

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 CITY OF LAKE MILLS :
 :
 and : Case 26
 : No. 43868
 : MA-6091
 JEFFERSON COUNTY EMPLOYEES, :
 LOCAL 655-C, AFSCME, AFL-CIO :
 :

Appearances:

Mr. Michael Lewis, City Manager, on behalf of the Employer.
Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME,
 AFL-CIO, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein the Employer and Union, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, I heard this matter on July 10, 1990, in Lake Mills, Wisconsin. The hearing was not transcribed and neither party filed a brief.

Based upon the entire record, I issue the following Award.

ISSUE:

The parties have agreed to the following issue: 1/

Was grievant Robert Scherr entitled to out-of-classification pay for work he performed on February 24 and 25, 1990, 2/ and if so, what is the appropriate remedy?

FACTS:

The Employer for a number of years has always paid out-of-classification pay to its wastewater treatment plant employes whenever they worked on a weekend when the foreman was not present, a situation which occurred about 3-4 times a year.

On Saturday, February 24, and Sunday, February 25, Scherr filled in for the foreman. The Employer refused to give him out-of-classification pay on the ground that the parties had just agreed in their recently concluded 1990 collective bargaining negotiations that the higher rate would only be paid if employes were called in for emergency work.

In response, the Union asserts that while it tentatively agreed to such a proposal in negotiations at the January 8 collective bargaining session, it did so in the context of an overall package which the Employer rejected at that time and that, as a result, it no longer is bound to any such understanding. It thus points out that the parties subsequently met and signed off to a January 18 settlement agreement which was totally silent on this issue and which expressly provided: "6. All other proposals are to be dropped by both parties." That is why, the Union says, it never even brought back this particular item to the Union membership when it voted upon whether to ratify the contract.

The Employer counters by saying that this understanding was a "side" arrangement, one which was agreed to independently of the other contract negotiations and that it would be unfair to now allow the Union to renege on this understanding because it was never codified in writing.

Normally, the Union would prevail in circumstances where, as here, the final January 16 settlement agreement which was initiated by both parties fails to include any language whatsoever on the out-of-classification pay issue and when the contract itself is silent on the issue. For since that agreement by its own terms encompassed the total bargain mutually agreed to between the parties, there ordinarily would be no basis for holding that the out-of-classification issue was also part of that bargain.

But here, we have one very important fact which must be considered - i.e. the testimony here of then acting Union president Wayne Hoffman who testified that the parties did reach a mutual agreement that out-of-classification pay would only be paid in emergency situations. Hoffman added that he specifically

1/ The parties have also agreed that the disposition of this grievance will govern other similar grievances.

2/ All dates hereinafter refer to 1990.

reported back to the membership and told them about the City's proposal to limit out-of-classification pay, and that the members "understood what was going on."

Given this admission, there is no question but that a mutual agreement was reached on this issue outside the context of the rest of the negotiations then taking place. That, apparently, was why it was not subsequently codified in the contract. As a result, it would be inequitable to now force the Employer to pay the out-of-classification pay in issue when the parties have agreed that it should not be paid.

Hence, it is my

AWARD

That grievant Robert Scherr was not entitled to out-of-classification pay for work he performed on February 24 and 25, 1990; the grievance therefore is denied.

Dated at Madison, Wisconsin this 24th day of August, 1990.

By _____
Amedeo Greco, Arbitrator