

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

POLK COUNTY

and

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION, POLK
COUNTY SHERIFF'S DEPARTMENT
EMPLOYEES' ASSOCIATION, LOCAL 201

Case 89
No. 51701
MA-8703

Appearances:

Mr. Robert L. Hachey, Corporation Counsel, on behalf of the County.
Cullen, Weston, Pines and Bach, by Mr. Richard Thal, and Mr. Gary Gravesen,
Bargaining Consultant, on behalf of the Association.

ARBITRATION AWARD

The above-entitled parties, herein "County" and "Association", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Balsam Lake, Wisconsin, on March 23, 1995. The hearing was not transcribed and the parties there presented oral argument. I there issued a bench decision regarding Issue No. 1, infra, which this Award augments. The Union subsequently filed a brief regarding Issue No. 2, infra, which was received by April 20, 1995.

Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUES

The parties have agreed to the following issues:

1. *Did the County violate Article XVII, Section 5, of the contract when it denied the grievants the minimum pay of four hours court time for court appearances which followed, and were contiguous to, regularly scheduled shifts and, if so, what is the appropriate remedy?*
2. *Did the County violate Article XVII, Section 5, and*

Article XXI, Section 2, of the contract when in its overtime pay calculations for hours worked by grievant Ann Wade during the 28-day period beginning September 11, 1994, it failed to count court time as hours worked and, if so, what is the appropriate remedy?

DISCUSSION

Prior contracts between the parties provided for daily overtime whenever officers worked more than 8 hours in a day. As part of a larger trade-off, the Association in contract negotiations agreed to forego such daily overtime in exchange for uniform hours and certain schedule changes. As a result, the parties agreed to Article XVII, Section 5, of the contract which now states:

Section 5.

Employees who are required to attend court on departmental business when the employee would not otherwise have been scheduled to work shall be paid at a time plus one-half rate with a minimum pay of four (4) hours (4 times 1.5 = 6 hours). This time shall be considered time worked towards the calculation of the 171 hour overtime threshold. Court time may be taken in cash or compensatory time at the option of the employee.

Officers must check on the status of a case trial scheduling by 9:00 AM for a non-jury trial, or by 4:30 PM the day before for a jury trial, to verify that there has been no cancellation.

If the officer follows the above instructions, and is unable to confirm cancellation, the County will be responsible for minimum court time.

In agreeing to this language, the parties never discussed whether the phrase "would not otherwise have been scheduled to work" was meant to provide for the minimum payment of court time when it directly preceded or followed an officer's shift without any gap in the time worked. The parties similarly never expressly discussed whether court time outside an employee's regularly-scheduled work day is to be included in the 171-hour threshold overtime requirement found in Article XVII, Section 5.

After the contract was agreed to, the County refused to pay four hours minimum court time to those employees who were held over immediately past their regularly-scheduled shifts without any gaps in times worked. It, instead, made such payment only if there were gaps between the end of those shifts and the times that employees were called back to work. The County

similarly refused to credit such court time as part of the 171-hour threshold overtime requirement. It therefore denied grievant Ann Wade's request for such payment which, if granted, would have resulted in her receiving 3 hours' overtime. Grievances were subsequently filed over both matters.

ISSUE 1

As I ruled at the hearing, the County violated Article XVII, Section 5, when it refused to pay four hours minimum court time to those employees whose regularly-scheduled shifts either directly preceded or followed their times in court without any gaps in time worked. For when those situations occur, employees are covered by Article XVII, Section 5, which mandates such payments when "the employee would not otherwise have been scheduled to work. . ." This proviso, on its face, does not in any way link payment to whether there is any gap between such court time and an employee's regular shift.

As a result, the County in effect argues that this part of the contract should be read to provide:

"Employees who are required to come back to work to attend court or departmental business when the employee would not otherwise have been scheduled to work shall be paid at a time plus one-half rate with a minimum pay of four (4) hours whenever there is a gap between the employee's regular shift and such court time. . ."

The problem with this interpretation is that it adds a requirement which is not in the contract; i.e., the caveat that such court time will be paid only when an employee returns to work and when there is a gap between such a return to work and an employee's regular shift. The contract, however, cannot be amended in that fashion.

Instead, it must be applied as written -- which in this case means paying four hours' minimum court time for all such off-duty court time, irrespective of whether it is directly contiguous to a regular shift.

As a remedy, the County therefore will make the grievants whole by paying them a minimum of four hours' court time at time and one-half and it shall make such payment in the future whenever this situation reoccurs. 1/

1/ As I related at the hearing, the four hour minimum requirement is applicable at either before or after a scheduled shift. The County thus is not required to pay it twice when court time precedes and follows a scheduled shift.

ISSUE 2

This issue turns on the missing of the minds which occurred in contract negotiations: the Union thought that as part of its larger trade-off in dropping overtime pay after eight hours' work per day that court time would count towards the 171 hours overtime requirement, while the County thought otherwise. Since the parties never expressly addressed this specific issue in negotiations, it is not surprising that this disagreement has arisen.

Nevertheless, it is basic arbitrable law that words must be given their regular meanings and that clear and unambiguous contract language must be applied as written. 2/

Here, the contract is very clear in stating: "This [court] time shall be considered time worked toward the calculation of the 171 hour overtime threshold."

The key word here is "shall" because it mandates that court time must be included in this overtime calculation.

Given this command and the arbitrable axiom that clear and unambiguous contract language must be applied as written, the Union's grievances must be sustained since such clear and unambiguous language takes precedence over the subjective views of the County's negotiations when they agreed to this proviso.

In light of the above, it is my

AWARD

1. That the County violated Article XVII, Section 5, of the contract when it denied the grievants the minimum pay of four hours' court time for court appearances which followed, and were contiguous to, regularly-scheduled shifts. The County therefore shall make the grievants whole by paying to them such court time and it henceforth shall make such payments in the future.

2. That the County violated Article XVII, Section 5, of the contract when in its overtime pay calculations for hours worked by grievant Ann Wade during the 28-day period beginning September 11, 1994, it failed to count court time as time worked. The County therefore will make Wade whole by counting such court time and paying her overtime for the three hours in dispute. Pursuant to the stipulation of the parties, the County similarly will count such court time

2/ See How Arbitration Works, p. 349, Elkouri and Elkouri (BNA Books, 4th Edition, 1985).

as time worked for overtime purposes after January 1, 1995, and pay such overtime to all such affected employees.

3. That to resolve any disputes which may arise over application of this Award, I shall retain my jurisdiction for at least thirty (30) days.

Dated at Madison, Wisconsin this 6th day of June, 1995.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator