BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
MONROE CITY EMPLOYEES UNION, LOCAL 3760, AFSCME, AFL-CIO	Case 21 No. 46270 MA-6928
and	
CITY OF MONROE	

Appearances:
Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, appear
Mr. James Myers, City Clerk/Director of General Government, appearing on behalf

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the City or Employer respectively, were signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing was held on December 10, 1991 in Monroe, Wisconsin. The hearing was not transcribed and the parties did not file briefs. Based on the entire record, I issue the following Award.

ISSUE

The parties were unable to agree on the issue so the Arbitrator has framed it as follows:

> Did the City violate the collective bargaining agreement by failing to pay overtime to those employes who spent more than eight hours in the employ of the City on May 2, 1991? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1990-91 collective bargaining agreement contained the following pertinent provisions:

Article 9 - Workday and Workweek

. . .

> 9.06 Overtime: Employees will be compensated at the rate of time and one-half (1 1/2) their normal hourly rate for all hours worked in excess of eight (8) per day or forty (40) per week. All time paid shall be considered time worked for overtime purposes.

. . .

Article 24 - Conference Attendance and Mileage Reimbursement

. . .

> 24.02 Compensation for conferences not required: Employees will be compensated at their regular rate for all time spent (including travel time), up to eight (8)

hours per day, relating to attendance at conferences which are not required by the Employer and which are not related to the activities referred to in Section 25.02 -Certification and License of this Agreement.

. . .

Article 25 - Miscellaneous

. . .

25.02 Certification and License: The Employer shall grant employees reasonable amounts of time off with pay for the purpose of attending mandatory training, or other courses or seminars which are designed to assist the employee to obtain, or maintain, any certifications and/or licenses which are required and which pertain to the employee's job classification. The employee must obtain advance written approval to attend such training or courses. The Employer shall pay for the cost of such approved training or courses in accordance with the provisions of Article 24 - Conference Attendance and Mileage Reimbursement of this Agreement, except that employees shall be compensated at their regular rate for all time spent relating to such activities, up to eight (8) hours per day, and, additionally, for all travel time associated with the activity.

FACTS

The facts are undisputed. On May 2, 1991, certain employes of the City spent the afternoon attending a City-sponsored CPR training session. These employes worked their normal morning schedule with most starting at 7:00 a.m. Beginning at 1:00 p.m. they attended the CPR training session in the City's Community Center in Monroe. Attendance at this training session was not voluntary; employes were directed to attend. Most employes finished the session and left about 5:00 p.m. Depending on their starting time, some employes were at work for eight hours that day while some were there nine and one-half hours. Afterwards, all employes were paid at straight time for their hours for that day, including those who were present more than eight hours. The Union filed a grievance seeking overtime pay for all time spent in excess of eight hours for that day. The grievance was later appealed to arbitration.

POSITIONS OF THE PARTIES

It is the Union's position that the employes who spent time in excess of eight hours in the employ of the City on the day in question are contractually entitled to overtime pay for those hours. In support thereof, it relies on Section 9.06, the Overtime provision, for the proposition that the time involved here qualifies for overtime. According to the Union, the language relied upon by the Employer (i.e. Section 24.02 and Section 25.02) is inapplicable here because in its view that language refers to out-of-town/off-site conferences, which was not the case here. It therefore contends that the City's action in denying overtime pay to those employes who spent more than eight hours on May 2 in the employ of the City violated Section 9.06. In order to remedy this contractual violation the Union requests that the affected employes be made whole.

It is the City's position that the employes who spent more than eight hours on the day in question in the employ of the City are not contractually

entitled to overtime for those hours. This argument is based on the premise that the employes attended a conference that day. The City notes that the wages to be paid for time spent attending conferences is expressly spelled out in Section 24.02 and Section 25.02, wherein it provides that wages are to be paid at the "regular rate". Since that is what happened here, the City contends the employes received the proper rate of pay (i.e. straight time). According to the City, the language relied upon by the Union (i.e. Section 9.06) is simply general language which does not override the specific language found in Sections 24.02 and 25.02. It therefore requests that the grievance be denied.

DISCUSSION

At issue here is whether those employes who were at work more than eight hours on the day in question are entitled to receive overtime for those hours over eight. The Union contends that they are while the City disputes this contention.

In deciding whether those employes who were at work more than eight hours on May 2, 1991 are entitled to receive overtime, the undersigned will look at the contractual provisions relied upon by the parties, namely Sections 9.06, 24.02 and 25.02. These sections are reviewed below.

Section 9.06 is the general provision pertaining to payment of overtime. It provides that employes will be paid at time and one-half for all hours worked over eight per day or forty per week. It further provides that "All time paid shall be considered time worked for overtime purposes."

Sections 24.02 and 25.02 are provisions which pertain to the wage rates to be paid employes who attend conferences, training or courses. Section 25.02 applies to that "training or courses" the employe is required to attend and Section 24.02 pertains to those "conferences" the employe is permitted to attend. The main difference between the two provisions is that Section 24.02 limits the amount of pay to eight hours per day including travel time, while Section 25.02 limits the amount of pay to eight hours per day and travel time is extra. Both of these sections expressly provide that employes are to be paid at their "regular rate" for the time spent at these activities. While the phrase "regular rate" is not contractually defined, the undersigned reads it to mean straight time. Thus, these two sections provide that employes attending such activities are to be paid at straight time, and not overtime.

Application of these contractual provisions here results in different outcomes. If Sections 24.02 and 25.02 apply here, then the affected employes are to be paid at straight time. However, if Section 9.06 applies, then the affected employes are eligible for overtime. Given the foregoing, it is obvious that the outcome here is dependent on which section is applied to the instant factual situation.

Attention is focused first on Section 24.02. As previously noted, this section pertains to those "conferences" the employe is permitted to attend. In other words, it applies to those "conferences" where attendance is voluntary. The record indicates that attendance at the CPR training session involved here was not voluntary; instead it was mandatory. That being the case, this section is inapplicable to the CPR training session involved here.

Having so held, the focus now turns to Section 25.02. As previously noted, that section applies to the "training or courses" the employe is required to attend. Since attendance at the CPR training session was required, it certainly appears that this section applies here. However, a closer reading of Section 25.02 indicates that the "training or courses" covered by this

section are those "which are designed to assist the employe to obtain, or maintain, any certifications and/or licenses which are required and which pertain to the employe's job classification." The problem with fitting the CPR training session into this category is that there is nothing in the record establishing that it (the CPR training session) dealt with "certifications and/or licenses which are required and which pertain to the employe's job classification", and the undersigned is unwilling to simply assume it. As a result, it is held that while attendance at the CPR training session was mandatory, this fact in and of itself does not mean that this training automatically falls into this category.

Moreover, there are other problems with applying Sections 24.02 and 25.02 here. First, both sections refer to "travel time". In the opinion of the undersigned, any reference to "travel time" envisions or contemplates traveling to and from a site away from the city of Monroe for the conference, training or course. Here, though, that did not occur. There was no "travel time" involved here because the activity occurred on the Employer's own premises. Second, both sections limit the pay for the time spent at the activity to eight hours (although Section 25.02 also allows for travel time which, as just noted, is inapplicable here because there was no travel time). In this case though, the City did not limit pay to just eight hours (as would be required by both sections since there was no travel time), but instead paid some employes nine and one-half hours for the day. As a practical matter, this payment of nine and one-half hours' pay to certain employes, albeit at straight time, undercuts the City's argument that Sections 24.02 and 25.02 should be applied here because neither section envisions a payment over eight hours when no travel time is involved.

It logically follows from the above finding that Section 9.06 must be applicable to the instant matter. As previously noted, all the employes were paid at straight time for their hours for that day, including those who were present more than eight hours. Since they were paid for this time, it is deemed to be hours worked. It therefore follows then that all time over eight hours is to be paid at the overtime rate. Since that did not happen here, the Employer violated Section 9.06. In order to remedy this contractual violation the Employer shall pay those employes overtime who spent more than eight hours on May 2, 1991 in the employ of the City.

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

AWARD

That the City violated the collective bargaining agreement by failing to pay overtime to those employes who spent more than eight hours in the employ of the City on May 2, 1991. In order to remedy this contractual violation the City shall pay those employes overtime for all time over eight hours.

Dated at Madison, Wisconsin this 12th day of February, 1992.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator