

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:
of a Dispute Between	:
	:
IOWA COUNTY HIGHWAY EMPLOYEE'S UNION,	:
LOCAL 1266, AFSCME, AFL-CIO	:
Case 74	:
	: No. 51221
and	: MA-8535
	:
IOWA COUNTY (HIGHWAY DEPARTMENT)	:
	:

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 583 D'Onofrio Drive, Madison, Wisconsin 53719, appearing on behalf of the Union.

Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, 119 Martin Luther King, Jr. Boulevard, P.O. Box 990, Madison, Wisconsin 53701-0990, by Mr. Howard Goldberg, appearing on the behalf of the County.

ARBITRATION AWARD

Iowa County Highway Employee's Union, Local 1266, AFSCME, AFL-CIO, hereafter the Union, and Iowa County (Highway Department), hereafter the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the County, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. Hearing was held on September 19, 1994, in Dodgeville, Wisconsin. The hearing was not transcribed and the parties did not file post-hearing written argument.

ISSUE:

The parties stipulated to the following statement of the issue:

Did the Employer violate the collective bargaining agreement when it failed to call in the Grievant for overtime on January 29, 1994?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE VIII - HOURS OF WORK

. . .

8.02 It shall be the policy to keep overtime at a minimum and it is expected that overtime will be worked only in emergencies which are beyond the control of either party to this Agreement. All overtime shall be authorized by the Highway Commissioner or his/her representative. However, when it becomes necessary to work overtime, it shall be divided as equally as is reasonably possible among those employees qualified to perform the overtime work required and all employees shall be paid time and one-half (1 1/2) for all such overtime worked in excess of eight (8) hours per day and forty (40) hours per week. All time paid shall be considered time worked.

. . .

BACKGROUND:

On Saturday, January 29, 1994, available employees were called in to work overtime to plow snow. On February 7, 1994, the Grievant, John Willborn, filed a grievance which stated:

was not called for overtime on my section on 1-29-94, for plowing snow + I was available + ready for work. The grievance alleged that the failure to call the Grievant for overtime violated Section 8.02 of the collective bargaining agreement. The grievance requested a remedy of four hours of overtime.

On February 14, 1994, Glen L. Thronson, commissioner of the County Highway Commission, responded to the grievance as follows:

The grievance of January 29 is denied. You were not available on that day. You were called twice and there was no answer. You were apparently in Madison.

The grievance was denied at all steps and, thereafter, submitted to arbitration.

DISCUSSION

Prior to January 29, 1994, the Grievant provided the County with two telephone numbers to be used for the purpose of calling the Grievant in to work. One of these telephone numbers was that of the Grievant's parents. The County routinely called both telephone numbers when calling the Grievant in for overtime work.

On January 29, 1994, County supervisors telephoned two different numbers in an attempt to call the Grievant in to work. At one number, there was no answer and at the second number, which County supervisors believed to be the telephone number of the Grievant's parents, a woman stated that the Grievant was not at home. County supervisors understood the woman to have claimed that the Grievant was in Madison with his son.

Upon being told that the Grievant was not at home, the County supervisors

called in another employe to plow the Grievant's section. This employe worked four hours of overtime.

Subsequently, one of the County's supervisors telephoned the number on the sheet which had been used to call the Grievant on January 29, 1994. When the supervisor called this number, a woman answered. This woman acknowledged that she had received telephone calls asking for the Grievant and that when she received these calls, she stated that the Grievant was not at home. The telephone number of this woman and the telephone number of the Grievant's parents differ by one digit.

County telephone records indicate that a telephone call was made to this woman's house on January 29, 1994 during the time period in which County supervisors were calling in employes. The County telephone records do not indicate that a call was made to the Grievant's parents' home on January 29, 1994.

At hearing, the Grievant claimed that, on January 29, 1994, the County had been provided with the correct telephone number of his parents' home. The Grievant further claimed that he was at his parents' house on January 29, 1994, during the period of time in which County supervisors called in employes; that County supervisors did not telephone his parents' house during that time period; and that he would have worked the available overtime on January 29, 1994. The record does not demonstrate otherwise.

The undersigned is persuaded that the County attempted to call in the Grievant for overtime on January 29, 1994. The undersigned is further persuaded that the County called a wrong number and, relying upon misinformation provided by the wrong number, concluded that the Grievant was not available for overtime work.

Section 8.02 requires the County to divide overtime as equally as is reasonably possible. It is reasonably possible for the County to place the correct telephone number on documents which it uses to call in employes.

By failing to telephone the Grievant at his parents home on January 29, 1994, the County did not divide overtime as equally as is reasonably possible and, thus, violated Section 8.02 of the collective bargaining agreement. Accordingly, the undersigned has sustained the grievance and has awarded the Grievant the four hours of overtime which he lost as a result of the County's contract violation.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following:

AWARD

1. The Employer violated the collective bargaining agreement when it failed to call in the Grievant for overtime on January 29, 1994.

2. To remedy this contract violation, the County is to immediately pay the Grievant four hours of overtime at his January 29, 1994 rate.

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

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator