

1. Moving an officer forward to cover for a swing car as indicted above.
2. An extension of the normal work shift by one hour on the front or any extension on the back of such shift (exclusive of reporting time).
3. Disciplinary procedures where the officer is not vindicated through the grievance procedure.
4. Certain training time as provided below.

Employees will be compensated for a minimum of three (3) hours for any call-in time worked on a scheduled work day. Employees will be compensated for a minimum of five (5) hours for any call-in time on a day off or scheduled vacation day. This call-in time shall be compensated at the normal rate of pay.

Discussion:

The facts are not significantly disputed. Grievant Dennis Kocken is a patrolman with the Sheriff's Department and in March, 1993 was assigned to work nights in the Village of Howard. His shift hours were 6:45 p.m. to 3:00 a.m., and he served at the time under a Village contract with the County. The Village possessed two squad cars, and had one officer on duty from 2:00 to 10:00 p.m. and another from 11:00 a.m. to 7:00 p.m. The day shift officer would turn his car over to the grievant.

On March 22, 1993, shortly after he started his shift, the grievant was handed a notice at 7:15 p.m. to report for drug testing. This was a routine random requirement by the department, and the grievant had been tested twice before under this system. On this occasion, however, the grievant pointed out to Lieutenant Van Stratten that the laboratory was no longer open 24 hours a day, and asked when he should go for testing. Van Stratten said he should come in early, before his shift on the next day. The grievant told Van Stratten that there might not be a car available, and asked if he could go sometime during the day instead. Van Stratten said that this was fine.

At approximately 11:00 the next morning the grievant, using his own car, went to Bellin Hospital. He was told that the hospital no longer performed the drug testing and that he was to go to the Bellin Wellness Center. He proceeded to this facility, took the test, and completed it at about 11:40 a.m.

The drug testing directive form used at the time states in

pertinent part as follows:

Your name has been selected for drug testing under the Brown County Sheriff's Department Drug Testing Policy. You are hereby required to report to the laboratory at Bellin Hospital between the above stated date and the end of your regularly scheduled shift, but in no case after 7:00 p.m. or before 7:00 a.m.

This time frame is not manageable for the "C" shift; therefore, special 6:45 a.m. arrangements can be made by calling John Corpus at 433-7485.

From time to time, legitimate circumstances may negate the above requirement. Any legitimate reason for not submitting to a drug screen prior to the end of your shift must be approved by your shift supervisor.

Following the test, the grievant claimed call-in time for the time involved. The County denied this request, and the grievant filed his grievance. After the grievance was filed, the department changed the drug testing directive form to the following language:

Your name has been selected for drug testing under the Brown County Sheriff's Department Drug Testing Policy. You are hereby required to report to the laboratory at Bellin Health Connection on the above-stated date at the end of your regularly scheduled shift, between 7:00 a.m. and 7:00 p.m.

This time frame may not be manageable for all shifts; therefore, special arrangements can be made to process you while on-duty by calling John Corpus at 433-7485.

From time to time, legitimate circumstances may negate the above requirement. Any legitimate reason for not submitting to a drug screen prior to the end of your shift must be approved by your shift supervisor.

It is undisputed that the grievant is not on the "C" shift, which runs from 11:00 p.m. to 7:00 a.m., and that he would have been off duty at any time that the laboratory was open. Chief Deputy Gary Pieschek testified that Bellin changed the hours of the laboratory about January, 1993. Pieschek also testified that

the grievant could have driven his own car to get tested at 6:15 p.m. on March 23rd and would have been paid the 45 minutes' time as an add-on to his shift.

It is undisputed that neither Van Stratten nor the grievant raised the question of pay for the time involved when they first discussed the matter, and that Van Stratten had been a lieutenant for only about three months at that time.

The Union contends that under the Department's drug testing policy, compliance must occur within 24 hours of notification, and that the requirement that the employe not go after 7:00 p.m. or before 7:00 a.m. excludes all of the grievant's working hours, so that he deserves to earn call-in time. The County contends that the grievant has been tested three times, is familiar with the policy, and asked a new Lieutenant if he could go during the day while saying nothing about pay. The County contends that Lieutenant Van Stratten said "fine" in the assumption that pay was not involved, and that in all other cases except on two occasions that an employe was held over at the end of a shift, the employes did not earn overtime or call-in pay for taking the drug test. The County argues that the grievance should be denied.

In this case I find that while the equities may lead in one direction, the clear language of the contract leads in another. The contract controls. While it is clear that the grievant was given some latitude by Lieutenant Van Stratten and that he could have avoided the issue by going to the clinic on the way to work on the evening of March 23, there is no evidence that he engaged in a subterfuge, and he did give Van Stratten an opportunity to order him to use his own car, by pointing out that a Village car might not be available at the time he was originally instructed to go for the testing. Because there is no evidence that the grievant could not have used his own car in the evening of March 23 to proceed for drug testing on the way to work, the equities favor the County's position. This, however, does not mean that the County prevails, because I find that the contract language is clear in favoring the Union's position. Under Article 15's minimum call-in time provision, "a call-in is defined as any time an employe is required to work outside his/her normal work shift schedule." 1/ The second exception provided in that paragraph, for "an extension of the normal work shift by one hour on the front . . ." could have been applied by order of management, but was not. While it would certainly be understandable if management in future restricted any such employe from appearing for drug testing at any time other than during the one-hour extension, the fact remains that in this instance the grievant was "required to work outside his/her normal work shift

1/ Emphasis added.

schedule". Furthermore, the fact that this language defines as a call-in "any" time of this nature is a broad definition, which includes the instance complained of even though it could have been averted. Thus the parties have bargained for a broad definition of a call-in, and a limited definition of each of the exceptions. In this instance, the drug testing time may be something of a windfall to the grievant, but it fits clearly within the broad definition of a call-in and fails to fit any of the more narrowly defined exceptions. Accordingly, the County must pay the grievant. 2/

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That Dennis Kocken is entitled to call-in pay and overtime under Article 15 of the collective bargaining agreement for his attendance at mandatory drug testing on March 23, 1993.

Dated at Madison, Wisconsin this 3rd day of January, 1994.

Arbitrator

By Christopher Honeyman /s/
Christopher Honeyman,

2/ The parties stipulated to the remedy in the event that the Union were to prevail.