BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between GREEN BAY MUNICIPAL EMPLOYEES UNION, PARKS DEPARTMENT LOCAL 1672, AFSCME, AFL-CIO and CITY OF GREEN BAY (PARKS DEPARTMENT)	Case 227 No. 47512 MA-7291

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 936 Pilgrim Way, #6, Green Bay, Wisconsin 54304, appearing on behalf of the Union.

Ms. Judith Schmidt-Lehman, Assistant City Attorney, City of Green Bay, City Hall, Room 300, 100 North Jefferson Street, Green Bay, Wisconsin 54301, appearing on behalf of the Employer.

ARBITRATION AWARD

Green Bay Municipal Employees Union, Parks Department Local 1672, AFSCME, AFL-CIO, hereafter the Union, and City of Green Bay (Parks Department), hereafter the City or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a staff member as single, impartial arbitrator to resolve the instant grievance. On July 14, 1992, the Commission designated Coleen A. Burns, a member of its staff, as impartial arbitrator to resolve the instant dispute. Hearing was held on September 2, 1992, in Green Bay, Wisconsin. The hearing was transcribed, and the record was closed on November 12, 1992, upon receipt of post-hearing written arguments.

ISSUE:

The parties have stipulated to the following statement of the issue:

Did the Employer violate the collective bargaining agreement when it failed to assign Bob Lavis available overtime on April 16, 1992?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE 11

WORK WEEK - OVERTIME - SUNDAY PAY

. . .

(J) Equipment Operators will be called in for overtime to operate equipment, and all other overtime shall be by seniority among those qualified (i.e., Senior Parks Maintenance Worker will be called first for overtime involving driving trucks). Every effort will be made by the Park and Recreation Department to schedule overtime as early as is reasonable. When the employer has at least one week notice of the need for overtime it shall post the overtime for three consecutive work days and the overtime shall be granted to the most senior qualified employee(s) in the classification(s) requested on the posting. When the employer has less than one week notice of the need for overtime it shall solicit interest among qualified employees and award the overtime to the senior interested employee(s).

In either case the employer is not obligated to contact employees who are not at work for the posting or solicitation period. However, a union steward may accept or sign for overtime on behalf of an absent employee. The Steward is relieved of responsibility for signing if they were expressly authorized to sign for the employee. Such proxy acceptance shall commit the employee to work just as if he/she had accepted in person.

Those employees who start a job on a given day shall work the overtime on that job for that day.

. . .

BACKGROUND:

At the start of the work day on April 16, 1992, two Parks Department employes, Greg Barta and Bill Grunwald, were assigned to work at Bay Beach to prepare the rides for the season opening. Prior to 11:00 a.m., Barta and Grunwald returned to the shop. At approximately 11:00 a.m., Bill Fischer, the Supervisor at Bay Beach, phoned Dan Lardinois, Barta and Grunwald's supervisor, to advise him that an electrician had arrived at Bay Beach and was waiting for someone to assist him in wiring the rides. Lardinois directed Barta and Grunwald to eat lunch

from 11:00 a.m. to 11:30 a.m. and, thereafter, to return to Bay Beach.

Prior to returning to Bay Beach, Grunwald asked Lardinois if he and Barta should work overtime if overtime were needed to complete the work at Bay Beach. Lardinois responded that he did not know, but that he would let them know. Lardinois contacted his supervisor, Keith Wilhelm, sometime after 1:00 p.m. and obtained permission for overtime work. Lardinois then went to assist Grunwald and Barta at Bay Beach. When it became apparent to Lardinois that overtime might be needed, he told Grunwald and Barta that, if necessary, they could work overtime to finish the job. On April 16, 1992, Barta and Grunwald did work overtime at Bay Beach.

On April 17, 1992, Good Friday, at approximately 10:30 a.m., employes Mike Landry and Steve Kellow approached Supervisor Lardinois to ask about overtime at Bay Beach. At that time, Lardinois did ask Landry and Kellow, who were more senior to the two men who were working at Bay Beach, if they wanted to work overtime at Bay Beach. Both Landry and Kellow declined, and the men who were working at Bay Beach did work the overtime which was available on April 17, 1992.

On April 20, 1992, a grievance was filed alleging that the Employer had violated Article 11 of the collective bargaining agreement by not assigning the April 16, 1992 overtime work to the most senior man. In remedy of the contract violation, the grievance requested that Bob Lavis, hereafter the Grievant, be compensated for one hour of overtime. The grievance was denied at all steps of the grievance procedure and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union:

The language incorporated into the current collective bargaining agreement as Article 11, Section (J), was drafted to resolve a problem in which senior employes were attempting to bump junior employes when there was overtime due to lawn mowing. The senior employes wanted to work the overtime, but were not interested in doing the lawn mowing assignment for the entire day. Agreeing that this was unfair, the City and the Union decided that, where overtime is scheduled in advance of the shift, senior employes would not be entitled to the overtime unless they were willing to work the entire assignment. The overtime involved in the instant dispute is not governed by the language of Article 11, Section (J).

At hearing, management testified that it was never anticipated that there would be overtime on April 16, 1992. It is apparent, however, that the possibility of overtime had occurred to the two employes involved in the work at Bay Beach. The Grievant overheard these two employes discussing the possibility of overtime with their supervisor, Dan Lardinois. At the time of this

discussion, all of the employes in the affected department were in the Park Shop. If there was a question of whether overtime would be worked, management should have offered the overtime to the senior employe who was fully capable of performing the job.

April 17, 1992 was Good Friday and a half day holiday for the Parks Department employes. On that day, Supervisor Lardinois did ask the senior employes if they wished to work the jobs that might involve overtime. This was done during the day and not at the beginning of the work shift.

The testimony at hearing establishes that there are several procedures that are used in the assignment of overtime in the Green Bay Parks Department. It is clear that the seniority principle is the initial premise at work when the need for overtime arises.

Both the Union and management have made attempts to meet concerns for the distribution of an assignment of overtime. Both sides have agreed in the latest round of negotiations to allow senior employes to choose whether they desire overtime which is scheduled at least a day in advance, so long as they work the entire shift on the job in question. Where there is no way to schedule unforeseen overtime, the Union has agreed that, with approval, whoever is doing the job would work the overtime. The issue involved in this dispute does not fall into either of these categories.

The overtime on April 16, 1992, was not of an emergency nature. Nor was it pre-scheduled. The April 16 overtime became necessary during the course of the work shift. Management could have offered it to the senior mechanic since the employes in question were all physically present in the shop at approximately the middle of the work shift. Management's testimony that they did not expect the work to involve overtime is not credible because the employes in question raised the issue of overtime while they were in the shop during the lunch break. Additionally, as management acknowledged, they told the employes at Bay Beach to just stay and get the job done. Thus, the City knew there was a probability of overtime prior to sending the men back to Bay Beach.

The overtime in question should have been assigned to the senior mechanic, Bob Lavis. The arbitrator should find that the City has violated the contract and order the City to make Bob Lavis whole for the overtime that he could have worked on April 16, 1992.

Employer:

The contract language clearly states that "those employees who start a job on a given day shall work the overtime on that job for that day." It is undisputed that, at the beginning of the work day on April 16, 1992, Barta and Grunwald were assigned the job of working on the Bay Beach rides. It is that job which required overtime work at the end of the day on

April 16, 1992. Under the terms of the collective bargaining agreement, Barta and Grunwald were entitled to work overtime on that day for that job.

The issue of overtime anticipation is one for the supervisor to make; it is not one for the employe to suggest to the supervisor. As the supervisor testified at hearing, even with the employes' suggestion that overtime was a possibility, it was the supervisor's opinion that overtime would not and should not be necessary to complete the work on the Scat machine or the other rides.

The fact that the supervisor, on the next day, may have offered unanticipated overtime based upon seniority does nothing to alter the correctness of his actions on April 16, 1992. The supervisor openly admitted that he made a mistake in offering the April 17, 1992 overtime on the basis of seniority. The fact that a mistake was made on April 17 should not affect the outcome of this grievance. The City has not violated the contract and the grievance must be denied.

DISCUSSION:

The Union, contrary to the Employer, argues that the Employer was contractually required to offer overtime work performed at Bay Beach on April 16, 1992, to the Grievant, Bob Lavis, on the basis of seniority. While the Union argues that the instant dispute is not controlled by the language of Article 11, Section (J), the undersigned disagrees.

As the Employer argues, the language of Article 11, Section (J), is clear and unambiguous. The employe who starts a job on a given day is entitled to work the overtime on that job for that day. The Union and the Employer agree that, if the Employer had known of the availability of the disputed overtime prior to the start of the shift on April 16, 1992, then senior employes would have been permitted to work the job. In the present case, however, the Union does not argue, and the record does not establish, that the Employer knew of the disputed overtime prior to the start of the shift.

When Bill Grunwald and Greg Barta began their work shift on April 16, 1992, they were assigned to work at Bay Beach for the purpose of preparing the rides for the season opening. The Union does not argue, and the record does not establish, that the Employer was not entitled to assign this ride preparation work to Barta and Grunwald on that day. While the record fails to establish why Grunwald and Barta returned to the shop prior to 11:00 a.m., the record does establish that both employes expected, and were expected by management, to return to Bay Beach to continue the ride preparation work which they had started at the beginning of their shift.

It is undisputed that the overtime work performed by Grunwald and Barta on April 16, 1992, involved the preparation of the rides for the season opening. The undersigned is satisfied that the overtime work performed by Grunwald and Barta on April 16, 1992, was

overtime on the job which they had started on April 16, 1992. Under the language of Article 11, Section (J), Grunwald and Barta were entitled to work the overtime which they did work on April 16, 1992.

The overtime which occurred on April 17, 1992, like the disputed overtime which occurred on April 16, 1992, was not known at the start of the shift. While it is true that, on April 17, 1992, Supervisor Lardinois did offer the overtime to two senior employes, it is evident that this offer was an effort by a relatively new supervisor to appease the Union because the Union had made "such a fuss on Thursday." As the Employer argues, Supervisor Lardinois made a mistake on April 17, 1992, when he offered the overtime to the two senior employes. This mistake does not alter the clear language of Article 11, Section (J), nor the Employer's right to rely upon this language.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The Employer did not violate the collective bargaining agreement when it failed to assign Bob Lavis available overtime on April 16, 1992.

2. The Grievance is denied and dismissed.

Dated at Madison, Wisconsin this 10th day of February, 1993.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator