BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LINCOLN COUNTY HIGHWAY EMPLOYEES LOCAL 332, AFSCME, AFL-CIO	Case 131 No. 49369 MA-7920
and	
LINCOLN COUNTY	

Appearances:

Mr. Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Daniel H. Mundt, Jr., Personnel Director, Lincoln County, appearing on behalf of the County.

ARBITRATION AWARD

Lincoln County Highway Employees Local 332, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Lincoln County, hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to act as the sole arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Merrill, Wisconsin, on August 30, 1993. The hearing was not transcribed, and the parties filed post-hearing briefs which were exchanged on October 15, 1993.

Background:

In the parties' 1992-93 collective bargaining agreement, employes classified as State Patrol Operator and State Patrol Helper were moved to the Operator Class 3 level. The rationale for this change was that working on State highways was considered to be more hazardous due to the heavier traffic and greater speeds. Occasionally, employes in Operator Class 1 and 2 were assigned to work on State highways. These employes sought Operator Class 3 pay for work on a State highway and were denied the higher pay and a grievance was filed which is the subject of the instant arbitration.

Issue:

The parties were unable to agree on a statement of the issue. The Union framed the issue as follows:

> Did the Employer violate the collective bargaining agreement when it refused to pay the Class 3 rate to Class 1 and 2 employes involved in performing "state work?"
>
> If so, what is the appropriate remedy?

The County framed the issue as follows:

> When is an employe considered to be working on a higher classification and thus entitled to receive the rate of pay of the higher classification?

The undersigned states the issue as:

> Did the County violate the collective bargaining agreement when it refused to pay the Class 3 rate to employes in Class 1 and 2 who were assigned Class 3 duties on State highways?
>
> If so, what is the appropriate remedy?

Pertinent Contractual Provisions:

ARTICLE XVII

CLASSIFICATION AND RATES

. . .

C. Work in Higher Classification: Employees working on a higher classification than their own shall receive the rate of pay of the higher classification for all time worked on such classification.

. . .

EXHIBIT "D"

WAGE CLASSES

OPERATOR CLASS	JOB DESCRIPTIONS	EFFECTIVE 5-1-93
	. . .	
3	Parts Clerk Asphalt Plant Operator Mechanic Equipment Operator State Patrol Operator State Patrol Helper	$11.11
2	Truck Operator Light Equipment Operator	$10.74
1	General Laborer	$10.38

Union's Position:

The Union contends that the language of the contract is clear and unambiguous and must be given effect. The Union notes that there is an extensive pattern of past practice and custom applying this language. It submits that employes were assigned and worked on State roads performing the range of duties required of the State Patrol Operator or State Patrol Helper class and have always been compensated at the higher rate even when they were

not specifically filling in for an absent employe.

The Union maintains that there is no support in the language of the contract for the County's position that an employe must be filling in for an absent employe for the higher rate of pay to apply. The Union claims that in the past performing work on the State highway system automatically qualified as the trigger for the State Patrol rate. Even if the language is arguably ambiguous, the Union insists that the past practice supports its interpretation. It argues that the County's position leads to absurd results. It asserts that under the County's theory, a flagman at one end of a project would be paid more than the flagman at the other end. The Union argues that its interpretation is more reasonable and must prevail. The Union believes that the intent of the parties who developed the language is important when attempting to interpret it. The Union submits that Article XVII, Section C, must be given effect and the grievance should be sustained and the affected employes made whole.

County's Position:

The County contends that under the language of Article XVII, Section C, a lower classification employe is entitled to the pay of the higher classification if they are asked to replace an employe or work a job in a higher classification. It uses the following example: If a Class 3 employe is on vacation and a Class 2 employe is asked to fill the position, then the Class 2 gets Class 3 pay. It insists that merely because Class 2 or 1 employes are working on a State road doing their normal duties where the Class 3 employes are, they may feel entitled to Class 3 pay, but they must fill in for an absent Class 3 employe to meet the requirements for higher pay. The County maintains that in the past it has only paid the higher class rate when a lower class employe is responsible for the full range of duties of a higher class employe or job. It claims that engaging in a few cross-over duties does not entitle the lower class to the higher class pay. It states that this is akin to saying that because a Department Head answers the phone, a Secretary, who answers the phone, is entitled to Department Head pay. It asserts that such a result would be unfair and unreasonable. The County argues that a lower classification employe

must be responsible for the full range of duties called for by the job in the higher classification to receive the higher classification's pay. It believes such an interpretation and application of Article XVII, Section C, is plausible and reasonable and it maintains that the grievance should be denied.

Discussion:

Article XVII, Section C, provides that employes working on a higher classification than their own are entitled to the pay of the higher classification for all time worked at the higher classification. The County has interpreted this language as requiring the assignment to the higher class, normally to replace an employe at the higher class who is absent due to illness or vacation. Although the Highway Commissioner has indicated that only if an employe was working as a State Patrolman or Patrol Helper would the employe be entitled to the higher rate, 1/ the Highway Committee apparently takes the position that the employe has to replace an absent employe.

Nothing in Article XVII, Section C requires the employe to replace an absent employe to get the higher rate of pay. Additionally, the past practice established that an employe assigned snow plowing, and not replacing anyone, got the higher rate of pay. An employe assigned to do patching on Highway 86, a State road, got the higher rate of pay and did not replace anyone. The requirement of replacing an employe of a higher classification is not required by the contract and is not supported by past practice.

The only requirement for an employe to get the higher rate of pay is to work in the higher classification. This does not mean that a truck operator in Class 2 who has to travel from one location to another location, say 15 miles, 5 of which is over a State road, is entitled to the higher pay, but rather he must perform the normal duties of the State Patrol Operator or State Patrol Helper to get the higher rate of pay. In other words, work on a State highway incidental to the employe's normal duties does not entitle the employe to the higher rate. Also, the mere performance of overlapping duties does not entitle an employe to the higher rate. However, if the employe is assigned State Patrol Operator or Patrol Helper duties, he is entitled to the higher rate of pay whether the employe replaces an absent employe or not. Thus, the undersigned finds that the County's requirement that an employe must replace a higher classed employe to be eligible for the higher rate violates the contract and the past practice.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The grievance is sustained. The County violated the contract when it refused to pay the Class 3 rate to Class 1 and Class 2 employes who were assigned to perform Class 3 work unless they were replacing an absent employe. The County shall return to the past practice and make employes whole for the losses suffered. The undersigned will retain jurisdiction for a period of 30 days solely for the purpose of resolving any disputes with respect to the remedy herein.

Dated at Madison, Wisconsin, this 26th day of October, 1993.

1/ Exhibit 3.

By Lionel L. Crowley /s/
Lionel L. Crowley
Arbitrator