BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

TAYLOR COUNTY HIGHWAY EMPLOYEES,
LOCAL 617, AFSCME, AFL-CIO

and

TAYLOR COUNTY

Case 62
No. 53353
MA-9324

Appearances:
Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Charles A. Rude, Personnel Director, appearing on behalf of the County.

ARBITRATION AWARD

Taylor County Highway Employees, Local 617, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Taylor 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 an 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 Medford, Wisconsin, on February 6, 1996. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on March 26, 1996.

BACKGROUND:

During the summer months, the Highway Department employes work a ten hour day from 6:30 a.m. to 4:30 p.m. The County, on July 26, 1995, directed the grievant to report one hour early at 5:30 a.m. On July 27, 1995, the County was going to "shoulder" Highway 64 and the grievant was assigned to operate the grader, and due to its low speed, it would take about an hour to reach the work site. Gravel trucks would haul gravel to the site but because they travel faster, it would not take them as long as the grader to reach the work site. One of the gravel trucks needed brake repairs but the regular mechanic was on vacation. The County directed a supervisor, Jerry Wolff, to report to work an hour early at 5:30 a.m. and perform the brake repairs on the truck. The grievant filed a grievance claiming that he was qualified to perform the work of repairing the

truck and should have been called in at 4:30 a.m. to perform it rather than having a non-bargaining unit person perform the work. The grievance was denied and appealed to the instant arbitration.

ISSUE:

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

> Did the County violate the collective bargaining agreement by allowing the supervisor, Wolff, to perform bargaining unit work on a truck on July 27, 1995? If so, what is the appropriate remedy?

The County states the issue as follows:

> Did the County violate the agreement, specifically Article 16, Section 16, when it did not call the grievant in to repair brakes on one of the Highway Department trucks on July 27, 1995?
>
> If so, what is the remedy?

The undersigned adopts the Union's statement of the issue.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE 16 - GENERAL PROVISIONS

. . .

> Section 16. Consistent with operational efficiencies and emergency situations, the County will take all reasonable efforts not to have non-bargaining unit personnel performing bargaining unit work.

UNION'S POSITION:

The Union contends that the language is clear and requires the County to "take all reasonable efforts" to ensure that non-bargaining unit employes do not perform bargaining unit work. It asserts that the only direct exception relates to "emergency" situations and a somewhat vague reference to "operational efficiencies." It argues that the intent of this language is indisputable and that while not absolutely prohibiting the use of non-bargaining personnel, it is intended to avoid, limit and restrict it in rather specific ways. The Union cites arbitral authorities and case law to the effect that clear and unambiguous language must be given its intended effect by arbitrators, including Great Atlantic and Pacific Tea Co., 36 LA 391 (Pollack, 1960), Clean Coverall Supply Co., 47 LA 272 (Whitney, 1966), and Milwaukee Police Assoc. v. Lund, 97 Wis.2d 15 (1980).

It argues that there was no "reasonable effort" made to secure a bargaining unit member to do the work on the truck as the record establishes that no effort was made. It notes that the County suggested that it was not sure the grievant was qualified to perform the work but all it had to do was ask him. It further notes that it was suggested that the grievant did not have keys to obtain parts but the parts clerk could have set them out the night before or could have come in to deliver the parts. It submits that this was not an emergency as the truck was in the shop and not broken down on the highway and this was mere routine maintenance and not an "emergency." It allows that the County's claim of emergency might be supported had it tried to contact the grievant or other qualified person but it failed to do so. The Union points out that Wolff was paid overtime at a rate higher than a bargaining unit employe so assigning this work to the supervisor was not more efficient. The Union observes that the County's reliance on the arbitration decision between the parties (No. 51360) is a desperate attempt to defend the indefensible because that case reveals no similarity with the instant case as that case involved a subcontract where the County was directed by the State to have Chippewa County perform certain work on Highway 13 and the County truck normally used to do this work was being repaired.

The Union concludes that there can be little doubt that the contract was violated and the grievance should be sustained and the grievant made whole.

COUNTY'S POSITION:

The County contends that Article 16, Section 16 does not unequivocally forbid the performance of all bargaining unit work by non-bargaining unit personnel. It submits that supervisors "troubleshoot" equipment malfunctions or assist bargaining unit personnel with some phase of the work they are doing for short periods of time. The County points out that the grievant is classified as a Grader Operator and worked in that class on July 27, 1995, and indeed, worked overtime. It notes that the grievant is not and has not been a Mechanic but does work as a Mechanic Helper during inclement weather or other circumstances as an alternative to being sent home due to a lack of work. Also, the County refers to the contract provision that Mechanic

Helpers do not receive the Mechanic rate of pay.

The County submits that the nature and timing of the work to be done justified the supervisor doing it. It observes that a problem with the truck's air brakes were encountered late on July 26, 1995, and as the truck would be used for "shouldering" the next day, the supervisor came in early and, with the assistance of the Mechanic Helper, did the repair. It notes that the grievant testified that he had observed work being done on a brake chamber but had not actually performed such work. It maintains that assignment of this work to the grievant, who had little if any experience, may have taken longer and could have resulted in potential danger if improperly done. It argues that the grievant was needed to operate the grader at the same time as the repairs and his untimely operation of the grader would have idled the 13 drivers of gravel trucks who would have waited for him.

The Employer takes the position that no employe was sent home or told to stay home, the grievant started at 5:30 a.m. on overtime and nothing in the agreement forbids any performance of bargaining unit work by non-bargaining unit personnel. It asks that the grievance be denied.

DISCUSSION:

Article 16, Section 16 does not provide an absolute prohibition on supervisors performing bargaining unit work. It requires that "consistent with operational efficiencies and emergency situations, the County will take all reasonable efforts" not to have supervisors perform bargaining unit work. The evidence established that the regular mechanic was on vacation on July 27, 1996, and the supervisor performed the brake repair with the assistance of a mechanic helper from 5:30 a.m. until the repair was completed. The evidence demonstrated that the grievant also began work on overtime at 5:30 a.m. to drive the grader to the location of "shouldering" on Highway 64. The County argued that the grievant was not qualified to perform the work but whether he was or was not is unnecessary to decide in determining the outcome of the case. Assuming that he was qualified, the grievant claims he should have been called in at 4:30 a.m. to repair the truck and then drive the grader at 5:30 a.m. as he did. The problem with this scenario is that if the grievant experienced problems in the repair, he would not be able to finish the repair or would delay driving the grader to the "shouldering" location which would idle a number of truck drivers. Additionally, a Mechanic Helper would have to be called in at 4:30 a.m. rather than 5:30 a.m. to assist in the repairs. Under these circumstances, the undersigned concludes that operational efficiencies permitted the County to assign the truck repair to the supervisor. It is concluded that due to the absence of the regular mechanic and the need to have the grader at the proper location in a timely fashion as well as the minimum amount of work, about one hour, the County did take all reasonable efforts consistent with operational efficiencies in having the supervisor do the work.

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

AWARD

The County did not violate the agreement by allowing the supervisor to perform bargaining unit work on a truck on July 27, 1995, and therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 7th day of May, 1996.

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

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