

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

TAYLOR ENTERPRISES

and

TEAMSTERS LOCAL UNION NO. 43

Case 33  
No. 47759  
A-4952  
Robert Ruetz - Holiday Pay

Case 34  
No. 47760  
A-4953  
Sherlia Franklin - Holiday  
Pay

Appearances:

Teamsters Local Union #43, 1624 Yout Street, Racine, WI 53404 by Mr. Charles Schwanke, President, appearing on behalf of the Union.

Mr. Jack Taylor, 1900 Kentucky Street, Racine, WI 53405 appearing on behalf of the Employer.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement for the years 1990-1993, Teamsters, Chauffeurs and Helpers Union No. 43 (hereinafter referred to as the Union) and Taylor Enterprises (hereinafter referred to as the Employer or the Company) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute concerning the refusal of the Company to pay drivers Robert J. Ruetz and Sherlia Franklin more than eight hours of holiday pay for the 1992 Memorial Day holiday. Daniel Nielsen was so designated. The two cases were consolidated for the purpose of hearing and decision. A hearing was held on November 11, 1992 at the County Board offices in Racine, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties agreed not to submit post hearing arguments, and the record was closed at the end of the hearing.

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

## ISSUE

The parties did not agree to any formal statement of the issue. From a review of the grievances, it is apparent that the issue in this case is:

"Does the contract entitle the grievants to receive holiday pay in the amount of their normal work schedules for the 1992 Memorial Day holiday? If so, what is the appropriate remedy?"

## PERTINENT CONTRACT LANGUAGE

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### ARTICLE 13. Work Week

Full-time employees shall be scheduled for a minimum forty (40) hour week. Employees for health reasons, proof from a medical doctor required, may work less than forty (40) hours per week and enjoy full-time classification by agreement between the Employer and the Union. Part-time drivers may be scheduled for any available work that cannot be scheduled for full time drivers.

### ARTICLE 14. Management Rights

The Employer possesses the sole right to operate the mass transit system and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this agreement and the past practices in the departments covered by the terms of this agreement, unless such practices are modified by this agreement or by the Employer under rights conferred upon it under this agreement or the work rules established by the Employer. These rights which are normally exercised by the Employer include but are not limited to the following:

1. To direct all operations of the transit system.
2. To hire, promote, transfer, assign, and retain employees in their position with the transit system and to suspend, demote, discharge and take other disciplinary action against employees for just cause.
3. To lay off employees due to lack of work or funds in keeping with the seniority provisions of the agreement.
4. To maintain efficiency of the transit operations entrusted to the Employer.
5. To introduce new or improved methods or facilities.
6. To change existing methods or facilities.
7. To contract out for goods or services; however, there shall be no layoffs or reductions in hours due to any contracting out of work.

8. To determine the methods, means and personnel by which such transit operations are to be conducted.
9. To take whatever action must be necessary to carry out the functions of the transit system in situations of emergency.
10. To take whatever action is necessary to comply with City, State or Federal law.

In addition to the management rights listed above, the powers of authority which the Employer has not officially abridged, delegated or modified by this agreement are retained by the Employer. The Union recognizes the exclusive rights of the Employer to establish reasonable work rules.

The Union and the employees agree that they will not attempt to abridge these management rights and the Employer agrees that he will not use these management rights to interfere with rights established under this agreement. Nothing in this agreement shall be construed as imposing an obligation upon the Employer to consult or negotiate with the Union concerning the above areas of discretion and policy.

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ARTICLE 16. Vacation & Holiday Pay

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Full-time employees who have completed their probationary period shall receive holiday pay in the amount of eight (8) hours x the employee's current hourly rate of pay for each of the following holidays:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Fourth of July	Christmas Day

If a holiday falls within the work week, computation for overtime hours shall be reduced by eight (8) hours straight time holiday pay.

It is agreed that if any of the negotiated holidays fall on a day other than the employee's normal work day or during the employee's vacation period, the employee shall be paid an additional eight (8) hours pay at the employee's straight time hourly rate.

If the employee may be required to work on any holiday, the employee shall receive time and one-half for all hours worked in addition to the eight (8) hours holiday pay, at their straight time rate.

In order to qualify for eight (8) hours straight time pay for a holiday not worked, it is provided that regular employees must work the regular scheduled work day which immediately precedes and follows the holiday, except in cases of proven illness or unless the absence is mutually agreed to.

Employees on the ten hour work day shifts shall be paid ten hours pay at their straight time hourly rate for all paid holidays.

Employees who are serving their probationary period are not entitled to holiday pay for holidays falling within the probationary period.

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#### ARTICLE 25. ARBITRATION

In the event that the Employer and the Union cannot mutually agree to a settlement of any unresolved controversy which may arise concerning any matter or the interpretation of this Agreement, such unresolved controversy shall be reduced to writing and shall be referred to the Wisconsin Employment Relations Commission to have an arbitrator appointed for settlement.

The filing fee required by the Wisconsin Employment Relations Commission for arbitration shall be split equally between the Union and the Employer.

The Employer and the Union agree that the decision of the arbitration committee shall be final and binding upon both parties. The Employer and the Union agree that Union membership shall not be a matter subject to arbitration.

#### BACKGROUND FACTS

The Employer operates the Belle Urban System busses in Racine, Wisconsin. In so doing, it employs personnel in the classification of Driver, who are represented for the purposes of collective bargaining by the Union. The grievants, Sherlia Franklin and Robert Ruetz, are employed as Drivers. At the time of this grievance, Franklin was scheduled for a 9.75 hour shift, and Ruetz was scheduled for a 9.5 hour shift.

For some time, the contract has contained a provision for eight hours of pay for holidays. All drivers received the eight hours' pay, regardless of whether their normal shifts were six hours, eight hours or ten hours. In negotiations, the parties amended the contract by including a new provision in Article 16:

Employees on the ten hour work day shifts shall be paid ten hours pay at their

straight time hourly rate for all paid holidays.

After this change in the contract, the Company paid ten hours' of holiday pay to drivers working ten hour shifts, and continued to pay eight hours pay to those working any shift less than ten hours. This policy extended over 23 holidays through the date of this grievance.

The grievants initiated this case after they received only eight hours of holiday pay for the 1992 Memorial Day holiday. This resulted in each of them receiving less than 40 hours of pay for that week.

Additional facts, as necessary, are set forth below.

## POSITIONS OF THE PARTIES

### The Position of the Union

The Union takes the position that the ten hour holiday provision was intended to apply to all employees scheduled for more than eight hours shifts. Furthermore, the contract guarantees a forty hour week to each employee, and the effect of the Company's shorting these grievants on holiday pay was to reduce their earnings under the 40 hour guarantee. Thus the grievants should be made whole for their losses by being paid at least 40 hours for the week in question.

### The Position of the Employer

The Company takes the position that the contract is clear and unambiguous. Employees receive eight hours of holiday pay, no matter what their normal work schedules, unless they work the ten hour shift called for in the new contract provision. The Company has consistently administered the language in this fashion since it was added to the contract, without objection by the Union or any employee. As for the claim that the contract guarantees forty hours of pay to employees, the Company asserts that the only promise in Article 13 is that it will schedule forty hours, not that it will pay forty hours. The grievants are scheduled for forty hours, but since they do not work the extra scheduled hours on the holidays, they are not entitled to receive forty hours of pay.

## DISCUSSION

Article 16 of the contract appears to create two classes of full-time employee for the purpose of calculating holiday pay. The contract first specifies that full-time employees will receive eight hours of pay for holidays. It then carves out an exception, providing that employees on a ten hour shift receive ten hours of pay for their holidays. Prior to the addition of this clause, all full-time employees received eight hours of pay no matter whether they were normally scheduled for more than eight hours per day or less than eight hours per day. This fact is

significant, in that it undercuts the Union's argument that Article 13's guaranteed forty hour week controls the amount of pay for holidays. Since the forty hour guarantee did not affect the amount of holiday pay before the negotiation of clause dealing with employees on a ten hour shift, 1/ and since there is no evidence of a change in either Article 13 or the remainder of the holidays provision relating to the amount of holiday pay, the undersigned concludes that the parties have not mutually understood Article 13 as a guarantee of 40 hours of pay during a holiday week.

The Union's argument that the ten hour clause was negotiated with an intent of providing ten hours of pay for all employees working more than eight hour shifts is not wholly unreasonable. That may well have been the intent of the Union's bargaining team, and such an interpretation would certainly solve one inequity in the holiday pay provision. However, the contract does not say that. As discussed above, by its plain language, it creates two classes of employees -- those who work ten hour shifts and receive ten hours' holiday pay, and everyone else, who receive eight hours' holiday pay. This reading of the contract is consistent with the practice that has been uniformly followed by the Company for the four years since the ten hour provision was negotiated. The grievants were not scheduled for ten hours shifts, and thus fall into the second category.

In concluding that the grievants are not entitled to more than eight hours of holiday pay for Memorial Day, the undersigned is well aware that there is a certain unfairness in this result. Franklin, for example, only missed the ten hour shift by 15 minutes per day. There is no evidence that the Company established this nine hour and forty-five minute shift as a means of avoiding extra holiday pay. Furthermore, the inequity in the contract cuts both ways, and represents a bargain made voluntarily by the parties. While the flat eight hours of pay for those working less than ten hour shifts works a hardship on some employees, it represents a windfall for those scheduled for shifts of less than eight hours per day. This is a tradeoff that the parties made when they negotiated the holiday pay provision. While this inequity was reduced somewhat by the ten hour shift provision, the express language of the contract and the practice of the parties indicate that the tradeoff was continued for those working less than ten hours per day.

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

#### AWARD

The contract does not entitle the grievants to receive holiday pay in the amount of their normal work schedules for the 1992 Memorial Day holiday. Accordingly, the grievances are

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1/ I note that the Union's evidence established that the reason for the change in Article 16 was that employees working a ten hour shift were only receiving eight hours of pay for holidays.

denied.

Signed and dated this 11th day of November, 1992 at Racine, Wisconsin:

Daniel Nielsen /s/  
Daniel Nielsen, Arbitrator