

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
: :
WISCONSIN PROFESSIONAL POLICE : Case 13
ASSOCIATION/LAW ENFORCEMENT : No. 48075
EMPLOYEE RELATIONS DIVISION : MA-7497
: :
and :
: :
THE VILLAGE OF ELM GROVE :
: :

Appearances:

Mr. Richard T. Little, Representative, on behalf of the Association.
Mr. Edmund M. Henschel, Village Manager, on behalf of the Village.

ARBITRATION AWARD

The above-entitled parties, herein the Association and Village, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Elm Grove, Wisconsin, on December 7, 1992. The hearing was not transcribed and the parties thereafter filed briefs which were received by January 11, 1993.

Based upon the entire record, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Did the Village violate Article XXIV of the contract by refusing to pay grievants Dave McElhatton, Robert Fuchs, and Gary Mengoni call-in pay and, if so, what is the appropriate remedy?

DISCUSSION

The facts here are short and simple.

On Tuesday, June 16, 1992, Officers McElhatton, Fuchs, and Mengoni were scheduled to work from 8:00 a.m. to 4:00 p.m. Because of a planned anti-abortion protest initiated from a Village parking lot and headed for another city, Chief Jeffrey W. Haig decided to call in extra manpower to deal with the situation. Grievants McElhatton, Fuchs, and Mengoni therefore were called at home at about 5:30 a.m. and told to report to work early. Fuchs and McElhatton reported for work at 6:30 a.m. and Mengoni reported in at 6:45 a.m., with all three thereafter working their regular 8:00 a.m. to 4:00 p.m. shift.

The Village paid time and a half to all three grievants for the hour and a half and hour and a quarter that they worked. The grievants subsequently filed a grievance on June 26, 1992, wherein they each requested two and a half hours of call in pay.

In support thereof, the Association primarily argues that the Village violated the clear intent of Article XXIV by failing to grant call in pay when it ordered the grievants to work outside of their regular scheduled hours of work because this provision "explicitly entitles an employe to a minimum of two hours and one half (2 1/2) hours pay at time and one-half." It also claims that the Village's position "is not supported by the facts of the case" because there was no emergency; because a prior proposed settlement between the parties is immaterial to the issue herein; and because "the call in provision must be complied with prior to looking elsewhere in the contract."

The Village, in turn, contends that "there has been a common understanding for at least fifteen years that additional hours worked contiguous with a scheduled shift be paid at time-and-one-half for actual hours worked," and that, furthermore, the Association has failed to prove that any employes in the past have ever been paid otherwise.

The resolution of this issue turns upon Article XXIV which provides:

ARTICLE XXIV - CALL-IN PAY

All employees covered by this Agreement shall respond to a call to work outside of their regular schedule of hours, by their department heads or other supervisors designated by their department heads. A minimum of two and one-half (2 1/2) hours (inclusive of travel time) at time and one-half (1 1/2) shall be paid any employee who is requested to report outside of their regular schedule of hours, except as provided in Article XXVI.

This language, in fact, is not as clear and unambiguous as the Association claims, since it fails to expressly address what is to happen when, as here, employes are called in early before their scheduled shift begins. There therefore appears to be a gap in the contract on this issue.

Elsewhere - and it is proper to look elsewhere in the contract because it is axiomatic that a contract must be read as a whole - Article XI, Section "D", provides:

"No provision of this Agreement should be interpreted to result in the payment to any Officer of an amount greater than one and one-half (1 1/2) times his regular hourly rate for any time worked."

This language, on its face, shows that the grievants here are not entitled to two and one half (2 1/2) hours call-in, as that would otherwise result in payment of more than time and one-half (1 1/2) for the time in issue.

All this is why there are no documented instances in the past of employes ever receiving two and one half (2 1/2) hours call in pay under circumstances similar to those found here. Indeed, Sheriff Haig testified that he is unaware of any situation since 1990 (when he became Chief) of where call-in has been paid the way the Association wants it paid here.

In light of the above, it is my

AWARD

That the Village did not violate Article XXIV of the contract by refusing to pay grievants Dave McElhatton, Robert Fuchs, and Gary Mengoni call-in pay; the grievances are therefore denied.

Dated at Madison, Wisconsin this 9th day of April, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator