

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

MONROE COUNTY HIGHWAY EMPLOYEES  
LOCAL UNION NO. 2470

and

MONROE COUNTY

Case 135  
No. 54300  
MA-9617

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME,  
AFL-CIO, on behalf of the Union.

Mr. Kenneth Kittleson, Personnel Director, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held in Sparta, Wisconsin, on October 14, 1996. The hearing was not transcribed and the County thereafter filed a brief that was received by November 18, 1996. Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Whether the County violated Article 14 of the contract when it failed to grant paid rest periods to some of its employes when they were engaged in continuous operations and, if so, what is the appropriate remedy?

DISCUSSION

Article 14 of the contract, entitled "Rest Periods", states:

Section 1. All employees shall receive one (1) fifteen (15) minute rest period in the first half of the day, and one (1) ten (10) minute rest period in the second half of their regular work day. Said

periods to be determined by the Highway Commissioner.

Section 2. All employees shall use their rest periods as desired.

Despite this clear and unequivocal language, the County admits that it has not granted such rest periods to certain employees who are on paving crews and who work on its cold mixing paving operations.

The County justifies its refusal to grant such breaks on the ground that such operations cannot be closed down for breaks and because Article 3 of the contract, entitled "Management Rights", provides:

Article 3 - MANAGEMENT RIGHTS

Section 1. The County possesses the sole right to operate county government and all management rights repose in it, subject only to the provisions of this Contract and applicable law. These rights include, but are not limited to the following:

- A. To direct all operations of the County;
- B. To establish reasonable work rules and schedules of work;
- C. To hire, train, promote, transfer, schedule and assign employees to positions within the County.
- D. To suspend, discharge and take other disciplinary action against employees for just cause;
- E. To relieve employees from their duties because of lack of work or any legitimate reason;
- F. To maintain efficiency of county government operations;
- G. To take whatever action is necessary to comply with state or federal law;
- H. To introduce new or improved methods or facilities;
- I. To change existing methods of facilities;
- J. To determine the kind and amount of service to be performed as pertains to county government operations; and the number and the creation of a new position or classification, or a change in the content of an existing position or classification, the parties shall negotiate wages for the position or classification;
- K. To contract out for goods and services, provided that such contracting out for goods and services shall not result in layoffs of present employees;

- L. To determine the methods, means and personnel by which County operations are to be conducted.

The County's exercise of the foregoing functions shall be limited only by the express provisions of this Contract. If the County exceeds this limitation, the matter shall be processed under the grievance procedure. (Emphasis added).

The County points to this language in support of its contention that "it gives the Highway Commissioner the latitude to direct employes to work through their breaks during continuous operations such as paving, sealcoating, and cold mixing operations".

That may be. But, that is not the issue here since the Union concedes that employes can be worked through their breaks under certain limited conditions.

Rather, what is in issue here is whether the County must pay employes when it deprives them of their contractually-provided breaks. As to that, it certainly must make such payment since their break times represent non-work time which cannot be totally taken away. For while the County and the Highway Commissioner have certain broad management rights pursuant to Article 3, that same proviso cautions: "The County's exercise of the foregoing functions shall be limited only by the express provisions of this Contract."

Here, Article 14 clearly and unequivocally provides for two rest periods. Hence, that specific language serves as a check on the County's management rights and it therefore must be honored in all work situations, irrespective of what they are.

The County nevertheless asserts that there is at least a five-year past practice showing that employes have not been paid when they work through their breaks. Even if there is, though, it is well-recognized that clear and unambiguous language of a contract must prevail over parol evidence and that, furthermore, a party does not automatically waive a clear contractual right through its mere non-use. See How Arbitration Works, Elkouri and Elkouri, pp. 348; 454 (BNA, Fourth Edition, 1985). That is the exact situation here.

The County also asserts that the Union only raised this issue in 1996 as a bargaining chip over negotiations regarding a ten-hour day. The Union's motivation, however, is immaterial when, as here, the contract is so clear and unambiguous in supporting the right asserted.

Lastly, the County argues that employes in fact were able to rest even when they were not formally given their contractually-mandated morning and afternoon breaks. I disagree. Statements from employes establish that they were not always given break time and that they were accorded little, if any, rest during the day.

The County therefore must grant paid rest periods even when employes are engaged in paving operations or any other operations which cannot be easily totally shut down. The only concession that can be made in such situations is to pay employes time and one-half when management decides that they must work through their rest periods, which is a course acceptable to the Union. In that way, work can be continued while at the same time compensating employes for working through their contractually provided for breaks. To do otherwise is to in effect gut the contract by reading Article 14 out of the contract. That cannot be done.

In light of the above, it is my

AWARD

1. That the County violated Article 14 by not granting paid rest periods to some of its employes and by not compensating them when they have been denied their rest periods.

2. That to rectify its contractual breach, the County shall immediately pay to all affected employes time and one half for working through their rest periods from May 1, 1996, to the present.

3. That the County henceforth shall either grant paid rest periods to all qualifying employes or pay them time and a half for working through their rest periods.

4. That to resolve any questions which may arise over application of this Award, I shall retain my jurisdiction for at least sixty (60) days.

Dated at Madison, Wisconsin, this 2nd day of December, 1996.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator