



By Peter Jackel

It's a story that could conceivably happen anywhere in the country: A city government determines that its employees who officiate city league games on the side are due overtime pay. So a ruling is handed down that city employees can no longer officiate for the city. In Racine, Wis., that left more than a dozen officials, most of them softball umpires, out of luck.

Speaking on his cell phone during a family vacation at Wisconsin's scenic Door County, Kevin Johnson couldn't help but note the irony: While on a vacation financed by the supplemental income he earned as a part-time softball umpire for the Racine Parks, Recreation and Cultural Services Department, he was being asked by a reporter how much it hurt to lose that job.

"It helped supplement my income to do what I'm doing right now — going on vacation," the 53-year-old Johnson said. "It was fun money."

For other Racine officials who lost their jobs this year because of a surprising and somewhat controversial policy decision, the loss of their part-time jobs had a far greater impact.

"You made decent money at it," said Craig Trott, 42, another Racine official affected by the ruling. "I try not to let it get me angry, but for some people who are in a different situation, who might have younger kids or kids who are in college, it could be a pretty financially-strapped situation when you are depending on that part-time job. I know a couple of guys who were in a situation where they had to find other work."

Those officials were unexpectedly put into that position in November 2002. The late Carl Tidwell, then director of the Racine Human Resources Department, made the decision that any full-time city employees who supplemented their income by working as Parks and Recreation Department sports officials (or in any other department role) must be paid overtime. And because of Racine's budget constraints, paying overtime was not an option, meaning a contingent of about 15 officials, many of whom performed their officiating duties for years, were suddenly denied their part-time jobs.

The city, which is also the home base of *Referee* magazine, reimbursed the affected officials with three years of back pay to cover unpaid


overtime — Johnson said he received a check for about \$1,600 in May — and then what had been a harmonious relationship was severed. Only those who did not have full-time positions with the city would be allowed to continue their officiating work.

"It did impact the city in terms of not only good officials but reliability, too," said Donnie Snow, director of the Racine Parks, Recreation and Cultural Services Department. "Some of the city full-time officials who were working as officials, referees, umpires, etc., were some of our most reliable and experienced referees and officials."

The change in policy stems from an issue during the late summer of 2002 involving a city employee, who was not a sports official, but who was working in two city departments. When that employee requested overtime, city of Racine officials were unaware that he was putting in hours in a second department and decided to take a hard look at their compensation procedures. Following a review, it was determined that the city unknowingly had been failing to comply with standard Department of Labor policies regarding overtime. That's when the park and rec officials — the ones who worked for the city in their day jobs — were caught in the bureaucracy.

Added Dave Brown, acting finance director for the city of Racine, "What was happening (with the officials) was they would have a 40-hour-a-week job with the city and then when they were officiating, they were being paid at some different rate. As far as the federal law is concerned, you can't do that. ... The law mandates that they get overtime for that."

Jim Kozina, the longtime director of Racine's Human Relations Department who resumed his duties on an interim basis following the unexpected death of Tidwell May 11, understands the reasoning behind the action. At the same time, he finds it unfortunate that reliable and talented officials have been deprived of their positions.



"I think it's pretty crummy," Kozina said. "They ought to be able to work for us as officials. We're not trying to exploit them by having them work over 40 hours at less pay; they want to do this to supplement their income. It's a line of work that is totally different than what they would do as a full-time employee. ... To have to be paid overtime, that, to me, is ludicrous.

But it also appears to be an unfortunate fact of life, said Don Collins, a San Francisco attorney and sports official who has written extensively on independent contractor issues involving officials.

"For coaches, (this type of situation) is far more common because coaches have such a direct link to schools that the schools can't possibly say the coach is an independent contractor," Collins said. "And the school probably doesn't want to get embroiled in paying its \$50,000- or \$60,000-a-year department head or veteran teacher time and a half for the drastic number of hours that a coach might coach. School districts are probably more used to handling this with coaches than city recreational departments."

With that in mind, the pertinent question appears to be this: If a school district can contractually agree with its faculty members on a set wage to coach sports or oversee other extra-curricular activities, why couldn't the same be done with full-time city employees who serve as part-time referees and umpires?

"It's just part of what's in their agreement," said Snow, referring to Racine's Unified School District. "We don't have that in Local 67 or Local

2239's contract and the part-timers don't have a local union representing them. So, then they come under the standards of the Department of Labor, and the Department of Labor makes that requirement that we have to pay them."

Does Snow envision such a motion ever being introduced so the officials who recently lost their jobs could eventually regain their part-time jobs?

"It would have to be negotiated in and then you would have to ask yourself, 'Why would a union want to negotiate themselves *out* of overtime?'" Snow said.

Snow added that he's aware of other recreation centers in Wisconsin that are not paying overtime to their officials. "I'm not going to tell you who they are, but when I notified the Department of Labor, they told me, 'I would advise you to tell them they're not in compliance.'"

Alan Goldberger, a New Jersey lawyer and official, who authored the book *Sports Officiating: A Legal Guide*, feels it's simply a matter of a group of talented officials getting caught up in unfortunate circumstances.

"I don't know if they would be on firm ground if they were to push the matter in court because there's no law I know of that would necessarily say they have any entitlement to officiate under those circumstances, despite the fact that they were employed in areas of the public sector that don't necessarily relate to officiating," Goldberger said. "I just don't know that that is a criteria for them, legally speaking, to ask a court to order a city to let them work."

Meanwhile, a city's recreation schedule — and the lives of those officials — carry on. No games have stopped, and other umpires have filled the vacuum, but there seems to be no recourse for 15 park and rec officials. Maybe they can officiate elsewhere, but for most the avocation they enjoyed, that gave them a few extra dollars to spend, is over — because of overtime they never even asked for.

Peter Jackel is a longtime sportswriter from Racine, Wis. □

BOB MESSINA