BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
FEDERATION OF NURSES AND HEALTH PROFESSIONALS, LOCAL 5001, AFT, AFL-CIO,	Case 5 No. 50835 A-5212
and	
UNITED REGIONAL MEDICAL SERVICES	

Appearances:
Ms. Carol Beckerleg, Field Representative, Federation of Nurses and Health Professionals, appearing on behalf of the Union.
Mr. Robert Mulcahy, Attorney at Law, appearing on behalf of the Employer.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union or Federation and United or Employer, respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing was held on June 2, 1994, in Milwaukee, Wisconsin. The hearing was not transcribed. The parties filed briefs on July 5, 1994. The record was closed July 12, 1994, when the arbitrator was notified that the parties would not be filing reply briefs.

ISSUES

The parties stipulated to the following issue:

> Whether the Employer violated the current contract for certain Federation of Nurses and Health Professionals employes by not paying standby pay of $1.25 per hour for employes called into work and paid under the call-in provisions of the contract? If so, what is the remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1994-1995 collective bargaining agreement contains the following pertinent provisions:

> 2.04 STANDBY PAY
>
> (1) (a) Full-time employes required to be on standby duty shall be paid $1.25 per hour while serving on standby status. If called in while serving on

standby pay status, employes shall be paid in accordance with sections 2.03(1) Overtime and 2.05(1)(a) Call-In Pay.

(b) Part-time employes on standby duty shall receive $1.25 per hour for all hours while serving on standby status. If called in while serving on standby status, part-time employes shall be paid in accordance with section 2.05(1)(b) Call-In Pay.

(2) For purposes of this section, "standby" shall mean the employe, at the direction of the employer, is required to be available for work upon notice during a specified period of time. Failure of the employe to respond when called shall be cause for forfeiture of standby pay and disciplinary action where the employe is unable to furnish acceptable justification for failure to respond.

(3) Standby shall not apply to an employe or group of employes who, as part of their regular duty assignment, are expected, but not required, to be available for work at all times in emergency situations.

(4) If an employe is called back within one (1) hour of completing a prior standby call, that employe shall receive overtime for the actual hours worked if hours worked (as defined in section 2.03(1) Overtime) exceeds eight (8) hours per day or forty (40) hours per week, rather than an additional four (4) hours pay as noted in section 2.04(1) Standby Pay.

(5) United shall establish a list of volunteers for standby pay eligibility. Such list shall be established each March for the following 12-month period. Standby pay eligibility shall then be rank ordered by seniority. Management shall utilize this list for all standby required that year. In the event there are insufficient volunteers, management shall meet the staffing needs through overtime assignments in accordance with section 2.03 Overtime.

2.05 CALL-IN PAY

(1) (a) Full-time employes called in to work outside of the employe's regularly scheduled shift shall be paid at the hourly rate (including overtime when appropriate) for the hours worked, but not less than a minimum of four (4) hours.

(b) Part-time employes called in to work outside of the regularly scheduled shift shall receive up to a minimum of four (4) hours of straight time pay. Of those four (4) hours, time and one-half will be paid for all hours actually worked regardless of number of hours worked per day or per week.

(2) Call-in shall not apply to hours worked outside of an employe's regularly scheduled shift when such hours are an extension of such shift.

(3) If an employee is called in one-half hour or less prior to starting time, the employe shall be paid for eight (8) hours if seven and one-half (7-1/2) hours are worked.

BACKGROUND

United Regional Medical Services is a private, non-profit corporation which provides laboratory and radiology services to Doyne Hospital (formerly Milwaukee County Medical Complex) and Froedtert Memorial Lutheran Hospital in Milwaukee. United commenced operations on January 1, 1992. It is the successor employer to Milwaukee County. United assumed the obligation to bargain labor agreements with two unions, namely the Federation of Nurses and Health Professionals (hereinafter "Federation") and AFSCME. The Federation represents United's 150 professional employes while AFSCME represents United's 300 technical, clerical and support employes.

Prior to beginning operations, United terminated all past practices attributable to Milwaukee County. United took this action in order to set its own policies and procedures and to avoid the restrictions of the stated and unstated past practices of Milwaukee County. The County's existing past practices and work rules affecting laboratory employes were extensively discussed with the Federation before United commenced operations.

