BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
PORTAGE COUNTY DEPUTY SHERIFF'S ASSOCIATION, WPPA/LEER DIVISION	:	Case 87 No. 45708 MA-6718
and	:	
PORTAGE COUNTY	:	

Appearances:

Steven J. Urso, Representative, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 7 North Pinckney Street, Suite 220, Madison, WI 53703, appearing on behalf of the Portage County Deputy Sheriff's Association.

Philip H. Deger, Personnel Director, Portage County, 1516 Church Street, Stevens Point, WI 54481, appearing on behalf of Portage County.

ARBITRATION AWARD

Portage County Deputy Sheriff's Association, WPPA/LEER Division (hereinafter Association), and Portage County (hereinafter Employer or County) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an impartial arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On May 8, 1991, the Association filed a request to initiate grievance arbitration with the Commission. The County concurred in said request and on May 31, 1991, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing in the matter was held on August 29, 1991, in Stevens Point, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs of the waiver thereof, the last of which was received December 4, 1991. Full consideration has been given to the evidence and arguments of the parties in reaching this decision.

STATEMENT OF FACTS

Members of the Association have been requested to work on their off-duty hours for special events, race track duty and the County Accident Reduction Program (CARE). Association members volunteered for said duty by signing up in order of seniority. They have applied for call-in pay and overtime for all time actually worked. They were paid for the time actually worked but were denied call-in pay. Grievance 91-113 was filed on February 22, 1991, seeking call-in pay. The grievance was processed through the grievance procedure and is properly before this Arbitrator.

PERTINENT CONTRACT LANGUAGE

SECTION XV - HOURS OF WORK

A. Normal Work Week: Employees shall work a work week averaging forty (40) hours based on a 2088 hour annual schedule prepared by the Sheriff. Prior to any change in work schedule, the Sheriff shall confer with the Association and give consideration to any recommendations of the

Association. The present schedule shall be administered by the Sheriff in accordance with past decisions on offsets for employees. This shall not interfere with the Sheriff's authority to change work schedules.

. . .

C. Overtime: All permanent full-time employees of the department performing work in excess of the standard work day or work week as called for in Paragraph "A" above, (sic) shall be compensated at the rate of one-and-one-half (1-1/2) their hourly rate of pay or compensatory time off at the rate of one-and-one-half (1-1/2) at the discretion of the employee. If the employee chooses compensatory time off, the Sheriff may schedule the compensatory time off at his discretion. The hourly rate shall be determined by the monthly rate divided by one-hundred-seventy-three (173).

. . .

SECTION XX - CALL-IN AND STEP-UP PAY

A. When an employee is called to duty outside his normal shift, he shall be compensated at a rate of time-and-one-half based upon his normal hourly rate and such employee shall received a minimum of two (2) hours compensation at the time-and-one-half rate in addition to all hours worked. An employee shall not be entitled to a minimum of two (2) hours compensation when he is instructed to report early for a particular shift, provided that it is less than two (2) hours immediately contiguous to the start of his shift, or is required to remain after the close of his shift.

B. When an employee is ordered to appear in court or to attend a department meeting and is failed to be notified that either has been cancelled, and reports at the specific time, the employee shall be compensated at the rate of time-and-one-half his normal rate for the appropriate minimum hours. An employee shall received a minimum of thirty six (36) hours notice for court appearances. If the court appearance is cancelled, call-in time will still apply if within thirty six (36) hours prior to scheduled trial.

ISSUE

The parties stipulated to framing the issue as follows:

Did the County violated the collective bargaining agreement by denying call-in pay for employes requesting

reimbursement for minimum call-in during 1990 and to date?

If so, what should the remedy be?

POSITION OF THE PARTIES

The Association argues that the language in the contract speaks for itself; that the only circumstances specifically excluded from call-in pay involve work immediately contiguous to the start of the shift and hours at the end of the regular shift; that neither of these situations are involved here; that no restriction or prohibition on applying call-in exists; that the testimony of the Captain corroborates the position of the Association; that the parties agreed to the change in Section XX; that the County now rejects what it has obviously agree to; that if the County desires to change the language, it should do so at the bargaining table; that it should not attempt to circumvent the process through arbitration over an issue it knowingly agreed to; that the County knew precisely what it agreed to in changing Section XX; that if the County is allowed to walk away from its obligations in this case, nothing would stop it from abandoning the wage schedule or any other benefit obtained in the collective bargaining agreement; that past history is not applicable since the 1990 contract change was voluntarily agreed to and collectively bargained; and that the language on call-in that appears in other contracts with the Count is not particularly relevant. For a remedy, the Association seeks payment of the on-call premium for all affected employes.

The County argues that the parties have failed to reach an effective agreement on this topic; that call-in pay is inappropriate and unwarranted in a variety of circumstances; that the employes knew in advance of the overtime; that the voluntary overtime caused no undue hardship on the employe because said employe stated in advance that he or she was willing to amend the original annual schedule; that the Association's interpretation of call-in pay is not reserved for the inconvenience of making an extra unscheduled trip to work; that bargaining history does not clarify the hidden ambiguity; and that a determination in favor of the Association would lead to potentially absurd results not in the best interest of the public, the Employer or the Association. Therefore, the County seeks to have the Association's grievance denied.

DISCUSSION

Under Section XV - Hours of Work, the parties agree that hours worked over the standard work day or week are compensated at time-and-one-half their hourly rate. Thus, it is clear that if the work in question was in excess of the normal work day or week, the employes should be compensated at time-and-one-half their hourly rate. The record appears to indicated that this did, indeed, happen.

But the Association argues that Section XX -- Call-In and Step-Up Pay requires that the employes also be paid two hours compensation at time-and-one-half in addition to the time actually worked. The County argues that call-in pay does not apply in this circumstance. Thus, the question is whether a voluntary overtime assignment comes within the definition of "call-in". Under the Association's interpretation of the term "call-in", said term applies to anytime an employe works outside the normal work day or work week, except for those circumstances specifically excluded in the contract, and it specifically applies in this situation. The County defines the term much more narrowly.

"Call-in pay" has been defined as follows:

> The number of hours of pay guaranteed, usually by contract, to a worker who reports to work. . .call-in pay applies to a guarantee of a minimum number of hours when the worker is called in on a day on which he otherwise would not be scheduled to work. . . . 1/

One purpose of call-in pay is to compensate an employe who must stop unexpectantly what he or she is doing and who must change plans previously made in order to report to work as directed by the employer. Call-in pay in one form or another guarantees the employe a certain amount of pay for the disruption of having his or her personal schedule changed and for the inconvenience of working an unscheduled shift (or part thereof). Under this contract, employes receive premium pay of two hours at time-and-one-half for call-in pay, in addition to any hours actually worked paid at the appropriate rate. Another purpose of call-in pay is to discourage an employer from having an employe work on a day off by making it expensive for the employer to do so.

It is of course clear that these overtime assignments must be compensated at the overtime rate; however, it is also clear that said assignments do not require payment of the call-in premium. The employes involved herein did not have to unexpectantly stop what they were doing or to change plans previously made because of these assignments. The reason is because these employes volunteered for these assignments by signing up in advance, so these employes were able to plan their off-duty lives knowing they would be working these assignments. Since the employes volunteered in advance for these assignments, the employer did not have to call-in the employes to work these assignments. As this case involves employes volunteering in advance for overtime assignments, and as it does not involve the employer calling-in employes to work overtime, Section XX - Call-In and Step-Up Pay does not apply to this situation.

However, it is also clear that call-in pay would apply if an employe had not volunteered ahead of time for one of these assignments and the Employer had called-in an employe to work the race track, a special event or a CARE program. To limit any misunderstanding that this Award may cause, let me state the holding in this matter as narrowly as I intend it to be: Call-in pay does not apply when an employe volunteers by signing up in advance for an assignment at the race track, a special event or for the CARE program. This Award makes no decision on whether call-in pay applies to other situations. It only states that in this situation, these employes were not called-in to work; they were offered an overtime assignment in advance of said assignment which they chose to accept by signing up for it. Since they were volunteered in advance to work the overtime, they were not called-in as that term is herein defined.

Under the Association's theory of this case, the distinction between overtime pay and call-in pay is eliminated, except in those situations specifically excluded from call-in pay by the contract. But call-in is a very specific type of overtime. It refers to the situation in which an employer contacts an employe and directs the employe to report to a job site. That did not happen here. The Grievants were not called in to work; indeed, the employes told the Employer when they would work. Thus, Section XX - Call-In and Step-Up Pay does not apply to the circumstances of this case.

1/ Harold S. Roberts, Roberts' Dictionary of Industrial Relations, Third Edition, (BNA, 1986).

For the reasons stated above, the Arbitrator issues the following

AWARD

1. That the County did not violate the collective bargaining agreement by denying call-in pay for employes requesting reimbursement for minimum call-in during 1990 and to date.

2. That the grievance is hereby denied and dismissed.

Dated at Madison, Wisconsin, this 7th day of February, 1992.

By _____
James W. Engmann, Arbitrator

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