BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF KAUKAUNA (UTILITY COMMISSION)

and

LOCAL 2150, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS

Case 50
No. 42310
MA-5652

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Marianne Goldstein Robbins, for the Union.

Bruce K. Patterson, Employment Relations Consultant, for the Employer.

ARBITRATION AWARD

Local 2150, International Brotherhood of Electrical Workers, herein the Union, and the City of Kaukauna (Utility Commission) , herein the Employer, requested the Wisconsin Employment Relations Commission to designate Douglas V. Knudson as an arbitrator to hear and resolve a dispute. The undersigned was so designated. The parties waived the contractual arbitration board and agreed that the undersigned would be the sole arbitrator. Hearing was held in Kaukauna, Wisconsin on August 28, 1989. No transcript of the hearing was taken. The parties completed the filing of post-hearing briefs on November 6, 1989.

ISSUE

The parties agreed that the Arbitrator should frame the issue and proposed the following statements of the issue:

Union

> Did the City violate the parties' collective bargaining agreement when it refused to pay the grievant, Don Vanden Heuvel, time and one-half for his second assignment in addition to the call-in payment he received as emergency call-in to work on a water main break on March 4, 1989? If so, what is the appropriate remedy?

Employer

> Did the Employer violate the collective bargaining agreement when it refused to pay the grievant, Don Vanden Heuvel, for the one and one half hours' pay over and above the call-out pay premium for a work assignment on March 4, 1989? If so, what should the remedy be?

The arbitrator frames the issue as follows:

> Did the Employer violate the collective bargaining agreement in calculating the amount of pay due to the grievant, Don Vanden Heuvel, for his work on March 4, 1989? If so, what is the appropriate remedy?

BACKGROUND

On Friday and Saturday, March 3 and 4, 1989, 1/ several inches of snow fell in Kaukauna. The Employer's supervisor who was on-call that day, John Rabedeau, was advised of a broken water main by a system operator. After going to the site of the broken main, Rabedeau had the system operator contact Don Vanden Heuvel, who was the on-call employe, to have him report to work.

Upon arriving at work, Vanden Heuvel was told by Rabedeau to valve down the flow on the broken main and to clear snow from the catch basins in the area to improve drainage of the water. That work took Vanden Heuvel about one and one-half hours. Rabedeau then told Vanden Heuvel to plow snow at the North and South sides of the utility building so employes would not have problems getting to work. Vanden Heuvel spent about one and one-half hours plowing snow, including the parking lots, at the building.

Vanden Heuvel received four and one-half hours of pay for his work on March 4. He timely filed a grievance seeking four hours of pay for the time spent working on the water main break and two and one-quarter hours of pay (time and one-half for one and one-half hours) for the time spent plowing snow at the Utility building.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE IV

WORKING HOURS AND RULES

> Sec. 9 A minimum of four (4) hours pay at straight time rate shall be allowed to all men who are called back

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1/ Unless otherwise specified, all other dates herein refer to 1989.

to work, after having been released from the day's work at any time outside of scheduled work including Saturdays and Holidays except if a man is called in to work one (1) hour or less prior to the start of the regularly scheduled hours, except that such minimum shall not again be paid for subsequent call-backs unless there is a lapse of two (2) hours or more from the starting time of the previous call back. Hourly employees called back to work shall be considered available for duty for two (2) hours following such call-back even though released from duty within the call-back period. If a man is called in to work one (1) hour or less before his scheduled hours he will be paid at the applicable rate but will be allowed a reasonable time to eat and be paid during this time. (See letter of intent-page 33)

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April 5, 1985

Mr. Roy Guse
Assistant Business Manager
Local 2150 I.B.E.W.
6227 W. Greenfield Ave.
West Allis, WI 53214

RE: Letter of Intent

Dear Mr. Guse,

Pursuant to our telephone conversation of this date, I am writing to set forth the employer's intent relative to the revision of Article IV, Section 9 as proposed on October 11, 1984 and included in Alternative (D) of the Commission's proposal dated April 1, 1984. This interpretation is applicable only if the language is modified through a voluntary settlement.

The Commission would not require that an employee return home and remain accessible for a second call within the call out time frame. Further, the Commission would not require employees to remain on a job site if there was no further work to be performed during the call out minimum time frame. Employees will be released once the purpose of the call out has been completed.

If you have any other question, please advise.

Sincerely,

Bruce K. Patterson

CC: E. Mullen

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POSITION OF THE UNION

Vanden Heuvel had two separate assignments on March 4, i.e., (1) repair of the water break and (2) snow removal at the Utility building. Under the contract and past practice, he should have been compensated separately for each assignment.

Article 4, Section 9 provides for a minimum of four hours pay when an employe is called in to perform an assignment outside his regular hours. Said language along with the relevant Letter of Intent, requires payment of the four hours to the employe for accomplishing the purpose of the call-in. If the employe is then assigned to another task, the employe has to be compensated separately for performing that other task. An employe is not to be required to perform other assignments under the rubric of the initial call-in.

Such has been the consistent past practice. The practice, although it consists of a limited number of instances, is clear, consistent and mutually accepted by both parties over an extended period of time, at least from 1984 to present as evidenced by the fact that the time records initially submitted by unit employes were signed by management employes.

POSITION OF THE EMPLOYER

The grievant was paid in accord with the provisions of the contract. The grievance should be dismissed.

All of the work performed by Vanden Heuvel related to snow removal and was completed within three hours. That activity and length of time was consistent with work practices and the contractual pay requirements.

Vanden Heuvel performed substantial snow removal not contemplated by the Employer. The Employer's assignment was well within the Letter of Intent in that only incidental available work was assigned. The Employer should not be liable for pay when an employe expands an assignment to increase the hours of work.

The prior occasions, relied on by the Union to establish a past practice, involved

substantially differing functions and, therefore, are not relevant to this matter.

DISCUSSION

For a number of years, apparently beginning in the mid-1970's, employes have been scheduled to read meters on weekends. The assigned employe received three hours of straight time pay for each weekend day in which meter reading was performed. If the employe was assigned other duties, in addition to the meter reading duties, then the employe was paid the appropriate overtime rate for the time spent performing the other duties, in addition to the three hours straight time pay for reading meters. The practice of scheduling employes to read meters on weekends ceased in June, 1988 when new equipment made the weekend assignments unnecessary. Said practice is not found to be controlling in the instant matter, since the meter reading duties were scheduled in advance, rather than being performed on a call-in basis. Therefore, the fact that employes were paid separately for the meter reading duties and for other duties performed on the same day does not resolve the issue of whether Vanden Heuvel should receive overtime pay for snow plowing on March 4, in addition to call-in pay.

The Letter of Intent dated April 5, 1985 specifies that an employe will be released from duty once the purpose of the call-in has been completed. Said letter also states that an employe will not be required to remain on a job site if there is no further work to be performed during the call-out minimum time frame. Consequently, it is necessary to decide whether the snow plowing at the Utility building performed by Vanden Heuvel fell within the purpose of the call-in.

There is no dispute that a substantial snowfall had occurred on March 3 and 4. In fact, a major portion of the 1 1/2 hours Vanden Heuvel worked on the water main break was spent in plowing snow around the catch basins. While the problem necessitating the initial call-in was the broken water main, the removal of snow around the catch basins was a necessary part of correcting that problem. The additional snow removal at the Utility building resulted from the weather, just as the water main problem did, and was sufficiently similar to the work for which he had been called-in, that such work falls within the purpose of the call-in and does not constitute a separate assignment to be paid separately from the call-in payment.

Based on the testimony of Rabedeau and Vanden Heuvel, there was a misunderstanding between said two individuals as to the amount of snow plowing Vanden Heuvel was to do at the Utility building. Rabedeau thought the plowing he had assigned Vanden Heuvel would take about 30-40 minutes, because he didn't think he had said the parking area in front of the building was to be plowed. Vanden Heuvel understood the plowing assignment to include the parking area. Regardless of the misunderstanding, he was paid for the entire time he worked on March 4, including the plowing of the parking area. The undersigned concludes that Vanden Heuvel was paid correctly by the Employer when it considered all of the work he performed on March 4 to be one call-in assignment. The snow plowing done by Vanden Heuvel at the Utility building did not constitute a separate assignment. Neither was such work of a make-work nature. Rather, the

work was necessary and reasonably could not be postponed. Therefore, the assignment of such work did not violate the Letter of Intent.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the Employer did not violate the collective bargaining agreement in calculating the amount of pay due to the grievant, Don Vanden Heuvel, for his work on March 4, 1989; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 18th day of January, 1990.

By /s/ Douglas V. Knudson
Douglas V. Knudson, Arbitrator