

BEFORE THE ARBITRATOR

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| In the Matter of the Arbitration | : |
| of a Dispute Between | : |
| | : |
| INTERNATIONAL ASSOCIATION OF | : Case 59 |
| FIRE FIGHTERS, AFL-CIO, KAUKAUNA | : No. 45384 |
| LOCAL 1594 | : MA-6580 |
| | : |
| and | : |
| | : |
| CITY OF KAUKAUNA (FIRE DEPARTMENT) | : |
| | : |

Appearances:

Mr. Charles Buss, Vice-President, 5th District International Association of Fire Fighters, 501 Prairie Avenue, Fond du Lac, Wisconsin 54935, appearing on behalf of the Union.

Mr. Bruce K. Patterson, Employee Relations Consultant, 3685 Oakdale Drive, New Berlin, Wisconsin 53151, appearing on behalf of the City.

ARBITRATION AWARD

The International Association of Fire Fighters, AFL-CIO, Kaukauna Local 1594, hereafter the Union, and the City of Kaukauna (Fire Department), hereafter the City or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the City, requested the Wisconsin Employment Relations Commission, hereafter Commission, to appoint a staff member as single, impartial arbitrator to resolve the instant grievance. On March 29, 1991, the Commission appointed Coleen A. Burns, a member of its staff, as arbitrator. Hearing was held on June 12, 1991 in Kaukauna, Wisconsin. The hearing was not transcribed and the record was closed on July 16, 1991, upon receipt of post-hearing written argument.

ISSUE:

The parties stipulated to the following statement of the issue:

When the City refused to pay the grievant holiday pay as set forth in Article 8(C) and Article 16(C) of the collective bargaining agreement for the scheduled work day of December 25, 1990 did it violate said agreement?

If so, what should the remedy be?

RELEVANT CONTRACT PROVISIONS

Article 8-Holidays

- B. In addition to all other compensation, each employee shall receive holiday pay at a rate of eight (8) times his hourly rate based on a forty (40) hour week for each holiday. The City shall combine the compensation due each employee for all holidays in each calendar year into one sum to be paid on the pay day nearest November 1.
- C. An employee scheduled to commence work at 7:30 AM on a holiday shall be paid time and one

half his base rate as computed under paragraph A of Article 4 for that 24 hour shift.

Article 16-Leaves of Absence

C. Funeral Leave

All employees will receive time off without loss of pay for the death of a member of their immediate family.....

POSITIONS OF THE PARTIES

Union

Captain Joe Gasper was scheduled to work the holiday of December 25, 1990. Gasper did not work the holiday because he was on authorized funeral leave under Article 16, Paragraph C. The City violated the collective bargaining agreement when it denied Gasper holiday pay at time and one-half for his scheduled work day of December 25, 1990.

Article 16, Paragraph C, states that funeral leave will be granted without loss of pay. The statement "without loss of pay" leaves nothing to interpretation as it is not at all ambiguous. Article 8, Paragraph C was violated as the compensation the grievant was to receive for December 25, 1990 was to be paid at the rate of time and one-half.

An arbitrator's function is not to rewrite the parties' contract, but rather, to give intent to the plain language of the Agreement. Prior acts cannot be used to change the plain language of a contract.

The City's reliance on articles concerning vacations and sick leave are irrelevant and only serve to point out that the City is attempting to draw attention away from the relevant language in Article 8 and 16. The grievance must be sustained.

City

The Agreement provides a premium or bonus pay for employes who work the nine specified holidays. That premium is specified in Article 8 as time and one-half the employe's base rate computed on a standard 80 hours per bi-weekly pay period. Section B provides for holiday pay for all employes whether they work or not. The Section C premium is for those employes who must give up family time to work a holiday. The grievant is not entitled to receive the holiday pay provided under Article 8(C) because the grievant did not work on December 25, 1990.

In an analogous case, an arbitrator ruled that, if the parties intended there to be such an application of both holiday pay and sick leave pay, they should have specified so in the Agreement (cite omitted). There is no practice of doing what the Union and the grievant are alleging in this grievance. The grievance should be dismissed.

DISCUSSION

Joe Gasper, the Grievant, was scheduled to work on December 25, 1990. Gasper, however, did not work as scheduled. Rather, on December 25, 1990, Gasper was on authorized funeral leave.

Gasper was paid his regular rate of pay for December 25, 1990 and received the holiday pay provided for in Article 8(B). The Union does not disagree with the payment of the holiday pay provided for in Article 8(B), but argues that the City violated Article 8(C) and Article 16(C) of the parties' collective bargaining agreement when the City paid Gasper his regular rate of

pay for December 25, 1990, rather than time and one-half.

As the City argues, the holiday pay provided for in Article 8(B) is paid to employes regardless of whether or not they work. It follows, therefore, that the time and one-half payment provided for in Article 8(C) is intended to compensate employes who work the holiday.

This is the first instance in which an employe scheduled to work a holiday did not work the holiday due to the fact that the employe was on authorized funeral leave. There have been instances in which an employe scheduled to work a holiday did not work the holiday because the employe was sick or on vacation. In these instances, the employe did not receive the time and one-half provided for in Article 8(C). The evidence of past practice supports the conclusion that the time and one-half payment provided for in Article 8(C) is intended to compensate employes who work the holiday.

Since Gasper did not work the December 25, 1990 holiday, Gasper is not entitled to the payment of time and one-half provided for in Article 8(C) of the parties' collective bargaining agreement. Accordingly, Gasper did not lose any pay when the City paid Gasper his regular rate of pay for December 25, 1990, rather than the time and one-half requested in the grievance.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The City did not violate Article 8(C) or Article 16(C) of the parties' collective bargaining agreement when it refused to pay Joe Gasper time and one-half for December 25, 1990.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 10th day of October, 1991.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator