

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 GENERAL TEAMSTERS LOCAL UNION NO. 579 :
 : Case 28
 and : No. 42522
 : MA-5713
 CITY OF MILTON (POLICE DEPARTMENT) :
 :

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, S.C.,
 Attorneys at Law, by Mr. William S. Kowalski, on behalf of General
 Teamsters Local Union No. 579.
 Roethe, Buhrow, Roethe, Pope and Fish, Attorneys at Law, by
Mr. Jeffrey T. Roethe, City Attorney, on behalf of the City of
 Milton.

ARBITRATION AWARD

General Teamsters Local Union No. 579, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the City of Milton, hereinafter the City, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The City subsequently concurred in the request and the undersigned was appointed to arbitrate in the dispute. A hearing was held before the undersigned on October 10, 1989 in Milton, Wisconsin. There was no stenographic transcript made of the hearing, and the parties submitted post-hearing briefs in the matter by October 25, 1989. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties could not agree on a statement of the issue. The Union would state the issue as follows:

Did the Employer (City) violate the Collective Bargaining Agreement when it denied employees pay for two (2) hours when they attended a meeting on June 16, 1989?

The City would state the issue as being:

Did the City of Milton violate the collective bargaining agreement when it denied employees two hours pay when three employees attended a Union meeting on June 16, 1989? If so, what is the remedy?

The undersigned concludes that the issue to be decided may be stated as follows:

Did the City violate the parties' Collective Bargaining Agreement when it denied two (2) hours of pay to three on-duty employees who attended a meeting called by the Union on June 16, 1989? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited, in relevant part:

ARTICLE 2 - MANAGEMENT'S RIGHTS.

The Union recognizes the City as the Employer and as having the right to hire employees; to demote, suspend or discharge employees for just cause; to establish and enforce reasonable work rules; to supervise and direct the work force; to schedule overtime hours of work; to contract or subcontract work; to establish job descriptions and reasonable levels of performance of employees, to create or abolish jobs; and to otherwise manage the affairs of the City as required by Wisconsin law, all of which shall be done in compliance with the terms of this Agreement and City rights under this provision shall not be used to discriminate against the Union or its members.

ARTICLE 6 - STEWARDS.

The City recognizes the right of the Union to designate job stewards and alternates from the City's seniority list.

The Steward shall be permitted reasonable time to investigate and present grievances on or off City property without loss of time or pay, during the regular scheduled work day, providing it does not interfere with the police operations.

. . .

ARTICLE 8 - TIME OFF FOR UNION ACTIVITIES.

Section 1. Absence. The City agrees to grant the necessary and reasonable time off, without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business, provided 48 hours written notice is given to the City by the Union specifying length of time off. The Union agrees that, in making its request for time off for Union activities, due consideration shall be given to the number of employees affected in order that there shall be no disruption of the City's operations due to lack of available employees.

The City also cites Article 29 - Wages and Pay, as indicating the employees are paid on an hourly basis for hours worked.

BACKGROUND

The Union represents the five full-time police officers in the City's Police Department and one clerical employe in a split position of Municipal Court Clerk/Police Department Clerk. The Union's Secretary-Treasurer, Brendan Kaiser, represents the bargaining unit in negotiations and contract administration. Kaiser sent a notice to all of the employes in the bargaining unit that there was going to be a "union meeting" on Friday, June 16, 1989 at the Milton City Hall. Kaiser did not contact the City's Mayor or City Clerk to notify them he was calling the meeting of the employes or ask their permission to call such a meeting. On June 16, 1989, Kaiser met the local steward at approximately 1:00 p.m., and the rest of the employes who attended arrived between 1:00 and 1:15 p.m. Kaiser began the meeting at approximately 1:15 p.m. in the City Hall in the same room the arbitration hearing was held. In addition to Kaiser, there were four of the full-time officers and the clerical employe present, two of the officers and the clerical employe were on duty at the time. The two officers had radios with them so that they could receive calls. The purpose of the meeting was to discuss problems the employes felt they were having with the way health insurance claims were being processed. At approximately 1:20 p.m., Kaiser called the City Clerk, Doris Viney, who's office is in the adjoining room, to come into the meeting so that they could advise her of their demand that the claims process be "straightened out." There is a dispute as to how long the meeting lasted. Kaiser testified that the meeting lasted approximately an hour and ten minutes. Viney and one of the grievants testified that the meeting lasted at least two hours.

The three employes who were on duty at the time of the meeting did not note on their time cards that they attended the meeting during their shift. The City docked their pay two hours for that day. The instant grievance was filed in response to their pay being docked. The parties attempted to resolve their dispute, but were unable to do so and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

Union:

The Union contends that the evidence demonstrates that the City has maintained a practice of paying employes for time spent at meetings such as this, even when called by the Union. The Union notes that the on-duty employes who attended the meeting had radios with them and asserts that, if needed, they would have been able to respond to any type of call. It is also asserted that the meeting was not called so much to discuss "union business" as it was to discuss a problem with the manner in which the City was handling insurance claims.

The Union also contends that the contract provisions cited by the City, Articles 6 and 8, by their own terms are not relevant and do not support the City's position.

The Union requests that the grievance be sustained and the grievants be made whole.

City:

The City first asserts that the express language of Article 6 provides that only the Union steward can be compensated for attending union activities during his/her work hours. While they were attending the meeting, the on-duty employes were not involved in "normal police operations." Employes are paid on an hourly basis for actual hours worked under Article 29. There is no language in the Agreement authorizing payment to employes under such circumstances; in fact, the language must be construed to mean that the City is not required to pay employes to attend such a meeting.

Next, the City contends that the evidence does not establish a past practice of paying employes for attending such meetings. To be a binding practice, it must be shown that the City acknowledged the practice and acquiesced in the practice. It is asserted that the City never knew that employes had claimed payment while attending union meetings before this instance. While the City has always allowed the Union to call meetings and on-duty employes to attend such meetings, it was unaware that the Union was attempting to have the City pay the employes for attending those meetings. The City asserts that the Union concedes that the employes never listed attendance at union meetings on their time sheets. Therefore, the practice was not unequivocal and was not clearly enunciated and acted upon. Management must know of the practice and agree to or acquiesce in the practice in order for it to be binding.

The City notes that there is no dispute that the parties have never negotiated the issue of paying employes to attend union meetings. It also notes that when the City has called a meeting of employes to explain benefits, such as the meeting noted in Union Ex. 7, it has paid employes for attending.

Lastly, the City asserts that it would be "totally absurd and contrary to the contract language and general practice" to allow the Union to call meetings during regular work hours without the City's knowledge or consent and require the City to pay employes to attend those meetings. Such a result would be contrary to Article 2 - Management Rights, Article 6 - Stewards, and Article 8, Section 1.

The City requests that the grievance be dismissed.

DISCUSSION

This case involves three on-duty employes attending a meeting called by the Union. In this case, the meeting was called to discuss the manner in which the health insurance claims were being handled. While the Union feels that it was forced to hold the meeting due to the City's alleged failure to correct the problem, that does not change the fact that it was a meeting called by the Union during several employes' work hours, without the City's knowledge or consent, for the purpose of discussing union concerns. It is noted that there is no provision in the parties' Agreement that requires the City to pay its employes for attendance at a meeting called by the Union for the purpose of discussing the employes' complaints against the City. Given the absence of such a provision in the Agreement, for such a right to exist it must be based upon a binding practice.

In support of its position that such a practice does exist, the Union cites a number of prior instances where the employes attended meetings called by the Union and did not have their pay docked. The Union asserts that those instances establish a binding past practice of permitting on-duty employes to attend Union meetings without loss of pay. For a practice to be binding, however, the parties must be aware of, and agree upon, the past practice. Such agreement may be express or tacit, but there must be mutual acceptance of the practice. Of the instances cited, one was a meeting called by the City to explain the new health insurance plan to the employes and is distinguishable on that basis. Two of the meetings cited were for ratification votes in 1984 and 1987, and it seems likely the City was aware of the meetings. Those meetings appear to have been brief, and the City apparently did not object to having on-duty employes attend and vote at those meetings. It is noted that a ratification vote is a necessary attribute of negotiations and that, given the operation of the Department, there will always be some employes on duty, regardless of when a meeting is held. In another instance cited by the Union, the Union notified the City by letter that it was agreeable to meet on December 11, 1986 and would be caucusing with the two employe groups (DPW and Police) at 8:00 a.m. and 11:00 a.m., respectively. In the other two instances cited, there is no evidence that management was aware of the meetings or aware that on-duty employes attended the meetings, and the Union's Steward, Twist, testified that the employes in the Police Department have never indicated on their time sheets that they attended union meetings during their scheduled work hours.

At most, the evidence indicates that in several instances where the City was aware, or was likely aware, of meetings called by the Union, it did not object and did not dock the pay of on-duty employes who attended those meetings. Further, those meetings immediately preceded or followed the parties' meeting for negotiations. The evidence presented is not sufficient to establish a binding practice of permitting on-duty employes to attend union meetings, which the City is unaware of beforehand, without loss of pay. The meeting in question was not called by the City, the City did not have prior knowledge of the meeting and there was no consent by the City, either express or inferred, that the on-duty employes could attend the meeting without loss of pay. If anything, the meeting in this case was similar to the two meetings cited by the Union that the City was not aware took place. Such circumstances cannot be indicative of, or a basis for finding, a practice that is mutually accepted by both parties.

Also, the benefit claimed by the Union in this case would be inconsistent with the concerns expressed by the parties in Article 6 and Article 8, Section 1 of their Agreement. While those provisions are not fully on point in this case, they do indicate that the parties have recognized certain concerns where an employe attends to union business during his/her work hours, i.e., the need to avoid disrupting police operations in the Department and to give the City prior notice. There was no prior notice of the meeting in question and the testimony of Viney and one of the grievants was that it was approximately two hours in duration. The on-duty employes at the meeting did not engage in police business while at the meeting, and while the two officers might have been considered available on an "on-call" basis, the Police Clerk was not performing any of the duties for which she is paid and the officers were not being paid to be "on call."

Given the lack of any mention in the Agreement of the right the Union claims, coupled with such a right being inconsistent with the concerns expressed in Article 6 and Article 8, Section 1, and the lack of a binding practice of permitting on-duty employes to attend union meetings without loss of pay under similar circumstances, it is concluded that the City did not violate the parties' Agreement by not paying the three on-duty employes for the time they spent in the meeting.

Based upon the foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 5th day of December, 1989.

By _____
David E. Shaw, Arbitrator