BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS LOCAL UNION NO. 579	Case 36 No. 45340 MA-6564
and	
VILLAGE OF EAST TROY	

Appearances:

Previant, Goldberg, Uleman, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. John J. Brennan, appearing on behalf of the Union.

Davis & Kuelthau, Attorneys at Law, by Mr. Roger E. Walsh, appearing on behalf of the Village.

ARBITRATION AWARD

The Village of East Troy, herein the Village, and Teamsters Local Union No. 579, herein the Union, jointly requested the Wisconsin Employment Relations Commission to designate the undersigned as the Arbitrator to hear and decide the Steven Krohn overtime grievance. The undersigned conducted hearings on the grievance on July 18 and 30, 1991 in East Troy, Wisconsin. No transcript of the hearings was taken and the parties filed post hearing briefs by September 4, 1991.

ISSUE:

The parties were unable to stipulate at hearing to a statement of the issue to be resolved by the undersigned. The Village submits the issue is:

> Did the Village violate the 1988-1990 collective bargaining agreement by working the mechanic at large from 11:30 p.m. on December 3, 1990 to 5:00 a.m. on December 4, 1990? If so, what is the appropriate remedy under the contract?

The Union believes the issue before the undersigned to be:

> Is the Village in violation of the parties' agreements by utilizing the mechanic at large for snow removal in a weekday overtime situation when the work was not first offered to all other DPW employes?

The undersigned believes the issue is most appropriately stated as:

> 1. Was there a binding grievance settlement agreement in effect on December 3, 1990 governing the assignment of overtime to the Mechanic at Large?
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> 2. If so, did the Village's failure to call the grievant in to plow snow on December 3, 1990 anytime between 11:30 p.m. to 5:00 a.m. on December 4, 1990 violate said settlement agreement? If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE:

ARTICLE 4 - SCOPE OF AGREEMENT

> This agreement represents the product of the consideration of and bargaining on all matters which any party hereto desired to negotiate. All such matters having been negotiated, the parties hereto understand and acknowledge that there are no other agreements written or oral between the parties hereto and that this agreement contains all agreements of the parties hereto during the term of this agreement. Rights relating to or arising out of any matters not covered by this agreement are reserved to the employer.
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> . . .
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> ARTICLE 6 - SENIORITY
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> 6. (a) Subject to the requirement that skill and ability be reasonably equal and the public health, welfare or safety are in no way threatened, seniority shall prevail with respect to overtime among bargaining unit employees.
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> (b) Any other provision of this Agreement, not withstanding, the Employer shall continue the practice of rotating overtime hours on weekends and holidays in order to equalize the overtime among the employees. Overtime in the Sewer Classification shall be rotated among the bargaining unit employees who normally perform work in the classification and said employees will not be afforded overtime hours in rotation within the Department of Public Works Classification. Except in case of emergency, all bargaining unit employees shall be subject to call.

DISCUSSION:

The basic facts giving rise to the instant grievance are that on December 3, 1990, the Village of East Troy was struck by a winter snow storm. As a consequence of the storm, the Village called in all Village Department of Public Works (DPW) employes to plow snow. These employes began their overtime assignments at 11:30 p.m. on December 3, 1990. The grievant, Steve Krohn, was called in on overtime beginning at 5:00 a.m. on December 4, 1990. As a consequence of the Village's actions, the grievant worked two hours of overtime as compared with other DPW employes who worked seven and one-half hours overtime. The relief requested in the grievance is for five and one-half hours at time and one-half.

Among the DPW employes who reported for work at 11:30 p.m. on December 3, 1990 was the Mechanic at Large, Randolph. From 11:30 p.m. on December 3, 1990 to 7:00 a.m. on December 4, 1990 Randolph was functioning not as a Mechanic at Large, but as the Crew Chief. He was assigned to oversee the snow removal operation by the DPW Superintendent, Rossmiller, who was unavailable to work those hours.

The Union's basis for contesting the Village's decision not to call in Krohn at 11:30 p.m. on December 3, 1990 as it did all DPW employes is based upon an alleged 1986 settlement agreement to a grievance. The Union insists that the June 18, 1986 letter of its Attorney Frederick Perillo confirming the oral agreements reached on June 18, 1986, provides that the Mechanic at Large

was only to perform Mechanic at Large work on overtime during a weekday unless there was an emergency and the other employes had been assigned or offered the semi-skilled or unskilled work first. It goes on to note that Village Attorney, Linda Gray's letter of September 3, 1986, confirms the existence of the June 18, 1986 settlement and subsequent clarifications. That documentary evidence coupled with Union business agent, Brendan Kaiser's testimony as to the existence and intent of that settlement agreement establish beyond a doubt that the Village, in an instance such as that surrounding the subject grievance, is obliged to offer emergency overtime work to other employes before offering such work to the Mechanic at Large.

To the contrary, the Village contends that the only binding and enforceable agreement in existence is Article 6, Section 6 of the parties' collective bargaining agreement. The Village reaches this conclusion on the basis of Section 19.85(3), Wis. Stats., requiring that a governmental body must consider the final approval of a collective bargaining agreement in open session and that the settlement agreement the Union seeks to enforce in this proceeding is a binding collective bargaining agreement. It contends that no such open session approval ever occurred, and therefore said settlement agreement has no force and affect. It goes on to argue that in the event the Arbitrator should find that such settlement agreement was in effect and binding it no longer has any force and effect by virtue of the fact that settlement agreements are deemed to be collective bargaining agreements and said agreements shall not exceed a term of three years pursuant to Section 111.70(3)(a)(4), Wis. Stats. It reaches this conclusion on the basis that the grievance settlement was not an interpretation of the language contained in the parties' 1985-87 agreement, but rather was a supplemental agreement which subsequently altered and changed the specific provisions of the 1985-87 agreement. It reasons that this conclusion is further reinforced by the provisions of Article 4 and the absence of any discussion concerning continuance of the 1986 grievance settlement during the negotiations for the subject 1988-90 collective bargaining agreement. Inasmuch as there is no reference in the 1988-90 collective bargaining agreement to the requirements pertaining to the use of the Mechanic at Large on overtime under Article 6 of the collective bargaining agreement said agreement could not have been binding on the Village on December 3, or 4, 1990.

Regarding the Village's first arguement that there is no binding settlement agreement because the County Board failed to ratify said agreement, the undersigned disagrees. Village Attorney Grays' letter of September 3, 1986 to Union Attorney Perillo states:

> The Village Board of the Village of East agreed to accept the proposed settlement agreement in the above described matters. However, the settlement agreement would include as part of that agreement, your letter of June 18, 1986 clarifying the meaning of paragraph 3(b)(ii) of the grievance settlement.

While there was subsequent correspondence regarding the duties and responsibilities contained in the proposed job description for the Mechanic at Large position, there was no disagreement over the terms of the settlement agreement which are relevant to the dispute herein. In fact, on September 19, 1986, the parties' attorneys engaged in telephone communication wherein the settlement agreement reached back on June 12, 1986, and ratified by the Village Board at its September 9, 1986 meeting, was confirmed by the Union's attorney. Consequently, it is obvious to the undersigned that there was ratification of the settlement agreement by the Village Board, and therefore said settlement agreement was binding for at least the remainder of the 1985-87 collective bargaining agreement. This conclusion is reached in spite of the Village

arguement that an additional ratification was required subsequent to the September 19, 1986 telephone conference between Attorney Perillo and Attorney Gray. There had already been ratification of the settlement agreement pertaining to the use of the Mechanic at Large in overtime situations and that agreement was never disputed or modified by either party subsequent to Village ratification on September 8, 1986.

