

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 140

and

SPARTA MANUFACTURING COMPANY

Case 35
No. 53526
A-5434

Appearances:

Mr. Kevin D. Lee, Business Manager, Laborers' International Union of North America, Local Union No. 140, 1920 Ward Avenue, Suite 10, LaCrosse, Wisconsin 54601-6782, appearing on behalf of the Union.

Lindner & Marsack, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, by Mr. Dennis G. Lindner, appearing on behalf of the Employer.

ARBITRATION AWARD

Laborers' International Union of North America, Local Union No. 140, hereafter the Union, and Sparta Manufacturing Company, hereafter the Company or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a member of its staff as arbitrator to hear and decide the instant grievance. The undersigned was so appointed and hearing was held in Sparta, Wisconsin, on January 26, 1996. The hearing was not transcribed, and the record was closed on March 29, 1996, upon receipt of post-hearing briefs.

ISSUE:

The parties stipulated to the following statement of the issue:

Did the Company violate Article VII, Section 1 (C) of the labor agreement by not paying holiday pay for Thanksgiving and the day after Thanksgiving to employees who were laid off effective Friday, November 17, 1995?

RELEVANT CONTRACT PROVISIONS:

**ARTICLE VII
PAID HOLIDAYS**

Section 1.

The Company agrees to pay the employees for eleven (11) contract holidays as listed herein and under the conditions provided in this Article.

(a). The recognized contract holidays shall be: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, day after Thanksgiving, the day before Christmas Day, Christmas Day, the day before New Year's Day and the Employee's birthday.

(b). Holiday pay shall consist of eight (8) hours straight time pay at the employee's regular hourly rate.

(C). To receive a paid holiday the eligible employee must work the last work day before such holiday and the first work day after such holiday, except when excused because of illness and verified by a physician's certificate so stating. For an employee to be eligible for holiday pay, he must have to work the last six (6) hours. Under no circumstances other than employees off for vacation or workers' compensation will any employee qualify for holiday pay if they have performed no work for the Company within the seven (7) day period immediately preceding the Holiday.

. . .

BACKGROUND:

Certain employees of the Company were laid off indefinitely, effective at the end of their work day on November 17, 1995. These employees, hereafter the Grievants, did not receive holiday pay for Thanksgiving, November 23, 1995, and the day after Thanksgiving, November 24, 1995. On December 8, 1995, the Union filed a grievance requesting that the Grievants be paid holiday pay for Thanksgiving and the day after Thanksgiving. The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union

The Grievants worked the last scheduled day before the holiday and had worked for the Company within seven (7) days preceding the holiday. The Grievants fulfilled every obligation demanded of them by the Company. The Company violated Article VII, Section 1 (C), when it did not pay the Grievants for the Thanksgiving and the day after Thanksgiving holidays.

Employees laid off for a short duration have received pay for holidays. Employees on short-term layoff and indefinite layoff are covered by the same agreement and should receive the same treatment. By failing to pay holiday pay to the Grievants, the Company unilaterally changed the holiday practice. The grievance should be granted and the Grievants should be compensated for two days paid holiday.

Employer

Article VII, Section 1 (C), mandates that employees work the last work day before a holiday and the first work day after the holiday, except when excused because of a verified illness. The "last work day before" and "first work day after" are days on which the plant operates and not necessarily the work days of individual employees.

Exceptions to the requirement that employees work the qualifying days should be strictly construed. Layoff is not a contractually recognized exception to the requirement that employees work the qualifying days.

During contract negotiations, the Company advised the Union that it would not use short-term layoffs to avoid paying holiday pay. The Company's beneficence was not extended to layoffs which are of indefinite duration and which result from business downturns.

While Thanksgiving Day, November 23, 1995, and the day after Thanksgiving Day, November 24, 1995, are recognized as holidays under Article VII, Section 1 (a), the Company did not violate Article VII, Section 1 (C), by failing to pay the Grievants for these holidays. The grievance should be denied and dismissed.

DISCUSSION:

As the parties recognize, the Grievants' right to receive holiday pay is governed by

Article VII, Section 1 (C), of the parties' collective bargaining agreement. The first sentence of Article VII, Section 1 (C), requires an employee to work "the last work day" before a holiday and the "first work day" after a holiday, "except when excused because of illness and verified by a physician's certificate so stating." The second sentence of Article VII, Section 1 (C), requires an employee to "work the last six (6) hours." The third, and final sentence of Article VII, Section 1 (C), requires employees, other than those off for vacation or workers' compensation, to have performed work "within the seven (7) day period immediately preceding the Holiday."

The first sentence of Article VII, Section 1 (C), which is unclear and ambiguous, has been interpreted in a prior arbitration award. 1/ In this award, Arbitrator Crowley recognized that "work day" is the Company's regularly scheduled work day, unless an individual employee has been scheduled to work at another time. 2/

In the present case, the Company's last regularly scheduled work day before the holiday was Wednesday, November 22, 1995, and the Company's first regularly scheduled work day after the holiday was Monday, November 27, 1995. Since the Grievants were not scheduled to work after November 17, 1995, one may reasonably argue that the Grievants worked the "last work day" before the holiday.

The Grievants were on indefinite layoff at the time of the Thanksgiving holidays. The Grievants did not work Monday, November 27, 1995, and were not scheduled to work at another time after the Thanksgiving holidays. As the Company argues, the Grievants did not work the "first work day" after the holiday and, thus, did not meet the requirements of Article VII, Section 1 (C).

According to Shop Steward Norm Dearborn, who was a member of the Union bargaining team which negotiated the last sentence of Article VII, Section 1 (C), this language requires the Company to pay holiday pay to any laid off employee who performs work within the seven day period preceding the holiday. If the parties intended such a result, then it was incumbent upon the parties to negotiate language which could be reasonably construed to provide such a result. They did not do so.

When the plant has been shut down for a week or two, laid off employees have received

1/ Issued November 29, 1993.

2/ In the prior case, the Company's last regularly scheduled work day before the holiday was Friday. The Grievant, however, was scheduled to work overtime on Saturday. Arbitrator Crowley found that the Grievant, who did not report to work on Saturday, failed to "work the last work day before" the holiday and denied the Grievant holiday pay for the Monday holiday.

holiday pay for holidays occurring during the shut-down period. While the Union argues that there is no contractual basis for distinguishing between these short-term layoffs and the Grievants' indefinite layoff, the undersigned disagrees. When there is a plant shut down, the laid off employees work the "last work day" before the holiday and the "first work day" after the holiday.

In summary, the Grievants did not work "the first work day" after the Thanksgiving holidays, as required by Article VII, Section 1 (C). Accordingly, the Grievants are not contractually entitled to be paid for Thanksgiving Day, November 23, 1995, and the day after Thanksgiving, November 24, 1995.

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

AWARD

1. The Company did not violate Article VII, Section 1 (C), of the labor agreement by not paying holiday pay for Thanksgiving and the day after Thanksgiving to employees who were laid off effective Friday, November 17, 1995.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 11th day of October, 1996.

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