BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2832 and EGGERS INDUSTRIES, INCORPORATED	Case 38 No. 47518 A-4888 (Brenda Van Dinter)

Appearances:

United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 1614 Washington Street, Two Rivers, WI 54241 by Mr. Conrad Vogel, Business Agent appearing on behalf of Local Union 2832.

Mr. Gary Milske, Personnel Manager, 164 North Lake Street, Neenah, WI 54956 appearing on behalf of Eggers Industries, Inc.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, the United Brotherhood of Carpenters and Joiners of America, Local Union No. 2832 (hereinafter referred to as the Union) and Eggers Industries, Inc., (hereinafter referred to as the Company) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute concerning the assignment of available overtime work. The undersigned was so designated. A hearing was held on June 11, 1992 in Neenah, Wisconsin, at which time the parties were afforded full opportunity to present such stipulations, testimony, exhibits, other evidence and arguments as were relevant. A stenographic record was made of the hearing, and a transcript was received by the undersigned on June 23, 1992. The parties submitted post-hearing briefs, which were exchanged through the undersigned on July 13, 1992, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes and issues the following Award.

ISSUE

The parties stipulated that the following issue was to be decided herein:

Did the Company violate Article 4.9 of the Collective Bargaining Agreement in notifying the grievant of available overtime on December 13, 1991? If so, what is the appropriate remedy? 1/

RELEVANT CONTRACT LANGUAGE

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ARTICLE FOUR - WAGES

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4.9 It is recognized that from day to day the needs of the business may require that overtime beyond the normal work schedule be worked by entire departments, or a few employees in certain departments. Department managers will first seek volunteers from within the department to fulfill such overtime requirements. If there are not enough volunteers to meet the overtime requirements, the department managers shall notify employees of such overtime opportunities during the forenoon of the day involved. Overtime work shall first be assigned to the employee or employees who normally perform the work in question, and if such employee is unable to perform the assigned overtime work, then such overtime work will be assigned to the employee or employees with the most seniority in their department.

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BACKGROUND FACTS

The Company fabricates wood products at its Neenah, Wisconsin plant. The Union is the exclusive bargaining representative for non-exempt production and maintenance employees and over the road truck drivers. The grievant, Brenda Van Dinter, is a member of the bargaining unit who works the second shift.

On December 13, 1991, Bob Coor, the Company's first shift trim saw operator called in sick. Joseph Riedel, the third floor manager, gave the receptionist a list of three names -- Brenda

1/ The parties stipulated that the hours available for overtime work on December 13th were from 12:30 to 3:30, plus two hours of call in under the contract. The money in issue amounts to six and one half hours of straight wages.

Van Dinter, Jim Hoffman and Tim Wendt -- to call in order and attempt to secure a volunteer for overtime. The receptionist called Brenda Van Dinter's residence at approximately 8:00 a.m. and spoke with her husband, Scott. She told Scott that she was calling to see if Brenda wanted to work overtime. Scott said that Brenda was sleeping, that he could not say whether she wanted to work the overtime, and that he was not going to wake her up and ask her. He told the receptionist to call back later.

The receptionist asked Riedel what to do, and he told her to call back between 9:30 and 10:00 a.m. At 9:30 she told Riedel she had called back and gotten no answer, and he told her to call the next name on the list. She reached Jim Hoffman, who agreed to work the overtime.

The instant grievance was filed later that day. The grievance was premised upon the assertion that Scott Van Dinter was home during the morning of the 13th and that the Company had not called back a second time. The Company denied the grievance, and it was referred to arbitration. Additional facts, as necessary, will be set forth below.

THE POSITIONS OF THE PARTIES

The Union takes the position that the grievant was the employee who was entitled to the first opportunity for available overtime on December 13th and that the Company was obligated to contact her. In failing to do so, they violated the agreement. The grievant is therefore entitled to be made whole for her losses.

The Company takes the position that it fully complied with the contract. The contract requires that the Company seek volunteers for overtime from among those who ordinarily perform the available work. Brenda Van Dinter was first on the list to be called. The Company did, in fact, call Van Dinter and was told by her husband that she couldn't come to the phone. Despite the fact that the first call met the contract's requirements, the Company made a second attempt to reach Van Dinter. The receptionist swore under oath that she called back at 9:30 a.m. and got no answer. Although Van Dinter testified that she was gone at that time, her husband was home. The Company is at a loss to say why he didn't get the phone call. However, the important point is that Company attempted to reach her twice before moving on to the second name on the list. The Company argues that a ruling holding them responsible for not getting an answer to their telephone calls would open them up to spurious claims in the future from workers who could claim to have been available for work.

DISCUSSION

There is no disagreement between the parties about the Company's contractual obligation to seek volunteers for overtime, nor about the order in which volunteers are to be sought. The disagreements here are over whether and under what circumstances the Company is required to made a second attempt to reach an employee, and whether the Company did, in fact, make such an

effort in this case.

The Company is correct in asserting that it met the requirements of Article 4.9 when it placed the first call to Van Dinter's home on December 13th. Nothing in the contract indicates that the Company, faced with a refusal by a family member to call an employee to the phone, is obligated to make further efforts to reach the employee. It is up to employees to make arrangements within their families about how to handle telephone calls from the employer, and to accept the consequences of those arrangements. If an employee chooses not to be disturbed at a given time, that employee cannot be heard to later complain that the Company should have called back at a more convenient time. Neither the contract nor common sense suggest that the Company can hinge its manpower needs and production schedule on the individual whims of each worker. The Company made a good faith effort to reach Van Dinter at 8:30 a.m. and that is all that the contract requires.

Having concluded that the Company is not required to make multiple efforts to reach workers, it must also be noted that the Company can, in individual cases, agree to make further efforts and then be bound by that agreement. Here the grievant's husband told the receptionist to call back later, and she agreed that she would. Her agreement was ratified by Riedel, who instructed her to call back at 9:30 a.m. By leading Van Dinter's husband to believe that his wife would not lose the opportunity for overtime until a second call was made, instead of insisting on an answer immediately, the Company obligated itself to make the second call. 2/ The issue then is whether the second call was actually made.

The grievant had an appointment at 9:00 a.m. and her husband stayed home with their newborn baby. He testified that he was near the phone at all times, and that no second call was received. Riedel testified that he told the receptionist to make a second call at 9:30 a.m. and she testified that she made the call and got no answer. There is no way, on this record, to reliably determine why the second call went unanswered, and that question is not really relevant. The issue is not whether the call was successfully completed. The important issue is instead whether the Company made a good faith effort to reach the grievant a second time.

The only evidence that might show a lack of a good faith effort by the Company is the testimony of Jim Hoffman, the worker who ultimately worked the overtime. He testified that he had asked whether Brenda had been called, and that Riedel told him they had tried to reach her, but that her husband Scott was grumpy and they didn't have to put up with that so they called him.

2/ It may seem that this would be an example of the old maxim that "No good deed goes unpunished." However, the Company has control of whether and under what circumstances it will agree to make further contacts, and there may be cases where it is in the Company's interest to make an extra effort to secure a particular employee for overtime before moving on down the list.

Riedel neither admitted nor denied making a statement of the sort, but insisted that he told the receptionist to make the second call.

The statement to Hoffman can be read as meaning the second call was not made, but it does not directly say that. The evidence to the contrary is strong. Even if Riedel's motives are drawn into question, the receptionist who was responsible for making the phone calls was absolutely sure that she had made two calls to Van Dinter's home. She is not acquainted with the grievant and there was no evidence of any hostility or other reason for her to lie under oath. Furthermore, the call to Hoffman was not made until shortly after 9:30 a.m. Had the Company decided not to call the grievant a second time, they could have contacted Hoffman at least an hour earlier. The timing of the first call to the grievant and the call to Hoffman are undisputed facts in the record. The lapse between them supports the Company's claim that they did not call Hoffman until a second attempt had been made to reach the grievant and offer the overtime to her.

The Company has no contractual obligation to make multiple calls to an employee when seeking volunteers for overtime, unless it chooses to do so. Where the Company agrees to make a second effort to reach an employee, it must make the second effort. In this case, the Company agreed to call the grievant back. The evidence in the record is not sufficient to establish that the Company did not make a good faith effort to reach the grievant a second time.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

The Company did not violate Article 4.9 of the Collective Bargaining Agreement in notifying the grievant of available overtime on December 13, 1991. Accordingly, the grievance is denied.

Signed this 14th day of July, 1992 at Racine, Wisconsin:

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator