

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 75	:
	: No. 51222
and	: MA-8536
	:
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 27, 1994?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE:

ARTICLE VI - SENIORITY

. . .

6.02 It shall be the policy of the Employer to recognize seniority in filling vacancies, making promotions and in laying off or rehiring, provided however, that the application of seniority shall not materially affect the efficient operation of the Iowa County Highway Department.

. . .

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:

At all times material hereto, John Willborn, the Grievant, was under a medical restriction which required that he operate a truck with an automatic transmission. On January 26, 1994, the Grievant brought his assigned truck, which had an automatic transmission, into the shop for repairs. The Grievant's assigned truck was not repaired until approximately 10:30 a.m. on January 27, 1994.

On January 27, 1994, employes of the County Highway Department were called in for emergency snow plowing. The majority of these employes were called between 4:00 and 4:30 a.m. and responded to the call between 4:45 and 5:15 a.m.

On February 4, 1994, a grievance was filed alleging that the County had violated Section 8.02 by not calling the Grievant in for overtime on January 27, 1994. The grievance requested a remedy of two hours of overtime.

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

Your grievance of January 27, 1994, is denied. We did not call that morning and we didn't send anyone over on your section until you arrived. The main reason you weren't called out is because you went home

sick the afternoon of January 26, and I have had a policy for many years to not call anyone out early if they have been ill. I think is important to properly recuperate from an illness. I know if I was ill, I would not appreciate a call at 4:00 a.m. asking me to come to work so I believe this is a fair and considerate policy.

Read Section 8.02 again. It clearly states management rights. Everyone does not have to be called out.

Union Grievance Representative, Mitchell Zablotwicz, responded by a letter dated February 21, 1994, which states as follows:

In your response of February 14, 1994, to the grievance filed on behalf of John Willborn, Jr. for not being called in to run his section prior to work hours on February 27, 1994, (sic) grievance denied. We feel your denied response is inaccurate and misleading toward the understanding which the employees and management have shared in the past.

First, you state that you didn't send anyone over section 26 until John arrived that morning. According to the call in sheet, Don Hittesdorf was called for section 26 and arrived at 4:46 a.m. Second, you state John had gone home early on January 26, 1994 and your concern for his full recovery would not allow you to disturb him. In addition, you mentioned this has been you policy for many years. I have worked here for close to five years and view that policy not to be held true on all occasions and possibly inappropriate unless you possess a medical degree where you could use that sort of action to override an existing emergency where all county patrolmen were being notified to go out of their section.

In checking the time cards, I discovered that John had gone home early on January 27, 1994 (that date in question) and not on January 26, 1994 (the date you stated).

Thirdly, your suggestion to read Article VIII, Hours of Work, Section 8.02, has helped me understand only that overtime will be authorized by the Highway Commissioner, or his/her representative, and when it becomes necessary to work overtime it shall be divided as equally as is reasonably possible among qualified employees. I see nothing in the section 8.02 that it states everyone does not have to be called out. In view that all the county section men were called out, we feel we are just in assuming an emergency had occurred and work should have been handed out according to the agreement between Iowa County and the Iowa County Highway Employees Local 1266 AFSME (sic) Union.

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

DISCUSSION:

Highway Commissioner Thronson did not testify at hearing. County Supervisor Don Bach, who did testify at hearing, stated that the Grievant was not called in for overtime on January 27, 1994, because his truck was not available.

The undersigned has credited the testimony of Supervisor Bach. Therefore, the sick leave policy outlined in Thronson's letter of February 14, 1994, is not at issue.

On January 27, 1994, the Grievant was under a medical restriction which required the Grievant to operate a vehicle with an automatic transmission. Since the truck assigned to the Grievant was being repaired, it was not available to the Grievant when employees were called in for overtime on January 27, 1994. The Union argues that the County had a Section 8.02 duty to call in the Grievant for the overtime work on January 27, 1994 and assign the Grievant another truck with an automatic transmission.

The County had three trucks with automatic transmissions in operation during the early morning hours of January 27, 1994. Each of these trucks was assigned to, and used by, an employe other than the Grievant. The record fails to establish that it was possible to reassign one of these trucks to the Grievant without undue disruption to the County's emergency snow plowing operation.

Section 8.02 requires that all overtime be divided as equally as is reasonably possible. Having no logical basis to conclude that it was reasonably possible to provide the Grievant with the type of truck required by the Grievant's medical restriction, the undersigned rejects the Union's assertion that the County violated Section 8.02 when it failed to call in the Grievant for overtime on January 27, 1994.

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

AWARD

1. The Employer did not violate the collective bargaining agreement when it failed to call in the Grievant for overtime on January 27, 1994.

2. The grievance is denied and dismissed.

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

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