

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

SHEBOYGAN COUNTY SUPPORTIVE SERVICES  
LOCAL 2481, AFSCME, AFL-CIO

and

SHEBOYGAN COUNTY

Grievance of Bonnie Korff  
and Joanne Dommissie  
dated 2/6/92

Case 163  
No. 47903  
MA-7427

Appearances:

Ms. Helen Isferding, District Council 40 Staff Representative, 1207 Main Avenue,  
Sheboygan, WI 53083, appearing on behalf of the Union.

Ms. Louella Conway, Personnel Director, Sheboygan County Courthouse, 615 North 6th  
Street, Sheboygan, WI 53081, appearing on behalf of the County.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission designated the undersigned Arbitrator to hear and determine a dispute concerning the above-noted grievance under the grievance arbitration provisions of the parties' 1989-91 collective bargaining agreement (herein Agreement).

The parties presented their evidence and arguments to the Arbitrator at a hearing held at the Sheboygan County Courthouse on November 18, 1992. The hearing was not transcribed, but the parties authorized the Arbitrator to maintain an audio cassette recording of the proceeding exclusively for his own use in award preparation. Briefing was completed on January 19, 1993, marking the close of the record.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Is the grievance arbitrable? (The parties stipulated that the County's arbitrability objection rests solely on an alleged failure to file the grievance initially within the contractual 30-day time limit.)

2. If 1 is so, did the Employer violate [Agreement] Art. 13(b) when it refused to pay Grievants Joanne Dommissé and

Bonnie Korff at the rate of time and one-half for work performed on December 23, 1991? (The parties further stipulated that the Arbitrator was to resolve ISSUE 2 for future reference even if the grievance is determined to have been untimely filed.)

3. If 2 is so, what shall the remedy be?

PORTIONS OF THE AGREEMENT

ARTICLE 3

MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason, is vested exclusively in the Employer.

By way of further enumeration and not as a limitation because of such enumeration, the Employer shall have the explicit right to determine the specific hours of employment and the length of the work week and to make such changes in the various details of the employment in the various employees as it, from time to time, deems necessary for the effective and efficient operation of County business.

. . .

ARTICLE 8

WORK WEEK

The work week shall consist of five (5) consecutive work days, Monday through Friday in a pre-established work schedule. . . . The work day shall be seven and one-half (7-1/2) hours per day except for the Custodian . . . Computer Operator I, whose work day shall be eight (8) hours.

Employees scheduled to work thirty-seven and one-half

(37-1/2) hours shall continue to have a minimum of thirty-seven and one-half (37-1/2) hours, and Custodian . . . and Computer Operator I shall continue to be scheduled for a minimum of forty (40) hours in every normal work week. All full time employees shall be guaranteed the full work schedule.

Each office's work schedule shall be determined by the department head upon approval of the Personnel Committee. The employer shall have the greatest degree of flexibility in scheduling hours as it determines necessary.

Work schedules for each office setting forth the work days and hours shall be established as above and assigned on the basis of seniority within the department with the most senior employee qualified to do the work being entitled to select the shift schedule desired. In the event of a change in the schedule from the established schedule to a new regular schedule the shift preference shall again be awarded on the basis of seniority so long as the selecting employee is qualified to carry out the work responsibilities. The work schedule shall be posted in each office and shall not be changed, except for emergency situations, without (3) working days prior notice to the employees affected thereby. Voluntary temporary exchanges of shift that in the determination of the department are not disruptive of office procedures may be permitted on an occasional basis to accommodate the personal needs of the employees. If a temporary shift change is requested it will be the employee's responsibility to seek approval, research and attempt to arrange.

Overtime may be scheduled at any time as deemed necessary by the employer. Overtime shall be distributed as equitably as possible among the qualified employees within the department. The first consideration for overtime shall be given to those employees who are permanently assigned to the job involved. Employees assigned to work the overtime shall be required to carry out such assignments, except that an employee may upon request be released from an overtime assignment if a qualified replacement is available and willing to work.

## ARTICLE 9

CALL-IN/STAND BY TIME

Employees who are called to work at times or on days on which they are not scheduled to work shall be entitled to a minimum of two (2) hours work (or pay). Any employee so called in may be required to work the full two (2) hours. If an employee is called in within three (3) hours of the normal starting time, such employee shall complete the regular work schedule.

. . .