The Village also argues that should the undersigned, as he did, find that there was a binding grievance settlement agreement, said agreement was no longer binding because such settlement agreements are treated as collective bargaining agreements; collective bargaining agreements cannot, under Sec. 111.70(3)(a)(4), Wis. Stats., have a term exceeding three years; and, that this grievance arose in 1990 some four years beyond the date of execution and the Union had failed to continue the settlement agreement modification to Article 6 in the 1988-90 collective bargaining agreement. This arguement clearly calls into question the status of a grievance settlement agreement subsequent to the expiration of the term of the collective bargaining agreement under which said settlement agreement was reached, and requires an interpretation of Sec. 111.70(3)(a)(4), Wis. Stats. The Wisconsin Employment Relations Commission has previously spoken with respect to the issue of memorandums of understanding, which the undersigned believes to be analogous to grievance settlement agreements, in Milwaukee Board of School Directors, Decision No. 22804-B (WERC, 3/89). In that case, the Board argued, as does the Village here, that memorandums of understanding are separate contracts between the parties with a term of three years imposed by Sec. 111.70(30(a)(4), Stats., whereas the Union argued that such memorandum are essentially part of the master contract between the parties and have a term co-existent with the master agreement. The Commission found that the memorandums of understanding are part of the master contract and have a term co-existent with that master agreement, contrary to the Employer's arguement therein. The undersigned believes that the Commission's rationale is equally applicable to grievance settlement agreements interpreting provisions of the parties' collective bargaining agreement. 1/

1/ "As a review of the parties' disputed memorandum of understanding reveals, a memoranda of understanding reflects the parties' need during the term of a "master" contract to record their agreement on how to resolve some dispute which has arisen. As such, a memoranda supplements in some fashion the parties' existing "master" contract as to such matters. We think it clear that the collective bargaining process is best served by a conclusion that unless the parties explicitly or implicitly agree otherwise, such memoranda have a duration co-extensive with the "master" agreement. Such a conceptual framework allows each party to enter the process of bargaining a successor agreement with the knowledge that all matters affecting employe wages, hours and conditions of employment will, if desired, be subject to and established by the collective bargaining process at the same time. Such a confluence of the duration of memoranda and master contracts allows the parties to assess in an orderly manner the positions they wish to take as to all terms which will govern during the term of the new "master" agreement. Our conclusion is also consistent with the reality that many memoranda exists to clarify or amend existing portions of the "master" contract. Clearly, the collective bargaining process is best served by having the "clarifications" and "amendments" exist only for as long as the "master" contract provision to which they relate. Then the memoranda, like "master" contract itself, become subject to renewal, modification or deletion as part of the bargaining for a successor agreement. Under the Board's theory of this case, memoranda of unspecified duration agreed upon during the term of a contract would always expire after the "master"

In reviewing the documentary evidence adduced to establish the existence of the alleged grievance settlement agreement, the undersigned finds that there was no specification regarding a duration for the settlement agreement. Consequently, the agreement is obviously to be coterminous with the collective bargaining agreement. Furthermore, it is incumbent upon a party who no longer wishes to be bound by said settlement agreement to propose its elimination inasmuch as it has become a part of the collective bargaining agreement; and like other provisions of a collective bargaining agreement that have no duration separate and apart from the term of agreement itself do not as mandatory language cease to exist at the expiration of said collective bargaining agreement. Thus, in this instance, contrary to Village assertions in its brief, the burden fell upon the Village to propose the termination of the modifications to Article 6 that are reflected in the settlement agreement and it was not the Union's responsibility to propose that said modifications be continued in the subsequent collective bargaining agreement.

The Village's final arguement is that even if the 1986 settlement agreement is found to continue to exist through December of 1990, no violation of that agreement occurred on December 3 and 4, 1990 as alleged in the grievance herein. The Village states that Steve Krohn, grievant, as the Assistant Mechanic, was a semi-skilled employe and as such had no standing to bring a grievance since he was not one of the class of employes who was supposed to be protected by the alleged settlement agreement; and, further, even if he were, the Mechanic at Large, Randolph, was not assigned to perform semi-skilled or unskilled work.

Regarding the Village's contention that the grievant, Krohn has no standing to contest the Village's failure to call him in for overtime work at 11:30 p.m. on December 3, 1990, the undersigned finds said arguement to be unmeritorious. Krohn, was an Assistant Mechanic and as such is shown in the collective bargaining agreement to be a semi-skilled employe. The settlement agreement provides that only "when all other employes have been assigned or offered overtime work, the Mechanic at Large may perform semi-skilled or unskilled work." In looking at the job duties specified for the Assistant Mechanic in Article 24, one listed duty is "operates all gasoline and diesel powered equipment, either Village owned or leased by the Village." While it is probably true that the principal duties of the Assistant Mechanic are to assist in performing routine periodic maintenance on all Village owned equipment, nonetheless, the job description clearly contemplates the operation of equipment such as was used on the evening of December 3, 1990 and the early morning of December 4, 1990. Thus, the position description of the Assistant Mechanic, as well as the language of the 1986 settlement agreement, coupled with the facts surrounding the duties that employes were called in to perform on the evening of December 3, 1990 establishes that the grievant did have standing to file the subject grievance.

Finally, the Village contends that the Mechanic at Large Randolph was, in any event, not assigned to perform skilled or unskilled work by Superintendent Rossmiller. Rather, he was assigned crew chief responsibilities which in this instance meant he was to oversee the snowplowing operation because of

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contract to which they relate. Such a theory is antithetical to the legislative desire to provide order to the collective bargaining process, to avoid endless collective bargaining, and to allow the parties the opportunity to meaningfully address all aspects of employe wages, hours and conditions of employment at the same time." Milwaukee Board of School Directors, Decision No. 22804-B (WERC, 3/89).

Rossmiller's unavailability to do same. Rossmiller specifically instructed Randolph that he was not to perform any snowplowing work unless he was specifically requested to do so by the senior DPW employe Otto. It does seem clear from the testimony, however, that Randolph did perform some snowplowing duties, whether they were at the behest of Otto or whether Randolph decided on his own to assist in the snowplowing operation. Otto testified that he was aware that Randolph used the snowplow on truck 7 for at least an hour to an hour and one-half and also operated the snowblower for a half-hour to forty-five minutes. He operated these plows in cleaning up behind stores, and doing odds and ends. While Otto testified "I don't think I asked Chuck Randolph to plow" he did not deny that he asked him to assist in certain of these operations. If he did ask Randolph to help out, it seems obvious that he would have only done so based upon the need for additional assistance. That being the case, there is no evidence in the record that Otto had the ability to call in additional employes to assist in the snowplowing operations. Indeed, when reviewing Union exhibit #7, Rossmiller's snowplowing guidelines memo to all DPW employes dated November 12, 1990 it is clear that while it is the responsibility of the senior crew member to see that the plowing operation is completed, nowhere in the memo does it indicate that he has a responsibility for calling in additional employes. Because Randolph was functioning as crew chief in the absence of Rossmiller, arguably a quasi supervisory position, he, presumably, would have had the ability to call in additional employes to assist with the snowplowing operation if asked by Otto to help out. His options then were to call in the Assistant Mechanic Krohn to assist or indicate to Otto that the crew that was on duty would have to complete the operation without his assistance because he had no authority to call in Krohn to assist and was himself precluded from performing those duties because Krohn had not been offered the opportunity to work.

Thus, the undersigned is persuaded from the evidence that Krohn performed some snowplowing operations in violation of the settlement agreement and that Otto's testimony established that Randolph spent approximately two and three-quarters hours operating snow removal equipment. Consequently, the grievant is entitled to be paid two and three-quarters hours at time and one-half.

Based upon the foregoing and the record as a whole the undersigned enters the following

AWARD

1. There was a binding grievance settlement agreement in effect on December 3 and 4, 1990 governing the assignment of overtime to the Mechanic at Large.

2. The Village's failure to call the grievant in to plow snow for two and three-quarters hours on December 4, 1990, violated said settlement agreement, and therefore the Village shall immediately award the grievant two and three-quarters hours pay at time and one-half his hourly rate of pay in effect on December 4, 1990.

Dated at Madison, Wisconsin this 4th day of December, 1991.

By _____
Thomas L. Yaeger, Arbitrator