BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 2717-C, AFSCME, AFL-CIO

: Case 100 : No. 49677

and

: MA-8025

JACKSON COUNTY (HIGHWAY DEPARTMENT)

Appearances:

Mr. Daniel Pfeifer, Staff Representative, Wisconsin Council 40, appearing on behalf of the Union.

Mr. James Michael DeGracie, Corporation Counsel/Personnel Director, Jackson County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County named above jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned to hear a grievance regarding overtime work during an emergency. After a hearing was held on October 21, 1993, in Black River Falls, Wisconsin, the parties agreed that the undersigned should issue an expedited award. The undersigned concludes that the grievance is to be denied.

On September 16, 1992, some bargaining unit members in the Highway Department were called out early to check the roads for wash outs and high water and to put out warnings signs and barricades. John Smetana was called in early at 5:30 a.m. but not asked to stay late even though Smetana had signed a sheet to show his interest in getting available overtime. John Borek was called in early and recalled out late around 5:30 p.m. Borek went out to County Trunk P and found correctional people filling sand bags. Borek has more seniority than Smetana. Nelson, with more seniority than Borek, was there, as well as Leroy Craig, with less seniority than Borek or Smetana. George Lewis was called in early and not called back later. Lewis has more seniority than most employees, except for Nelson

Prisoners at the Black River Correctional Camp, a minimum security prison camp, were asked to help with sand bagging operations. Some prisoners from the County Jail also helped with the work. Sandbagging was done in three locations -- on County Highway P, County Highway VV, and around a private house near Levis Creek Road, a town road.

Article 2, Section 1, J, gives the County the right to "take necessary action to carry out the functions of the County in situations of emergency." Article 8, Section 1, says the regular work week "shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, 7:00 a.m. to 3:30 p.m." Article 8, Section 3, says that employees get time and one-half for hours over 40, and that the "County has the right to require reasonable overtime work." The contract does not address the distribution of overtime to more senior employees.

The Union is concerned about protecting bargaining unit work for bargaining unit members. The Union notes that in snow emergencies, bargaining unit members, not prisoners, are called out to plow snow. The County notes that there is no quarantee of overtime, and that it took appropriate action during an emergency.

High water problems can be common in Jackson County during heavy

rains or when flood gates are lifted. While filling sand bags may be done by bargaining unit members, it is not exclusively their work. No one would seriously argue that during the flood in the summer of 1993, bargaining unit members would have to be called first before all the able-bodied people in the town were able to fill and place sand bags. Even if the sand bagging work were deemed to be bargaining unit work, exceptions may apply in special circumstances.

Whether or not the flooding in September of 1992 was deemed an emergency at the moment it occurred is irrelevant. The County acted reasonably without violating the contract where sand bagging needed to be done within a short amount of time. A special need or circumstance existed which allowed the County to take the action it took. The County has the right to take action to prevent high water problems from becoming larger emergencies.

Some bargaining unit members did work. Employees sign up for overtime work if they are interested in getting some. but the labor contract does not state how overtime is to be distributed, whether by seniority or an equalization system. There is no contract violation where the County did not call those who signed up to show their interest or availability for overtime under these circumstances.

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| The grievance is | denied. | | | |
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| Signed this | day of Novemb | er, 1993, at | Elkhorn, | Wisconsin. |
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| | Ву | | | |
| | | Karen J. M | Mawhinney, | Arbitrator |