ARTICLE 13

TIME AND ONE-HALF

Time and one-half (1 1/2) shall be paid:

- (a) For all hours worked in excess of seven and one-half (7 1/2) hours per day or in excess of thirty-seven and one-half (37 1/2) hours per week except for Custodian . . . and Computer Operator I when such maximums shall be eight (8) hours per day or forty (40) hours per week.
- (b) For all hours worked on the employee's day off.
- (c) Employees, at their option, may elect to take overtime payments as compensatory time off. compensatory time may be accumulated to a maximum of 37.5 hours for those working a 37.5 hour week and to a maximum of 40.0 hours for those working a 40.0 hour week. Compensatory time off must be approved by the employee's supervisor before it is taken off. All unused compensatory time will be paid out on the last paycheck of the year in which it was earned.

. . .

ARTICLE 18

HOLIDAYS

All employees except as herein provided shall be granted eleven (11) paid holidays during calendar year 1989, 1990 and 1991. They are as follows:

HOLIDAY	1989	1990	1991
1. New Years Day . . . [dates omitted]			
2. Good Friday Afternoon . . . [dates omitted]			
3. Memorial Day . . . [dates omitted]			
4. Independence Day . . . [dates omitted]			
5. Labor Day . . . [dates omitted]			
6. Thanksgiving Day . . . [dates omitted]			
7. Day after Thanksgiving . . . [dates omitted]			
8. Christmas Eve Day . . . [dates omitted]			
9. Christmas Day . . . [dates omitted]			
10. New Years Eve Afternoon . . . [dates omitted]			
11. Floating Holiday			
12. Floating Holiday			

- a. One (1) Floating Holiday may be taken any time after an employee has worked the first ninety (90) days in any calendar year and the remaining holiday any time after the employee has worked six (6) months during the calendar year. The actual day of the holiday may be designated by the employee after notifying the department head five (5) days in advance of such election and the department head shall respect the wishes of the employee as to the day off insofar as the needs of the County will permit.
- b. Employees who are required to work on the holiday shall be paid at time and one half (1-1/2) of the regular rate of pay for the hours worked. The employee shall be permitted to take equivalent holiday time at such time as they may select within the next succeeding thirty (30) days subject to the scheduled approval of the department head or at the employee's election may receive the equivalent pay at the regular rate.

ARTICLE 19

## VACATIONS

. . .

6. When Vacation May Be Taken: In determining vacation schedules the head of the department shall respect the wishes of the eligible employees as to the time of taking their vacation insofar as the needs of the county will permit. Vacation allowances shall be taken during the vacation year except that employees who are required by their department head to defer all or a part of their vacation for a given vacation period may be permitted to take it within the first six (6) months of the ensuing vacation year, after which it will be lost.

. . .

## ARTICLE 25

### GRIEVANCE PROCEDURE

The County shall not be required to process any grievance which is based upon an occurrence more than thirty (30) days prior to the date of it being offered as a complaint, or a complaint which is filed more than thirty (30) days after the union knew, or should have known of the existence of grounds for such complaint, . . . .

### BACKGROUND

The Union represents a bargaining unit consisting of certain regular full-time and regular part-time personnel employed by the County in the Courthouse and in auxiliary departments including the County's Bus Transportation System.

The Grievants are employed as Court Secretaries in the Clerk of Courts office. As such they normally work a 37-1/2 consisting of 7.5 hours each on Monday-Friday.

Months prior to December 23, 1991, (the day preceding two contractual paid holidays) both Grievants had requested to take that day as paid vacation during the customary vacation selection process in their office. Those requests were approved by supervision shortly after they were submitted. Sometime thereafter, Grievant Korff chose instead to take paid compensatory time off as regards that date.

On December 23, 1991, two other Court Secretaries called in sick unexpectedly. Coupled with previously-approved requests for paid time off, those absences left Clerk of Courts Office

Supervisor Daun Bartzen with two courtrooms that would be without a deputy clerk of courts unless replacements were found. Because courts cannot be in session without a deputy clerk of courts present, and to avoid the inconvenience to parties, jurors and judges that would be associated with canceling court sessions, Bartzen called the Grievants, explained her situation, and asked them to come in and work a full work day that day. According to Grievant Dommissie, Bartzen told her "I believe you'll be paid time and one-half because you're scheduled off." According to Grievant Korff, Bartzen told her that she would "probably be paid at time and one-half because it will be a scheduled off day." Bartzen, in her testimony, did not dispute the Grievants' recollections in those regards. Bartzen stated that she requested the Grievants to come in to work that day, but did not directly order them to do so. By all accounts, the Grievants agreed to come in and work that day, and each did so. In Dommissie's case, that involved delaying her departure to pick up her daughter from an out-of-state location. Dommissie said that she hesitated initially to agree to come in, but recognized that Bartzen was "in a bind" such that she ultimately agreed to do so.

Both of the Grievants worked their usual 7.5 hours plus short additional periods of overtime that day. Each of the Grievants initially prepared and submitted time sheets for the week claiming time and one-half their regular rate for all hours worked on December 23. Sometime thereafter a question arose whether Grievants were in fact working on an off day so as to be entitled to the time and one-half rate for all hours worked. Both of the Grievants were informed no later than December 27 that someone in personnel or payroll had told Bartzen that the coding for 7.5 hours of each Grievant's work that day would have to be changed to straight time. Korff recalled Bartzen as saying "I don't know if I'm going to be able to pay you that [time and one-half rate] because Payroll says it wasn't your regular off day." Dommissie recalled that Bartzen had initially told her that "there may be a problem about how to code and report the 7.5 hours," and later told her that those hours would have to be coded as straight time, to which Dommissie replied "We'll deal with it later" because she was on a tight schedule in and out of courts all during the day and had to leave work to carry out her revised travel departure plans. Eventually the Grievants' time sheets were redone and/or changed so that the 7.5 hours was coded at their regular (straight time) rate of pay.

No grievance was filed until after the Grievants received their paychecks for the pay period ending December 28, 1991. Those checks were issued and received by both Grievants on January 10, 1992. In those paychecks, Grievants were paid straight time for 7.5 of the hours worked on December 23, 1991. In addition, Dommissie's check did not contain any reimbursement of the 7.5 hours of vacation she wound up not taking on December 23. In Korff's case, the amount the County paid her as its cash payout of unused compensatory time had not been reduced as regards the compensatory time she had intended to but did not use on December 23, so her paid leave account was not a matter of concern.

In their grievance initiated on February 6, 1992, the Grievants asserted, "Employees were



denied time and one-half for hours worked on their off day and use of one vacation day. Employee was also denied carryover of one vacation day. . . . [in alleged violation of] Article 3 - Management Rights; Article 2 - Freedom of Choice in Union Membership; Article 13 - Time and One Half (b); Article 19 Vacations; and any other contract violations and violations of State and Federal laws that may apply." By way of relief, the Grievants requested that the County, "Immediately pay out all time and one half hours worked on employees day off including the prevailing interest rate and allow the grievant choice of pay-out or carryover of vacation day lost, and make the grievants whole.

Management's responses at Steps 1 and 2 asserted that the County was not required to process the grievance because it involved an occurrence that was more than 30 days prior to grievance filing. In Management's responses at Step 3 (dated March 2, 1992) and Step 4, the grievance was denied both on the basis that it had been untimely filed and that the Grievants had been properly compensated as regards December 23, 1991 in light of the County's adjustment crediting Dommissie with an additional 7.5 hours of vacation. That adjustment of Dommissie's vacation account was the subject of a Time Bank Adjustment Form signed by Clerk of Courts Jane A. Schetter and dated February 26, 1992. (On the basis of that adjustment, the Union stipulated at the arbitration hearing that the status of Dommissie's vacation balance was no longer an issue in this case.)

The County offered evidence concerning past practice which was received over Union objection. Specifically, the County presented testimony of Lynne Denis, Supervisor of Special Projects which includes the County's Transportation System. Denis testified that since at least April 10, 1991, it has been the County's practice to fill in for absent Bus Drivers by calling in part-time Bus Drivers on days they were not scheduled to work and paying them at straight time. By way of an example, Denis initially cited William Russell who was called in to cover for Bus Driver absentees and whose time sheet for that week showed 7.5 hours of straight time for each of the two days he worked that week. On rebuttal she provided documents purporting to show that on November 1 and 18, 1991, part-time Bus Driver Bob Poleet received straight time pay for hours worked when he was called in to replace absentees. Denis further testified that she had discussed that practice with Union Chief Steward Diane Schmahl earlier in 1991, and that Schmahl had told her that so long as the replacement driver was told that his schedule was being changed due to an emergency, the payment of straight time was appropriate. Denis also stated that to her knowledge, bargaining unit employees in her area of responsibility have been paid time and one-half only for hours worked in excess of 7.5 in a day or 37.5 in a week, for hours worked on a holiday, and for a change in hours on less than three days notice in the absence of an emergency.

In response to Denis' testimony, Schmahl admitted having a discussion on the subject with Denis on May 8, 1991, but denied giving discussing or approving of straight time pay for regular drivers who worked as replacements on their days off. Schmahl asserts, instead, that she and

Denis were discussed only how the County would handle offering fill-in driving opportunities to the three part-time drivers (one of whom was Bill Russell) who had recently been laid off. Schmahl claims that she told Denis that those employees should be called before any personnel not on layoff; and that when the laid off employees were called in as replacements, they would not need to be paid at the time and one-half rate. In the course of that testimony, Schmahl referred to her handwritten notes of that conversation which read as follows:

5-8-91

Questions for Helen  
Bus Drivers

Lynne Denis' questions

1. If a P.T.B.D. is called to work (fill-in) on a day not on the rotating schedule, is this their "day off" & must we pay them o.t. (1-1/2)? NO
2. If so, can she call in a "casual" before a "PT" to cover these days/times? SHE SHOULD BE CALLING in laid off PTER's first.

-no more than (1) drivers off at a time on a day or week.

Schmahl testified that her reference to "P.T.B.D." in those notes was only to those part-time employees who were on layoff. To support the limited intended scope of her note and comments to Denis, Schmahl further testified that at the time of that conversation, there were no full-time drivers on layoff, only part-time employees; that there were other part-time employees who continued working when the three part-time employees were laid off; and that those part-time drivers who continued working were not working on a rotating schedule. Finally, Schmahl testified that the Union was unaware of any employees -- other than those on layoff -- being called in as replacement Bus Drivers by the County and not being paid time and one-half.

Schmahl also testified that the Union was not aware that the County had ever called in Bus Drivers who were not on layoff to replace an absentee without paying time and one-half.

POSITION OF THE COUNTY

The evidence establishes that on or before December 27, 1991, the Grievants were aware that they would not be receiving time and one half for 7.5 of the hours they worked on December 23, 1991. Grievant Dommissie testified that she knew from the outset on December 23 that she would not receive time and one-half for the day, and she prepared a new time sheet on that day showing 7.5 hours at regular time and .75 at overtime. Grievant Korff testified that she was told

on December 23 that she would not get overtime, her original time sheet signed on December 27 shows 7.5 hours at regular time and .75 hours at compensatory time, and she admits that Bartzen told her she "would not get overtime." Because the grievance was filed more than thirty (30) days after December 27, 1991, it is outside the contractual 30 day time limit and hence untimely and non-arbitrable. Accordingly, the answer to ISSUE 1 should be "yes."

With regard to ISSUE 2, December 23, 1991 was a Monday and part of the Grievants' Monday-Friday work schedule pre-established in accordance with Agreement Art. 8. It was therefore not one of Grievant's "off days" under that schedule. When they were called in to work due to a combination of holiday-related time off and flu-related illnesses of other Court Secretaries, their prior vacation/compensatory time approvals were, in effect, withdrawn and they worked a part of their normally scheduled work week. Each Grievant worked a full day and more, meeting the two-hour minimum in Art. 9. Korff received pay on the last paycheck of the year for all compensatory time earned but not taken, consistent with Art. 13. Dommissie was requested, in effect, to defer the cancelled day of vacation for use during the first six months of 1992, consistent with Art. 19, and her vacation balance was ultimately adjusted to that effect. Hence, neither experienced any loss of pay or time on account of their coming in to work on that date.

In any event, Article 8 permits changes to be made to the schedule on an emergency basis. As Bartzen testified, the Grievants employees were called in due to an emergency that threatened to force cancellation of court sessions and great disruption to judges, juries, attorneys and the parties involved in the proceedings.

Finally, the County showed that when it called in Bus Drivers to work because of an emergency caused by other employees' illness, those employees were not paid the time and one-half rate claimed in this case. That very situation was discussed with Union representative Diane Schmahl in May of 1991, and her notes reflect that Schmahl agreed that the County is not required to pay them at a rate of time and one-half. That was some six months prior to the incident in question here.

For all of those reasons, the answer to ISSUE 2 should be "no."

#### POSITION OF THE UNION

The grievance was filed within 30 days of the Grievants' January 10, 1992 receipt of their paychecks. Only then were they actually harmed financially. And only then could they know for certain at what rate the first 7.5 hours they worked on December 23 would be paid and see that (until changes were made after the filing of the grievance) the County was still charging Dommissie's vacation account for 7.5 hours as regards that day. Bartzen initially told the employees they would be paid time and one-half for all hours worked if they would come in. Each

made out a time card to that effect which was later changed. At one point, Bartzten told Korff she was uncertain whether Korff would be paid at time and one-half for all hours worked, and Bartzten testified that she was not sure when she told them that they would be paid only straight time for 7.5 of the hours. For those reasons, the grievance must be deemed timely filed.

Article 13(b) clearly and unambiguously provides that "time and one-half shall be paid . . . For all hours worked on the Employee's day off." December 23, 1991 was a "day off" for the Grievants by reason of the vacation requests each the submitted and got approved months before and by reason of Korff's subsequent decision to take compensatory time rather than vacation time on that date. The Agreement clearly does not limit the concept of a "day off" solely to unpaid days, since Art. 18 refers to a paid floating holiday chosen by the employe and approved by supervision as a "day off." The Grievants were asked, not directed, to come to work. They were presented with an Article 9 call in situation, not an Art. 8 emergency schedule change. Bartzten's calendar bore a notation that she had "called in" the Grievants, and her action was accompanied by none of the considerations such as seniority that would have accompanied a true schedule change. Under the clear language of 13(b), the Grievants were entitled both to the reimbursement/deferral of their compensatory time/vacation that was ultimately granted to them and to time and one-half for all of the hours they worked on December 23, 1991.

The County's reliance on past practice is misplaced given the clear and unambiguous language of Article 13(b). In any event, the County's evidence is insufficient to establish a binding practice. To be binding, a past practice must be unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. The County has really shown only one isolated incident, on November 18, 1991, the calendar month before the instant grieved event, on which part-time Bus Driver, Bob Poleet was paid straight time when called in to work on a day he was not listed on the schedule. Poleet's work on November 1, 1991 is irrelevant since he originally been scheduled to work on that day but was identified in handwriting as "canceled." Part-time bus driving schedules are quite different from the 37-1/2 hour Monday through Friday schedule worked by the Court Secretaries. The County has also not proven that the Union knew of or therefore approved of the County's actions with regard to Poleet. Union Chief Steward Diane Schmahl testified under oath that at no time did she give permission for Transportation System head Lynn Dennis to call people in on their off day and pay them at straight time. In Schmahl's notes, relied on by the County, Schmahl's notation that time and one-half need not be paid if part-time Bus Drivers were called to fill in referred only to the part-time Bus Drivers who were then on layoff, not to regular part-time drivers who were not then laid off.

The grievance should therefore be sustained and the Grievants paid an additional 1/2 time for the 7.5 hours of work on their off day, December 23, 1991, for which the County paid them only at straight time.

## DISCUSSION

### ISSUE 1 -- Timeliness of Grievance Filing

The County bears the burden of persuasion that the grievance was not timely filed. Arbitrators generally resolve doubts about time limit compliance in favor of reaching the merits.

The timeliness of the grievance turns whether the grievance is based on an "occurrence" more than thirty days prior to the date the grievance was filed. As the Union points out, the Grievants' January 10, 1992 receipt of their paychecks covering the pay period including December 23, 1991 was the first point at which they experienced financial harm as a result of the County's decision to treat 7.5 hours of their work on December 23 as not qualifying for the time and one-half rate. Moreover, in the context of Bartzen's initial indications that the time and one-half rate was probably applicable, coupled with the preparation of multiple time sheets, ultimately bearing handwritten corrections, the Arbitrator finds that it appropriate and necessary under Art. 25 to allow the Grievants to wait until they were paid to know for sure how those hours were going to be compensated. Accordingly, because the grievance was filed within 30 days after the Grievants received the relevant paycheck, it was filed within the applicable Article 25 time limit and hence procedurally arbitrable.

### ISSUE 2 -- Claimed Violation of Art. 13(b)

The resolution of ISSUE 2 turns on whether the 7.5 hours of work on December 23, 1991 for which the Grievants were paid at straight time were worked on the Grievants' "day off" as that term is used in Art. 13(b).

The County's position appears to be that the Grievants' days off are Saturdays and Sundays, and that if the days of approved vacation or compensatory time off constitute additional days off, then the fact that the Grievants worked their normal schedule on those days instead of taking vacation or compensatory time off changed the Grievants' schedule so that December 23 was no longer a "day off."

The Union's position appears to be that the Grievants' Article 13(b) days off would include days, such as December 23, 1991, when the Grievants were called in and worked on a day that they had previously requested and been granted permission to take off with pay as vacation or compensatory time off.

Contrary to the Union's contention, the language of Art. 13(b) on its face could plausibly support both parties' proposed interpretation of "day off." The parties could have intended the term to be narrowly interpreted to mean days other than the "five consecutive work days, Monday through Friday in a pre-established work schedule" referred to in Art. 8. Or, the parties could have intended the term to be more broadly interpreted to refer to any day the employe is scheduled

to be "off" duty for any reason.

The parties used the term "day off" in Art. 18(a) in reference to the day the employe elects to take an Art. 18 floating holiday. However, read as a whole, Article 18 cuts two ways. On the one hand, as the Union points out, the parties used "day off" in 18(a) to refer to a day -- like a day of approved vacation or compensatory time off -- on which the employe would be scheduled off based on an exercise of employe choice. On the other hand, the parties saw fit to specifically provide in the first sentence of Art. 18(b) that employes required to work on a holiday shall be paid at time and one-half the regular rate for the hours worked. If the parties intended Art. 13(c) to broadly encompass days off such as floating holidays, then their inclusion of the first sentence of Art. 18(b) was wholly unnecessary surplusage.

Well-established arbitral standards of contract interpretation call for giving meaningful effect to all provisions of an agreement by avoiding wherever possible an interpretation that renders a portion of the agreement meaningless surplusage. In order to interpret the Agreement in a way that gives some meaningful effect to the first sentence of Art. 18(b), it is necessary to adopt the above-noted narrower interpretation of "day off" in Art. 13(b), consistent with the County's position herein. Given the Grievants' established work schedules, their Art. 13(b) days off are Saturdays and Sundays. The Arbitrator also finds that interpretation more appropriate because it gives effect to the fact that the parties expressly provided in Art. 18(b) that hours worked on a holiday are to be paid at time and one-half, while they notably made no parallel provision in Arts. 19 and 13(c) with regard to work performed on days that had been previously approved for vacation or compensatory time off.

As the Union contends, this case does not involve a change in work schedule of the sort referred in the second last paragraph of Art. 8. This case involves cancellation of the Grievants' previously-approved vacation and compensatory time, not a change in the established and presumably posted schedule of work days and hours generally in effect for the Grievants in their office. While the County was faced with circumstances that would comfortably fit within the category of an emergency, its response to the emergency it was facing does not constitute a change in work schedule as that term is used in Art. 8.

As the County contends, none of the requirements of Art. 9 regarding "Employees who are called to work at times or on days on which they are not scheduled to work" were violated inasmuch as both Grievants worked their regular work schedule and more that day, well in excess of the two hour minimum.

The Arbitrator has considered each of the other provisions cited in the grievance and finds that none was violated by the County's failure to pay the Grievants at time and one-half for all hours worked on December 23, 1991.

The Arbitrator's conclusions above make unnecessary any consideration of or reliance upon the County's contention that its position is supported by past practice.

### DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

1. The grievance is arbitrable. In the circumstances of this case, the Grievants' receipt of their paychecks on January 10, 1992 constituted the occurrence that initially caused them harm and that put them on unequivocal notice that they were not being paid at time and one-half for 7.5 of the hours worked by them on December 23, 1991. The grievance was timely filed within 30 days of that occurrence.

2. The Employer did not violate Art. 13(b) when it refused to pay Grievants Joanne Dommissie and Bonnie Korff at the rate of time and one-half pay for work performed on December 23, 1991. When the Agreement is read as a whole and in a manner giving some effect to the first sentence of Art. 18(b), the term "day off" in Art. 13(b) does not include days scheduled for vacation or compensatory time off, but rather, in Grievants' case, refers only to Saturdays and Sundays.

3. The grievance and the Union's requests for relief based upon it are denied, such that no consideration of remedy is necessary or appropriate.

Dated at Shorewood, Wisconsin  
this 8th day of April, 1993 by Marshall L. Gratz /s/  
Marshall L. Gratz, Arbitrator