely. (See attached Memorandum from Cmdr. Warych).

Statement of Facts;

- Kenney is a day shift patrol officer scheduled to work 6:15 am-2:45 pm on a 5-3 work schedule.
- Kenney is a member of the DIVE team in good standing.
- DIVE team Command Staff schedules Dive training; regular scheduled time is 11a-7:30pm.

- Members/former members of the DIVE team have attended training during part of their workday, or during their off time on a workday, or on an off day, as a normal practice for years prior to and since the inception of payback. (See 2014 memo from then Capt. Ebel)
- The compensation for attending DIVE training for members including Kenney has been straight time payback consistent with Article 7.7 of the labor agreement.
- The concept of ordering members of the GBPPA to change their work hours to make DIVE training or any other monthly specialty unit training their workday is a new concept, completely inconsistent with the terms of the labor agreement as well as the parties' past practice is not the result of collective bargaining.
- In fact, the City specifically requested in bargaining the successor to the 2016-2019 labor agreement that officers flex their workday for training purposes; a proposal that was denied by the GBPPA.
- Kenney did not/would not have been in violation of the 14 ¼ hour rule if he had stayed at training until 7:30p.
- Other members of DIVE junior to Kenney were allowed to attend Dive training on this date, on their off time and earn payback.
- Article 7.7.1 specifies that a member of DIVE may flex their day or receive payback for training.
- Article 7.7.1 specifies that the compensation for attending training on a member's off time is payback at a straight time rate.
- DIVE training has always been voluntary. Members of DIVE have not been disciplined, nor required to use vacation, personal time, sick or other paid time off when unable to attend scheduled DIVE trainings.

Rational:

Article 7.7.1 of the labor agreement specifies that an officer "may" flex his/her day for training purposes. That provision has always been interpreted by the parties as providing the officer with the choice of doing so. Many members of the GBPPA have voluntarily done so in order to maintain compliance with the 14 ¼ hour rule. Article 7.7.1 also specifies that compensation for SWAT training for any member of the GBPPA on their off time is straight time payback.

The GBPPA recognizes the City's right to schedule DIVE training. The City chose to schedule training during a portion of Kenney's off time. To order Kenney (or any member of the DIVE team) to flex their day solely to reduce the amount of payback is not only at odds with the plain language of Article 7.7.1. It also violates articles 2.1 and 2.4, and constitutes an unfair work rule, as the City is applying their new directive in a discriminatory fashion by allowing some GBPPA members (but not others like Kenney) to attend DIVE training on their off times and receive payback compensation.



Green Bay Police Department Operations Division



Captain Paul Ebel

Email: pauleb@greenbaywi.gov

920-448-3186

Date: June 2, 2014

Ref: Training and Flexing of shifts, special units

Special Unit Commanders

Each of the special unit teams that are assigned to you has a shift flexing component attached to the officer who is attending training on a regularly scheduled work day. The officer has the ability to flex their schedule in order to attend the training or they may choose to work their shift up to the start of the training then attend the scheduled training. Their attendance at training depends on a safety staffing level that maintains a two person buffer on shift. In order to assist the effected shifts with planning their staffing levels 6 days out please have the officers assigned to your teams inform you of their intent to flex their shift or work their shift at a minimum of 10 days prior to any scheduled training.



Green Bay Police Department Operations Division



Commander Kevin Warych

920-448-3200 ext 0919

To: Patrol Supervisor/Specialty Unit Supervisors

Date: September 22, 2020

REF: Training and Flexing of shifts, special units

Below are the guidelines that each specialty unit supervisor shall follow. Our goal is to continue to provide training for our specialty units in a consistent and fiscally responsible manner.

- Department/Specialty Unit supervisors set the schedule to specialty unit training.
- The specialty unit training shall be scheduled on a date that minimizes the number of officers training off-duty.
- Officers will need to obtain direct supervisory approval to flex their schedule to attend training. The officer shall notify the specialty unit supervisor and the shift commander (Buchman, J. Allen, Atlas only) via email about his/her request to flex his/her schedule to attend the training.
- The officer shall notify the specialty unit supervisor and shift commanders above at least 10 days before the scheduled training.
- The notice shall be in given via email. If an officer approaches you and verbally tells you they intend to flex, then you need to remind them to send it to the supervisors stated above in writing otherwise it will not be approved.
- Generally, an officer is allowed to flex his or her schedule to attend the training. Exceptions to this is to ensure that there is minimum staffing for patrol officers and handling the Canine Unit. We will follow-up with the Canine Units on how to schedule the Canine Unit consistently with these guidelines.
- The Department has the right to dismiss officers early from training days at the conclusion of their work day to limit the accumulation of overtime and/or payback time.

Regardless of the position, if an officer does not give you notice to flex his or her schedule to attend training, then the officer will be working the normal shift and may attend the training for the amount of time that does not exceed 8.5 hours in a full day, workload permitting.

We will discuss this at our next supervisory meeting on September 30th (SGT) and Oct 1st (Lt.) Please contact me with any questions.

Cmdr. Kevin Warych

INTRADEPARTMENTAL CORRESPONDENCE

Date: October 13, 2020

To: Detective Kevin Kempf, Green Bay Police Department Detective
Detective Phil Scanlan, Green Bay Police Department Detective

From: Chief of Police

SUBJECT: RESPONSE TO GRIEVANCE NO. 2020-003

I received Green Bay Professional Police Association (PPA) Contract Violation Form, alleging a contract violation occurred on August 6 2020. Please see below for my grievance response.

TIMELINESS

The time limits for initiating grievance was waived while Commander Warych researched the matter. This grievance is determined to be within time limits.

GRIEVANCE

Per the Grievants' Information Form, Grievance No. 20-003: *"This grievance alleges a violation of article 7, section 4 of the labor agreement and/or department policy pertaining to: the requirement to flex their workday to attend training. The grievance also alleges a violation of articles 2.1 and 2.4, as the department is applying their new directive in a discriminatory fashion."*

On August 6, 2020 Detectives Kempf and Scanlan were scheduled in Telestaff to attend SWAT training from 1100 hours to 1930 hours. They did not notify their supervisors of their intent to work an extended workday on August 6th, 2020, despite being notified of their training schedule in person by Lieutenant Gering. Detective Scanlan and Detective Kempf began their workday on their regularly scheduled time of 0700 hours. They were advised by their supervisor that since they had started their shift at 0700 hours they would be dismissed from training at 1530 hours. They were dismissed from training at 1530 hours by their SWAT supervisor.

FINDINGS

The grievance is denied.

RATIONALE

The grievance is denied on the following basis: The Green Bay Police Department is committed to serving the Green Bay community as effectively and efficiently as possible. Training is scheduled by management (Contract Article 1.2) to provide the maximum effectiveness with the least possible fiscal impact. Training is not scheduled for the personal financial gain of any individuals. The fact that other, junior members, working patrol assignments on shifts different than the grievants' received payback is irrelevant.

Both Detective Kempf and Detective Scanlan were advised by their SWAT supervisor Lieutenant Gering that they were prescheduled to begin their workday at 1130 hours in order to attend SWAT practice. Both elected to come in at their regular 0700 hours start of watch times. There were no exigent circumstances or workload issues requiring their 0700 hours start of watch time and neither communicated to their supervisor in advance of any need or of their intent to begin work at 0700 hours. They were appropriately sent home by their supervisor after they completed a full work day at 1530 hours.

No PPA member is entitled to determine their work schedule in order to maximize their personal financial gain without the permission of the Department. It is clear and codified in the PPA Labor Agreement (Contract) that all SWAT training plans and schedules must be approved by SWAT supervisory personnel. Detectives Kempf and Scanlan failed to notify their supervisor of their plan to work their regular schedule and attend scheduled training, which blatantly conflicted with the notification and direction given to them by their SWAT Commander, and the contract language which requires that schedules be approved by SWAT supervisory personnel -Contract Article 7.4.1 (e).

The Department and City always reserve the right to send officers home if their workday has been completed.

CLARIFICATION OF DEPARTMENT POSITION

- The City of Green Bay is under considerable financial strain and all City department managers have been directed to initiate cost saving measures when practicable.
- Officers may flex their time in order to attend SWAT training, subject to SWAT supervisory personnel approving the schedule.
- In order to provide SWAT training in the most efficient manner, Lieutenant Gering was directed to modify the SWAT training day to accommodate the greatest number of personnel without the accumulation of earned Payback time.
- SWAT practice, and membership on the SWAT team are both voluntary assignments.
- Both Detective Scanlan and Kempf worked a complete workday, and were compensated appropriately for their work hours.
- The Department and City reserve the right to limit the earning of "payback time" using the management discretion to establish schedules when it is in the best interest of the City and Department.
- Detective Kempf and Detective Scanlan failed to notify or obtain permission from their supervisors to work an extended work schedule on August 6th, 2020. Their actions directly conflicted with direction and notification given to them by their supervisor.
- Lieutenant Gering notified the Detectives in advance that they would be dismissed at 1530 hours.
- Lieutenant Gering appropriately dismissed Detectives Kempf and Scanlan from SWAT practice at 1530 hours after their full workday was completed on August 6, 2020.

RELEVANT CONTRACT LANGUAGE

- Contract Article 1.2 Management Rights. The Union recognizes the prerogative of the City....to determine reasonable schedules of work.
- Contract Article 7.4.1(e) All training plans and schedules must be approved by SWAT supervisory personnel.
- Contract Article 7.21.1 For those teams where it is specifically referenced in Article 7, officers may flex their workday to attend training dependent upon the maintenance of a 2-person buffer above the current safety staffing numbers.
- Contract Article 29.1: Any officer accepting a position requiring specialized training/school for the position shall flex their workday and workweek to attend such training.

The Department management does not discriminate against PPA members who seek to enforce the terms of the labor agreement. Employment and scheduling decisions are made in the best interests of the community we serve and the individuals we employ. Consideration of Department and City financial concerns is appropriate in determining schedules and there is nothing discriminatory in doing so.



ANDREW J. SMITH
Chief of Police

INTRADEPARTMENTAL CORRESPONDENCE

Date: October 13, 2020

To: Police Officer Tim Kenney, Green Bay Police Department
Detective Phil Scanlan, President Green Bay Professional Police Association

From: Chief of Police

SUBJECT: RESPONSE TO GRIEVANCE NO. 20-004

I received Green Bay Professional Police Association (PPA) Contract Violation Form, alleging a contract violation occurred on August 11, 2020. Please see below for my grievance response.

TIMELINESS

The time limits for initiating grievance was waived while Commander Warych researched the matter. This grievance is determined to be within time limits.

GRIEVANCE

Per the Grievant's Information Form, Grievance No. 20-004: *"This grievance alleges a violation of article 7, section 7 of the labor agreement and/or department policy pertaining to: the requirement to flex their workday to attend training. The grievance also alleges a violation of articles 2.1 and 2.4, as the department is applying their new directive in a discriminatory fashion."*

On August 11, 2020 Officer Kenney, a member of the Dive Team was scheduled for training from 1100 hours until 1930 hours. Officer Kenney worked his normal patrol shift that day starting at 0615 hours until 1030 hours when he left the road to attend training.

Officer Kenney did not notify his supervisors of his intent to work an extended workday on August 11th, 2020. Officer Kenney began workday on their regularly scheduled time of 0615 hours. He was advised by his supervisor that since he had started his shift at 0615 hours he would be dismissed from training at 1445 hours. He was subsequently dismissed at 1445 hours by his supervisor.

FINDINGS

The grievance is denied.

RATIONALE

The grievance is denied on the following basis: The Green Bay Police Department is committed to serving the Green Bay community as effectively and efficiently as possible. Training is scheduled by management (Contract Article 1.2) to provide the maximum effectiveness with the least possible fiscal impact. Training is not scheduled for the personal financial gain of any individuals. The fact that another, junior member of the Department, Officer Kendall Herwald

working on a shift different than the grievant received payback is irrelevant. Officer Herwald who was cited in the grievance works a different shift and was on a scheduled day off on August 11th, the scheduled day of the Dive Unit training. Therefore, he is not similarly situated as the Grievant and was also appropriately compensated.

There were no exigent circumstances or workload issues requiring Officer Kenney's 0645 hours start of watch time. He was appropriately sent home by his supervisor after he completed a full work day at 1445 hours.

No PPA member is entitled to determine their work shifts in order to maximize their personal financial gain without the permission of the Department.

The Department and City always reserve the right to send officers home if their workday has been completed. The determination that the City and the Department need to take measures to reduce costs and to reduce payback is a valid management decision.

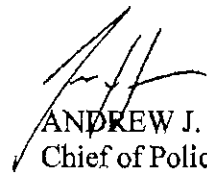
CLARIFICATION OF DEPARTMENT POSITION

- The City of Green Bay is under considerable financial strain and all City department managers have been directed to initiate cost saving measures when practicable.
- Officers may flex their time in order to attend Dive Unit training.
- In order to provide the Dive Unit training in the most efficient manner, the Dive Unit Officer In Charge (OIC) Lieutenant Mahoney was directed to modify the schedule of the monthly training day to accommodate the greatest number of personnel without the accumulation of earned Payback time.
- Dive Unit practice, and membership on the Dive Unit are both voluntary assignments.
- Officer Kenney worked a complete workday, and was compensated appropriately for his work hours.
- The Department and City reserve the right to limit the earning of "payback time" when it is in the best interest of the City and Department.
- Contract Article 7.7.1 (d.) States thatSupervisory approval shall be required prior to any member flexing their hours or performing duties on their off time." Officer Kenney did not notify or obtain permission from his supervisor to work an extended work schedule on August 11th, 2020.
- Lieutenant Mahoney notified officer Kenney in advance that he would be dismissed at 1445 hours.
- Lieutenant Mahoney appropriately dismissed Officer Kenney from Dive Unit practice at 1445 hours after his full workday was completed on August 11, 2020.

RELEVANT CONTRACT LANGUAGE

- Contract Article 1.2 Management Rights. The Union recognizes the prerogative of the City....to determine reasonable schedules of work.
- Contract Article 7.7.1 (d.) Supervisory approval shall be required prior to any member flexing their hours or performing duties on their off time

Contract Article 29.1: Any officer accepting a position requiring specialized training/school for the position shall flex their workday and workweek to attend such training. The Department management does not discriminate against PPA members who seek to enforce the terms of the labor agreement. Employment and scheduling decisions are made in the best interests of the community we serve and the individuals we employ while being fiscally responsible.



ANDREW J. SMITH
Chief of Police



The City of Green Bay is a leader in employee health and wellness with its [Health 1265](#) program and a goal to engage all employees in their own health and well-being

November 23, 2020

Detective Kevin Kempf
Detective Phil Scanlan
Officer Tim Kenney
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

Sent via email: kevin.kempf@greenbaywi.gov

Sent via email: phil.scanlan@greenbaywi.gov

Sent via email: tim.kenney@greenbaywi.gov

RE: Step 2 – Grievance Response 20-003, 20-004 (Flex Workday to Attend Training)

Dear Detectives Kempf and Scanlan and Officer Kenney,

The following is my review of the grievances (20-003, 20-004) regarding the flexing of a workday to attend training. The language pertinent to this grievance is 1.2, 2.1, 2.2., 7.4.1.e, 7.7.1, and 7.21.

Article 1 – Recognition/Management Rights

1.2 MANAGEMENT RIGHTS. The Union recognizes the prerogative of the City, subject to its duties to collectively bargain, to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not abridged, delegated or modified by this Agreement, are retained by the City, including the power of establishing policy to hire all employees, to determine qualifications and conditions of continued employment, to dismiss, demote, and discipline for just cause, to determine reasonable schedules of work, to establish the methods and processes by which such work is performed. The City further has the right to establish reasonable work rules, to delete positions from the Table of Organization due to lack of work, lack of funds, or any other legitimate reasons, to determine the kinds and amounts of services to be performed as pertains to City government and the number and kinds of classifications to perform such services, to change existing methods or facilities, and to determine the methods, means and personnel by which City operations are to be conducted. The City agrees that it may not exercise the above rights, prerogatives, powers or authority in any manner which alters, changes or modifies any aspect of the wages, hours or conditions of employment of the Bargaining Unit, or the terms of this agreement, as administered, without first collectively bargaining the same or the effects thereof.

Article 2 – Purpose of Agreement

2.1 GENERAL. It is the intent and purpose of the parties hereto that this agreement shall promote and improve working conditions between the City and the Green Bay Police Department (GBPD) Bargaining Unit and to set forth herein rates of pay, hours of work, and other terms and conditions of employment to be observed by the parties hereto. In keeping with the spirit and purpose of this agreement, the City agrees that there shall be no discrimination by the City against any employee covered by this agreement because of membership or activities in the Bargaining Unit, nor shall the City interfere with the right of such employees to become members of the Bargaining Unit. The City retains all rights, powers, or authority that it had prior to this Agreement.

2.2. DISCRIMINATION. Neither the Employer nor the Union shall discriminate in any manner whatsoever against any employee as defined in Section 111.32 et seq. of Wisconsin Statutes.

7.4 SWAT TEAM

7.4.1.e The SWAT Team may train up to 12¾-hours per calendar month. Hours may not be carried over outside the calendar month except the SWAT Commander may grant exceptions on a case-by-case basis to facilitate special training needs. The compensation for this training shall be actual hours at time for time via payback for those on their off time. All training plans and schedules must be approved by SWAT supervisory personnel. SWAT Team officers may flex their workday to attend training in accordance with 7.21.

7.7 DIVE TEAM

7.7.1.d. Members may flex their work day or receive payback compensation for attending or conducting dive related meetings and/or training on their work day. Members attending or conducting dive related meetings, equipment maintenance and/or training on their off time shall be compensated at time for time payback. Supervisor approval shall be required prior to any member flexing their hours or performing duties on their off time.

7.21 MAINTENANCE OF 2-PERSON BUFFER

7.21.1 For those teams where it is specifically referenced in Article 7, officers may flex their workday to attend training dependent upon the maintenance of a 2-person buffer above the current safety staffing numbers. Compensation for training will be actual hours at time for time via payback for those on their off time.

- i. Officers may be cancelled from training outside of 24-hours prior to the start of their regular shift in order to maintain the 2-person buffer.
- ii. If the training occurs during all or part of the officers' regular working hours, the officer may be pulled from training at any time to resume regular duties.
- iii. If the training does not occur during any part of the officer's regular working hours, the officer may not be pulled from the training within 24-hours prior to the start of

their regular affected shift.

- iv. The Shift Commander has the discretion to allow attendance below the 2 person buffer on a case-by-case basis, dependent upon the work environment present at the time the training is to begin.

These are the material facts for the grievances filed:

- Detectives Kempf and Scanlan are members of the SWAT Team.
- On August 6, 2020 Detectives Kempf and Scanlan were scheduled to attend SWAT training from 11:00am to 7:30pm.
- Detectives Kempf and Scanlan have a workday schedule from 7:00am to 3:30pm.
- Neither Detective Kempf nor Detective Scanlan notified their supervisor, Lt. Keith Gering, that they intended to start work at 7:00am and attend SWAT training from 11:00am to 7:30pm.
- Lt. Gering told both Detective Kempf and Detective Scanlan that they were unable to attend the full training and would be dismissed at 3:30pm as working from 7:00am to 3:30pm resulted in a full shift of work.
- Officer Kenney is a member of the Dive Team.
- On August 11, 2020 Officer Kenney, a member of the Dive Team was scheduled to attend Dive Team training from 11:00am to 7:30pm.
- On August 11, 2020 Officer Kenney was scheduled to work his regular shift beginning at 6:15am.
- Officer Kenney was told by his supervisor that since he began working at 6:15am he would be dismissed from training at 2:45pm.
- Officers who had an off day on both August 6, 2020 (SWAT Team Training) and August 11, 2020 (DIVE Team Training) were allowed to attend the full Specialty team training and receive payback.
- In 2014, then Operations Captain Paul Ebel sent out a memo addressing the ability of officers to flex his/her schedule to attend specialty unit training.

After reviewing the grievance, the grievance is denied for the following reasons.

I. INTERPRETATION OF THE CONTRACT DOES NOT PERMIT AN OFFICER TO FLEX A WORK SCHEDULE TO ATTEND TRAINING WITHOUT SUPERVISORY APPROVAL.

First, the interpretation of the pertinent contract language does not permit the officers to flex their workday to attend training without the proper notification or supervisory approval from a supervisor. In regards to the language pertaining to flexing of hours for SWAT Team training, this language is found in Article 7.4. Article 7.4 states "*All training plans and schedules must be approved by SWAT supervisory personnel. SWAT Team officers may flex their workday to attend training in accordance with 7.21.*" (emphasis added). The SWAT supervisory approves all training plans and schedules for the SWAT Team. Neither Detective Scanlan nor Detective Kempf notified the supervisor of their intent to start work at 7:00am and attend the full duration of the training. This allowed Lt. Gering to determine if the officers were allowed to attend the training past their regularly scheduled workday. In addition, neither Detective Scanlan nor Detective Kempf provided anything in the grievance that the flexing of hours was done in accordance with 7.21.

For Officer Kenney and attending Dive Team training, the contract states in 7.7.1.d.: *Supervisor approval shall be required* prior to any member flexing their hours or performing duties on their off time. (emphasis added) The facts indicate that Officer Kenney did not receive supervisor approval to flex his work schedule to attend Dive Team training.

Based on the contract language and the failure to obtain supervisor approval to flex the workday and attend Specialty team training, the grievances are denied.

II. PAST PRACTICE

Unambiguous contract language cannot be modified by past practice. *See Madison Teachers Inc. v. Madison Metro. Sch. Distr.*, 2004 WI App 54 ¶ 15. As stated above, the contract language is unambiguous that the officer on the SWAT Team may flex his or her schedule in accordance with Article 7.4 and 7.21 and for the Dive Team may flex his or her schedule in accordance with Article 7.7.1.d.

In the alternative, if the contract language is determined to be ambiguous, then the past practice must be 1) unequivocal; 2) clearly enunciated and acted upon, and; 3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by the parties. *City of Cumberland*, Case 18 No. 55310 MA-9976 (Meier, 4/23/98).

Detectives Kempf, Scanlan, and Officer Kenney stated that the past practice has been unequivocal and are relying on a Memo from 2014 to show that the past practice has been to allow officers to flex their schedule to attend specialty team training. As stated above, the City is not bound by the memo from 2014 as the contractual language controls how officers can flex or not flex their schedule to attend specialty team training.

Even if the 2014 memo from then Operations Captain Ebel is relevant in determining that a past practice has been established, the 2014 memo does not clearly establish a past practice. The 2014 memo requires officers to notify their supervisors at least 10 days prior to a specialty training to indicate whether an officer is asking to flex his/her schedule to attend specialty training. The grievants did not follow the guidelines posted in the memo and the alleged past practice that they rely on. It cannot be an unequivocal past practice if officers in the past have given a 10 day notice before a schedule is flexed and now the officers do not give any notice. That would not be a consistently applied practice.

Moreover, the reliance on the memo shows that the alleged past practice was not clearly enunciated and acted upon or that it has been an established practice accepted by the parties. The memo stated that notice should be given at least 10 days prior to when an officer asked to flex his or her schedule. If that is the past practice that is enunciated between the parties, it was not followed or acted upon here.

Therefore, if the language is determined to be ambiguous, there still is not an established past practice that allows the grievants the ability to attend specialty training and flex their workday without giving the proper notice to a supervisor.

III. WHETHER THE SUPERVISOR'S DECISION IS A REASONABLE WORKPLACE RULE OR DISCRIMINATORY.

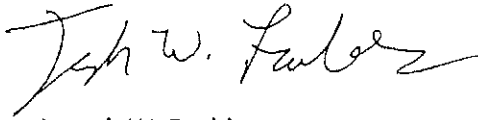
The supervisors asking the grievants to leave specialty training early because the proper notice was not given to flex one's work schedule and foregoing payback was reasonable and not discriminatory. This is a reasonable work rule based on the rationale listed above, the management rights listed in Article 1.2 and the contract language in Article 7. If supervisors and management are unable to ask for notice and determine whether an officer can flex one's schedule, this will cause disruption in scheduling including the concern of scheduling enough officers to meet the safety staffing levels.

If the interpretation of the grievants is upheld, this will undermine a supervisor's authority to set the schedule and will create an unworkable environment. Based on the grievants' interpretation of the contract, the grievants do not have to give any notice to the supervisor of an officer's intent to flex one's schedule to attend specialty training. This interpretation of the contract usurps the authority of a supervisor to create and set schedules and from a practical manner makes managing schedules and specialty training very difficult to do.

In addition, there is no discrimination because officers who were on their off day could attend specialty team training and receive payback. Supervisors set the schedule to minimize the number of officers who could attend training on one's off day. For the grievants who wanted to attend specialty team training on their work day, they failed to give notice and work with the supervisor to attend the specialty team training on their workday. I'm not aware of any other officers who were similarly situated who could attend the full specialty team training and earned payback. Thus, the action was not discriminatory.

For the foregoing reasons, the grievance is denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Joseph W. Faulds".

Joseph W. Faulds
Human Resources Director

Cc: Police Chief Andrew Smith (via email only)
Attorney Jon Cermele (via email only)
GBPPA Representative Phil Scanlan (via email only)



Green Bay Police Department
Operations Division



Captain Paul Ebel

Email: pauleb@greenbaywi.gov

920-448-3186

Date: June 2, 2014

Ref: Training and Flexing of shifts, special units

Special Unit Commanders

Each of the special unit teams that are assigned to you has a shift flexing component attached to the officer who is attending training on a regularly scheduled work day. The officer has the ability to flex their schedule in order to attend the training or they may choose to work their shift up to the start of the training then attend the scheduled training. Their attendance at training depends on a safety staffing level that maintains a two person buffer on shift. In order to assist the effected shifts with planning their staffing levels 6 days out please have the officers assigned to your teams inform you of their intent to flex their shift or work their shift at a minimum of 10 days prior to any scheduled training.



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 26, 2021

PREPARED BY

AGENDA ITEM # E.4

Consideration with possible action on grievance #20-005 filed by the Green Bay Professional Police Association regarding the removal of an officer from the K-9 Unit.

The Committee may convene in closed session pursuant to Section 19.85(1)(a), Wis. Stats., for purposes of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governing body. The Committee will thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to take action on items discussed in closed session, if appropriate, and to consider the remainder of the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. GBPPA Grievance 20-005
2. Lynch 20-005 Step II

Green Bay Professional Police Association Contract Violation Information Form

Date of Occurrence: 08-28-2020	Grievance step – check one 1 ☒ 2 ☐ 3 ☐
Officer's Name/Rank: (If association as a whole write GBPPA) Officer Matt Lynch	Division/Assignment: Operations / Canine Unit

This grievance alleges a violation of article 7, 2 & 3 section 7.3 and 2.1, 2.2 and 3.5 of the labor agreement and/or department policy pertaining to: See Attached

Description of Grievance – state all facts including time, place of incident, persons involved, etc.

See attached documentation

Relief Sought:

1. Reinstate Officer Matt Lynch to the Canine Unit

2 Cease and desist discriminating against GBPPA bargaining unit members, in this instance Officer Lynch, for exercising their rights in a grievance process.

Signature of Employee: M. LYNCH (A)	Signature of Association Representative: 	Date Filed: 8-28-2020
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Employer Representative Response:

Employers representative signature	Title	Date Grievance received:	Date Answered
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Matter resolved: Yes ☐ No ☐ If yes, How?

09-28-2020

GBPPA Grievance 20-005

Summary:

On August 27, 2020, Chief Smith ("Chief") ordered that K-9 Officer Matt Lynch ("Lynch") be removed from the K-9 Program. The Chief ordered the removal via an "Interdepartmental Correspondence" addressed to Lynch and the GBPPA president. That correspondence cited as "cause" the fact that the Department had established the size of the K-9 Unit "...at five K-9/handler teams." The Chief noted that Lynch was not currently assigned a K-9 partner and the Department had no plans to assign him a K-9 partner due to the size of the K-9 Unit. The Chief ordered Lynch's deactivation from the unit effective Friday, August 28, 2020 and indicated that Lynch would be eligible to test for a K-9 position should one become open in the future.

Facts:

- Lynch had been a canine handler since 2009.
- Lynch's canine partner "George" was retired at the end of April 2019.
- According to the labor agreement, Lynch is grandfathered in as a canine handler and would be qualified to receive the next available canine unless removed for "cause" or if he voluntarily left the canine unit.
- In May of 2019, Lynch was told he was not allowed to attend monthly canine trainings.
- When Lynch sought clarification for not being allowed to attend training, Operation Cmdr. Warych sent Lynch an email explaining that Lynch was not being removed from his position in the K-9 unit, thus article 3.5 of the labor agreement did not apply. Cmdr. Warych reiterated to Lynch that he was still a GBPD K-9 Handler in good standing.
- GBPPA reps Scanlan and Biller spoke with K-9 Unit Lt. Jody Buth who affirmed the Chief's statement that the department was not going to replace canine George as the GBPD was going to reduce the canine unit from seven to five canines. Scanlan and Biller asserted that Lynch would be eligible for the next canine should one of the remaining five be lost or the department chose to add an additional canine. Lt. Buth told both Scanlan and Biller that the Chief would not give Lynch another canine as he was so close to retirement and it would be too much of an investment in someone that close to retirement.
- On 05-29-20 the GBPPA filed a grievance (2019-003) on behalf of Lynch not being allowed to attend canine training, which was denied by the Chief.
- On 06-10-19 the GBPPA forwarded that same grievance to Step 2, where it was denied by HR director Faulds.
- On 08-07-19 the GBPPA forwarded that same grievance to Step 3 (Personnel Committee). The matter was heard on 10-08-19, at which time members of the committee questioned GBPPA President Scanlan, Lynch and the Chief. During the hearing, the Chief testified in three significant respects: 1) Given Lynch's seniority as a K-9 handler, Lynch would be "next up" for any new canine in the event the Department chose to get another dog; 2) that Lynch would receive all the training necessary in the event another dog were to be added to the K-9 Unit, and; 3) the loss or death of a dog, coupled with a decision to not replace that dog, would not rise to the level of "cause" to remove a handler, such as Lynch, from the K-9 Unit.
- The Personnel Committee ultimately denied the grievance in regard to Lynch continuing to train with the canine unit without a canine partner.

- The GBBPA filed for arbitration. Arbitration was scheduled for 08-27-20.
- On 08-26-20, the WERC arbitration hearing for Lynch's grievance was rescheduled.
- On 08-27-20, the day Lynch's grievance had been originally scheduled to proceed to hearing, the Chief issued the aforementioned interdepartmental correspondence removing Lynch from the K-9 Unit as a result of the Department's decision to remain at 5 dogs.
- Lynch had not been disciplined or counselled, nor did he do anything (or fail to do anything) that would have created "cause" to be removed from the canine unit.

Rational:

The Chief's assertion that a change in the size of the K-9 Unit constitutes "cause for removal" violates Article 7.3.1(d) of the labor agreement, as well as the binding past practice that all K-9 handlers appointed prior to July 1, 2016 remain in the K-9 Unit until they voluntarily leave the Unit or are removed for cause. In fact, the City specifically recognized that unequivocal past practice by bargaining a change to article 7.3 and specifically creating a two dog/10 year term limit for K-9 handlers appointed after July 1, 2016.

Cause for removal from a specialty unit is defined in Article 3.5 of the labor agreement, which specifically cites examples of cause as "poor performance, reluctance to perform assigned duties, failure to successfully complete training, continued failure to be available for call-ins, poor documentation and the like." Those examples confirm that "cause" must be related to a K-9 Handler's performance. However, the Chief has not identified any performance issues with respect to Lynch.

Moreover, the "cause" cited by the Chief in removing Lynch from the K-9 Unit directly contradicts the assertions he made to the Personnel Committee in Lynch's training grievance. As there was no "cause" to remove Lynch from the K-9 Unit, Lynch's removal is most reasonably considered retaliatory for having pursued his initial grievance with respect to training. That would violate Articles 2.1 and 2.4 of the labor agreement, as it would constitute discrimination against Lynch for having exercised his right to dispute the order preventing him from attending training in the first place. Chief Smith's decision to remove Lynch from the Canine Unit because of the lack of available K-9's appears to be an attempt to side-step Lynch being provided with the next available K-9.

INTRADEPARTMENTAL CORRESPONDENCE

Date: August 27, 2020
To: Police Officer Matthew Lynch, Green Bay Police Department
Detective Phil Scanlan, Green Bay Professional Police Association
From: Chief of Police

SUBJECT: REMOVAL FROM K-9 PROGRAM

This correspondence is to inform you that you are being removed from our Green Bay Police Department K-9 program. The cause for removal from the K-9 cadre is that we have established the size of our K-9 unit at five K-9/handler teams. You are not currently assigned a K-9 partner and with the Department's determination regarding the size of the program, there continues to be no plans to assign you a K-9 partner.

Your deactivation and removal from the Green Bay Police K9 Unit will be effective on Friday, August 28, 2020. If the Green Bay Police Department has an opening for an additional K-9 officer position in the future you are eligible to test for the K-9 position in accordance with the K-9 team selection process.

Should you have any questions please contact me directly.


ANDREW J. SMITH
Chief of Police

Green Bay Professional Police Association Contract Violation Information Form

Date of Occurrence: 08-28-2020	Grievance step – check one 1 ☐ 2 ☒ 3 ☐
Officer's Name/Rank: (If association as a whole write GBPPA) Officer Matt Lynch	Division/Assignment: Operations/ Canine Unit
This grievance alleges a violation of article <u>7, 2 & 3</u> section <u>7.3</u> and <u>2.1, 2.2</u> and <u>3.5</u> of the labor agreement and/or department policy pertaining to: <u>see attached step I</u>	

Description of Grievance – state all facts including time, place of incident, persons involved, etc.

See attached documentation

Relief Sought:

Same as step I.

Signature of Employee:	Signature of Association Representative: 	Date Filed: 11-06-2020
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Employer Representative Response:

Employers representative signature	Title	Date Grievance received:	Date Answered
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Matter resolved: Yes ☐ No ☐ If yes, How?



Report to the
Personnel Committee
of the City of Green Bay

MEETING DATE

January 26, 2021

PREPARED BY

AGENDA ITEM # E.5

A request by Ald. Brian Johnson to the Personnel Committee for an update on the alderperson orientation program that was submitted approximately two years ago.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None

**REPORT OF ROUTINE PERSONNEL ACTIONS
FOR REGULAR EMPLOYEES**
January 26, 2020

<u>Position</u>	<u>Department/Division</u>	<u>Name</u>	<u>Date</u>
<u>New Hire</u>			
Patrol Officer	Police	Baldemar Ramirez	1/11/2021
Patrol Officer	Police	Ronald Nickel	1/11/2021
Patrol Officer	Police	Lyndsey Seewald	1/11/2021
Truck Driver - Street	Public Works	Nicholas Petersen	1/11/2021
Operator I - Night Sweeper	Public Works	Paul Mleziva	1/19/2021
<u>Promotion</u>			
Administrative Clerk	Clerks	Jaime Fuge	1/4/2021
Deputy Clerk			
<u>Grade/Step Change</u>			
Administrative Clerk	Community & Economic Development	Santina Johnson	1/2/2021
Assistant Park Director	Park, Recreation and Forestry	James Andersen	1/1/2021
<u>End of Employment</u>			
Records Clerk	Police	Becky DeWolfe	12/31/2020
Transit Operator	Transit	Stacy Rose	1/15/2021
Transit Operator	Transit	Kathy Pickett	1/15/2021