The last labor agreement between Milwaukee County and the Federation contained the following relevant language concerning standby pay:

2.04 STANDBY PAY

(1) Employes on standby duty shall receive $1.25 per hour for all hours scheduled. If called in while on standby, the employe shall be paid a minimum of 4 hours' pay at the overtime rate for work in one session and additional pay at the overtime rate for all work in excess of 4 hours in one session.

(2) For purposes of this section, "standby" shall mean the employe, at the direction of the employer, is required to be available for work upon notice during a specified period of time. Failure of the employe to respond when called shall be cause for

> forfeiture of standby pay and disciplinary action where the employe is unable to furnish acceptable justification for her failure to respond.

The record indicates that the $1.25 per hour standby pay referenced above was compensation for employes to carry a beeper and to be available for call-in within a 30-minute timeframe. Under the agreement between Milwaukee County and the Federation, if an employee on standby status was called in to work they received standby pay of $1.25 per hour in addition to call-in pay. Thus, the two types of pay were pyramided.

The first labor agreement between United and the Federation covered the period of January 1 through December 31, 1992. This agreement was essentially a carryover of the Federation's prior agrement with Milwaukee County. The standby pay provision referenced above from the labor agreement between Milwaukee County and the Federation was carried over verbatim into the 1992 agreement between United and the Federation. Standby pay was not discussed in these negotiations. After United and the Federation entered into their 1992 agreement, employes who were assigned standby duty received $1.25 per hour for all hours scheduled (just as they had under the Milwaukee County agreement). If an employe was called in to work while on standby status, they also received call-in pay. Thus, the two types of pay were still pyramided. As was the case under the Milwaukee County agreement, United employes assigned standby duty were required to be available during a specified period of time (for example, 7:00 p.m. to 7:00 a.m.) and were required to respond within 30 minutes of the call. Employes were given a pager or agreed to be available at their home phone. Employes on standby who did not respond to a call forfeited standby pay.

Negotiations for the 1993 agreement between United and the Federation began in September, 1992. Prior to the beginning of negotiations, both parties agreed to a "win-win" or "mutual gains" bargaining format. The parties met for the first time in September, 1992, and exchanged their respective list of issues. United's list consisted of 54 issues, two of which mentioned standby pay. The Federation's list of 12 issues did not include standby pay or call-in pay as issues. Carol Wichmann, a member of United's bargaining team, testified that the Employer's proposal relative to standby pay was intended to discontinue the existing pyramiding of standby and call-in pay. Wichmann told the Federation's negotiating team that it was excessive and expensive to continue the $1.25 per hour standby pay after the employe was called into work and eligible for the call-in pay provisions. Wichmann also told the Federation's negotiating team that such payment was not the norm in the health care industry, so United intended to negotiate language changing the current arrangement. The bargaining notes of Cindy Tellock, a member of the Federation's bargaining team, confirm that the Federation's bargaining team was told it was a problem for employes to be paid standby pay of $1.25 per hour after they had been called in to work (and were receiving call-in pay).

In December, 1992, the parties reverted to traditional bargaining and formal language proposals were exchanged. At a December 14 bargaining session, Robert Mulcahy, chief labor negotiator for United, made a handwritten proposal to the Union which separated standby pay from call-in pay. During this same session, United also proposed call-in pay at the rate appropriate, either straight time or time and one-half and increased the "general" call-in guarantee of hours not associated with standby status from three hours to four hours under Section 2.05. Under the Employer's proposal, the increase in guaranteed hours for call-in was a trade-off for the changes proposed in standby pay. This Employer proposal was later typed up.

On January 11, 1993, the Federation made a counterproposal regarding Sections 2.04 (Standby Pay) and 2.05 (Call-in Pay) which dealt only with the assignment of standby duty. On February 2, 1993, as part of a package offer,

United responded to the Federation's January 11, 1993 counterproposal regarding standby pay, dealing only with the issue of voluntary assignment.

On March 24, 1993, United gave the Federation a handwritten proposal regarding Section 2.04 (Standby Pay) which changed the phrase "all hours scheduled" to "all hours serving on standby status." Wichmann testified that during this bargaining session she told the Union's bargaining team that once an employe on standby was in the building, they would only get call-in pay. Mulcahy's bargaining notes from that session confirm same. Wichmann also testified that she told the Federation's bargaining team during this session that it was United's goal to mirror the new AFSCME contract regarding standby pay language. Mulcahy's bargaining notes from that session confirm same. Union negotiators did not deny Wichmann made these statements.

United's labor agreement with AFSCME for 1993-1995 includes standby pay language which is identical to the standby pay language which United proposed to the Federation on March 24, 1993. The current AFSCME contract provides in pertinent part:

> 2.06 Standby Pay
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> (1) Employes required to be on standby duty shall be paid $1.25 per hour while serving on standby status. If called in while serving on standby status, employees shall be paid in accordance with 2.07 Call-In Pay.

In contrast, United's 1992 labor agreement with AFSCME required payment of standby pay "for all hours scheduled on standby duty."

At a March 30, 1993 bargaining session, the Federation offered two typed counterproposals to the Employer on standby pay and call-in pay. Both included the language on standby pay eligibility United proposed March 24, 1993. The parties signed off on the Federation draft of Section 2.04 (Standby Pay) and Section 2.05 (Call-In Pay) on April 2, 1993. Before the 1993 contract was signed, United gave the Federation a typed listing of items included in the tentative agreement. This document listed all language changes, including additions and deletions. It specifically indicated what language was added to, and deleted from, Sections 2.04 (Standby Pay) and 2.05 (Call-In Pay). The 1993 contract became effective April 25, 1993 and expired December 31, 1993.

The record indicates that after the 1993 contract became effective, the Employer implemented the new call-in pay language in regards to payment of

overtime for only those hours worked and straight time for the remainder of the contractually guaranteed four hours.

In June, 1993, the Union became aware of differing opinions concerning how standby pay would be handled once an employe responded to a call. The Union raised this matter at a labor/management meeting on June 17, 1993. Union President Candice Owley's notes from that meeting indicate that management was told that the Union's position was that standby pay continues for all scheduled standby hours, to which an employer representative responded they had no position at that time. The Union raised the standby pay matter again at a July 27, 1993 labor/management meeting. At that meeting, Wichmann indicated she would review her bargaining notes from the 1993 negotiations concerning standby pay, consult with Mulcahy, and notify Owley of the Employer's position concerning same. After reviewing the Employer's bargaining notes and records, Wichmann wrote Owley on August 13, 1993, and indicated that the Employer would no longer pay both standby pay and call-in pay simultaneously.

About this same time, United's payroll department issued a memo to employes explaining how to fill out new time sheets. This memo contained a variety of examples including one where an employe was on standby and responded to a call during those standby hours. This example indicated that the employe was to be paid for all scheduled standby hours plus the hours actually worked. The Employer later indicated this particular example was erroneous.

After Wichmann sent the letter noted above (i.e., the August 13, 1993 letter indicating the Employer would not pay both standby pay and call-in pay simultaneously), the Employer continued to pay both standby pay and call-in pay simultaneously. Specifically, employes who were on standby and responded to a call during the standby period received standby pay for all hours scheduled on standby in addition to call-in pay. This continued until December, 1993.

In December, 1993, Barbara St. Martin was denied payment for the standby hours when she was called in to work. Specifically, during the pay period of November 21, 1993 through December 3, 1993, she was on standby for a total of 24 hours but was paid standby pay for a total of 18.5 hours. She grieved same. The Employer ultimately paid St. Martin the difference, but the underlying issue of payment for standby hours when an employe reports for work while on standby duty was not resolved. The parties proceeded to arbitration on this issue.

On February 8, 1994, Finance Director Jean Voight issued a memo to United supervisors concerning pay practices. Among other things, this memo addressed the application of standby pay in the event of a call-in. This memo indicated that standby pay ceases once an employee is in the building after a call-in to work. The record indicates that since this memo was issued, United has paid standby pay for hours before and after a call-in to work, but not for time spent working after a call-in to work.

The record further indicates that in bargaining the 1994-1995 contract, the Union made the following proposal concerning standby pay:

> Clarify that all hours of scheduled standby (whether called in to work or not) will be paid at $1.25 per hour.

The Union did not succeed in getting the requested "clarification." Instead, the standby language remained the same. Thus, there was no change in contract language regarding standby pay in the parties' 1994-1995 contract.

POSITIONS OF THE PARTIES

Union's Position

It is the Union's position that the Employer is violating the current contract by not paying standby pay for employes called in to work and paid under the call-in provisions of the contract. According to the Union, the applicable contract language (Section 2.04), when read as a whole, is ambiguous. To support this premise, the Union notes that the first sentence of Section 2.04(1)(a) (which applies to full-time employes) and Section 2.04(1)(b) (which applies to part-time employes) are each worded slightly differently. Relying on the premise that the language is ambiguous, the Union contends the arbitrator should look at the Employer's past practice concerning standby pay and apply it here. The Union asserts that until the 1993 contract was negotiated, the Employer's practice was to pay employes standby pay for all hours on standby status, including those hours worked when the employe was called in to work. The Union notes that even after the contract language changed in April, 1993, the Employer continued this practice (i.e., paying employes standby pay for all hours on standby status including hours worked) until December, 1993, when the grievant was denied payment for standby hours when she was called in to work. The Union submits this was the first time an employe was denied standby pay after responding to a call. The Union asks the arbitrator to give effect to this longstanding past practice. With regard to the parties' 1993 bargaining history, the Union acknowledges that the parties changed the first sentence of Section 2.04 in the 1992 contract from "all hours scheduled" to "all hours while serving on standby status." According to the Union, there was no discussion or explanation from the Employer regarding this change in language. The Union specifically contends there was no discussion or agreement at the table to discontinue the payment of standby pay when an employe is called in. The Union asserts that if the Employer's intent was contrary (i.e., to stop paying standby pay when an employe is called in), it was incumbent upon them to clearly communicate that intent to the Union. The Union submits that while the Employer may have communicated their intent concerning the change in language to AFSCME when it bargained with them, the same cannot be said of its negotiations with the Employer. The Union further notes that this particular issue was resolved late in the bargaining process. That being so, the Union believes it is not surprising that confusion occurred at the table under these circumstances. The Union contends this confusion continued after the 1993 contract was negotiated and it cites the following to support this contention. First, it notes that when it initially raised the instant matter with management representatives at labor/management meetings in June and July of 1993, Wichmann indicated she would have to check out the matter with Mulcahy. Second, it notes that when the head of payroll issued a memo in July, 1993, instructing employes how to fill out time sheets, that memo did not indicate that employes were to deduct hours worked from total standby hours. Third, the Union notes again that the Employer did not deny standby pay to employees who responded to a call until December, 1993 - months after the 1993 contract had been ratified. Finally, with regard to the fact that the Union raised the issue of standby pay during the 1994 negotiations, the Union submits this was for clarification purposes only. The Union therefore contends the Employer is not in compliance with the agreement. In order to remedy this

alleged contractual breach, the Union asks the arbitrator to rule in its favor and award standby pay for all hours on standby status, including those hours when an employe responds to a call.

Employer's Position

It is the Employer's position that it is not violating the current contract by not paying standby pay for employes called in to work and paid under the call-in provisions of the contract. In support of this view, it first relies on the language found in Section 2.04. According to the Employer, that provision is clear and unambiguous in providing that standby pay is paid for that time while the employe is "serving on standby status." In its view, only time spent actually waiting, as opposed to working, is compensable under the provision. It contends that the only reasonable interpretation which may be given to the language is that an employe is either serving on standby status or call-in status, but not both simultaneously. To support this premise, it compares the language of the parties' 1992 and 1993 agreements (i.e., the change in wording from "scheduled" in the 1992 contract to "while serving" in the 1993 contract). It notes that under the 1992 agreement, if an employe was scheduled, assigned or designated for standby duty from say 6:00 A.M. to 9:00 P.M., pay was accorded for that entire 15 hour span even if the employe was called in to work. It contends that under the 1993 agreement though, once an employe is in the building after a call in to work, they are no longer "serving" on standby. In the Employer's opinion, their purpose (namely to await a call to work) has been fulfilled. Once the employe is at work, they are on "call-in" status and the more lucrative pay set forth in Section 2.05 (Call-In Pay) applies to those hours. The Employer therefore submits the arbitrator is compelled to give full effect to the contract language and find it to be determinative of the outcome of this dispute. The Employer argues in the alternative that if the arbitrator needs further support beyond the contract language to decide this case, the parties' bargaining history also militates for denial of the grievance. It notes in this regard that it brought its concerns about paying both standby pay and call-in pay simultaneously to the Federation's attention during the negotiations for the 1993 contract at several bargaining sessions, that it had previously terminated the past practices of Milwaukee County, and that the contractual changes in Section 2.04 were arrived at after several exchanges of counterproposals from both parties. The Employer contends there is no merit to the Union's argument that it was unaware of the language that was changed in Section 2.04. It notes in this regard that after it proposed the new language for that section, the Union made two counteroffers which included the same language used by the Employer, namely "serving on standby status." In the Employer's view, the fatal flaw to the Union's position in this grievance is that the contract language did not change from 1992 to 1993, or in the alternative that the change in language was meaningless. The Employer asserts with regard to the former that the contract language in Section 2.04 was altered substantially, and with regard to the latter that the bargaining history shatters any illusion that the language change was meaningless. Finally, the Employer notes that in the 1994 negotiations, the Union sought unsuccessfully to regain the dual payment of standby pay and call-in pay it traded away in the 1993 contract. It asks the arbitrator to draw an adverse inference from the Union's 1994 bargaining proposal. The Employer therefore requests that the grievance be denied.

DISCUSSION

My analysis begins with a review of the following historical context. Prior to the creation of United as an entity, the employes in the Federation's bargaining unit with Milwaukee County were paid standby pay of $1.25 per hour for all hours scheduled on standby status. If an employe on standby was called in to work, they were paid both standby pay and call-in pay. In other words, the standby pay and call-in pay were pyramided. The standby pay language from the old Milwaukee County contract was not changed for the first contract

between United and the Federation (the 1992 contract) because that contract was a rollover of the contract between the Federation and Milwaukee County. However, in the parties' second contract (i.e., their 1993 contract), the standby pay language was renegotiated. A question subsequently arose concerning the meaning and impact of the renegotiated standby pay language. The Employer contends that under the revised standby pay language, employes are no longer eligible for standby pay after receiving a call in to work. In their view, the $1.25 per hour paid for being available for work ceases once an employe is actually called in to work and starts receiving call-in pay. The Union disagrees. According to the Union, the $1.25 per hour standby pay does not cease once an employe is actually called in to work and starts receiving call-in pay. In their view, the $1.25 per hour standby pay is paid in addition to the call-in pay (just as it was before the standby pay language was changed).

In the discussion that follows, attention will be focussed first on the applicable contract language. If the language does not resolve the matter, attention will be given to evidence external to the agreement, namely the parties' bargaining history and/or past practice.

The parties agree that the contract language applicable here is Section 2.04(1) and (2) of the parties' current contract. Those paragraphs provide as follows:

> (1) (a) Full-time employees required to be on standby duty shall be paid $1.25 per hour while serving on standby status. If called in while serving on standby pay status, employes shall be paid in accordance with sections 2.03(1) Overtime and 2.05(1)(a) Call-In Pay.
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> (b) Part-time employes on standby duty shall receive $1.25 per hour for all hours while serving on standby status. If called in while serving on standby status, part-time employes shall be paid in accordance with section 2.05(1)(b) Call-In Pay.
>
> (2) For purposes of this section, "standby" shall mean the employe, at the direction of the employer, is required to be available for work upon notice during a specified period of time. Failure of the employe to respond when called shall be cause for forfeiture of standby pay and disciplinary action where the employe is unable to furnish acceptable justification for failure to respond.

Section 2.04 is the standby pay provision. "Standby" is expressly defined in Section 2.04(2) to mean that employes are required to be available for work upon notice during a specified time period. During that time period, employes so assigned are considered to be on standby status. An employe who is on standby status is not at work. Instead, they can engage in personal pursuits within a limited geographic radius. Both Sections (1)(a) and (1)(b) specify a payment for serving on standby status, namely $1.25 per hour. This amount is considered payment for the inconvenience of carrying a beeper and remaining available to report to work within 30 minutes. Section (2) also provides that employes who do not respond to a call when on standby status forfeit this standby pay. If an employe on standby status is called in to work, they are paid pursuant to the call-in pay provision (Section 2.05). Under that section, an employe is guaranteed four hours of pay at either straight time or time and one-half, whichever is appropriate for the employe's work week.

The Union argues Section 2.04 is ambiguous while the Employer contends it is clear and straightforward. In support of its premise that the language is ambiguous, the Union points to the fact that the language applicable to full time employes is worded differently than the language applicable to part time employes. Certainly there is a slight difference in wording between Section 2.04(1)(a) and (b). The former uses the phrase "full time employes required to be on standby duty shall be paid $1.25 per hour . . ." while the latter uses the phrase "part time employes on standby duty shall receive $1.25 per hour for all hours . . ." However, this slight difference in wording is of no consequence here. In the context of this case, the language that is important is the last five words in both (a) and (b), specifically the phrase "while serving on standby status." By its clear and straightforward terms, that phrase provides that standby pay is for the time the employe is "serving on standby status." Once an employe on standby is called in to work though, they are no longer "serving on standby status." This is because their stated purpose (namely to await a possible call to work) has been fulfilled. Said another way, the employe does not have to wait any longer for a call because the call has come. When the employe on standby reports to work, their status changes from being on standby status to call-in status and they are paid pursuant to the call-in pay provision. It is therefore held that the $1.25 per hour standby pay referenced in Section 2.04(1) for remaining available for work ceases when an employe actually comes in to work. At that point, the employe is paid pursuant to the call-in pay provision whereby the employe receives a minimum of four hours pay at the applicable hourly rate, typically time and one-half for overtime. When the employe leaves the building after working, standby pay resumes if the employe is still on standby status. It is therefore held that only time spent waiting, as opposed to working, is compensable under Section 2.04(1).

While it is not necessary to examine the parties' bargaining history to resolve this contractual dispute, a review of that history buttresses the conclusion reached above. The record shows that the Employer advised the Union early in negotiations for the 1993 agreement that it wanted to stop pyramiding standby pay and call-in pay after employes on standby had been called in to work. To accomplish this goal, the Employer wanted to change the language in the standby pay provision. The operative language in the 1992 contract provided that employes on standby duty received $1.25 per hour "for all hours scheduled." This meant that if an employe was scheduled to be on standby for say a twelve hour period, the employe was paid standby pay for that entire time span even if the employe was called in to work. On March 24, 1993, Mulcahy submitted a handwritten proposal which changed the operative language cited above from "all hours scheduled" to "all hours serving on standby status." The record shows that Employer negotiator Wichmann told Union negotiators that the purpose and intent of this proposal was that once employes (on standby) were in the building, they would only get call-in pay. She also told Union negotiators that the Employer wanted to mirror the language on standby pay the Employer had negotiated with AFSCME. Mulcahy's bargaining notes from that session corroborate these statements. The Union's typed counterproposals on standby pay on March 30, 1993, included the new language proposed by United (specifically the phrase "all hours serving on standby status"). This language was ultimately included in the parties' 1993 contract. Before the 1993 contract was signed, United gave the Union a version of the new contract which showed all the language changes. In pertinent part, this document showed what language was being deleted from the standby pay provision (namely the phrase "all hours scheduled") and what language was being added to same (namely the phrase "all hours serving on standby status"). Taken together, this bargaining history supports the Employer's contention that it communicated the meaning and impact of their proposal to change the operative phrase in Section 2.04(1) from "all hours scheduled" to "all hours serving on standby status." As a result, the Union's contention that the Employer failed to clearly communicate their intent regarding the changed standby pay language is rejected.

The Union essentially overlooks the changed language in Section 2.04(1) and instead asks the arbitrator to enforce the practice which existed prior to the filing of the instant grievance. As previously noted, the Employer paid both standby pay and call-in pay simultaneously until December, 1993, when it denied the grievant standby pay after she was called in. The problem with enforcing the prior practice now is that the contractual basis for same vanished when the parties altered the standby pay provision in the 1993 negotiations. Stated simply, that change was not meaningless. As a practical matter, the new language in Section 2.04(1) achieved the Employer's intended bargaining goal of eliminating the pyramiding of standby pay and call-in pay after an employe has been called in to work. Were the undersigned to hold otherwise and find that standby pay and call-in pay could still be pyramided (as they were prior to the changed language), this would make the change in Section 2.04 (1) meaningless.

It is an accepted rule of contract construction that interpretations which nullify a provision's meaning are to be avoided because the presumption is that the parties intended the provision to have meaning.

Finally, the Union notes that the Employer did not implement the changed standby pay language until December, 1993 - some seven months after the 1993 contract became effective. The Employer acknowledged at the hearing that this delay was caused by a management screw-up. Be that as it may, the record shows that since December, 1993 (when it denied the grievant standby pay for the time spent working after a call in to work), the Employer has administered the standby pay clause as written. Specifically, it has paid standby pay for all hours before and after a call in to work, but not for time spent actually working. As a result, no contract violation has been found.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the Employer has not violated the current contract for certain Federation of Nurses and Health Professionals employes by not paying standby pay of $1.25 per hour for employes called in to work and paid under the call-in provisions of the contract. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 7th day of October, 1994.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator