

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**VERNON COUNTY HIGHWAY AND RECYCLING EMPLOYEES LOCAL
UNION 1527, AFSCME, AFL-CIO**

and

VERNON COUNTY

Case 101
No. 54918
MA-9826

Appearances:

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

Klos, Flynn & Papenfuss - Chartered, Attorneys at Law, by **Mr. Jerome Klos**, appearing on behalf of the County.

ARBITRATION AWARD

Vernon County Highway and Recycling Employees Local Union 1527, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Vernon 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 Viroqua, Wisconsin, on June 4, 1997. The hearing was not transcribed. The County filed a post-hearing brief. The Union did not file a brief and the record was closed on October 7, 1997.

BACKGROUND:

The basic facts underlying the grievance are not in dispute. Recycling employees are paid time and one-half (1 1/2) their regular hourly rate for hours worked before 6:00 a.m. and after

6:00 p.m. These hours are not included by the County in the basic forty hours worked per week after which all hours worked are at time and one-half (1 1/2) the regular hourly rate. The Union grieved the matter which was denied and appealed to the instant arbitration.

ISSUE:

The parties stipulated to the following:

Did the County violate the collective bargaining agreement by the manner in which it calculated overtime compensation for the recycling employees?

If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE IV

Hours of Work, Wages, Overtime Pay

- 4.01 The standard work day shall be 7:00 a.m. to 3:30 p.m., with a one-half (1/2) hour off (non-paid) for noon lunch, except for Recycling employees. (See 4.08)
- 4.02 For Highway employees, the standard work week shall be five (5) days, Monday through Friday, both days inclusive. For Recycling employees, the standard work week will be forty (40) hours.

. . .

- 4.08 For Highway Department employees:
All hours worked outside of the standard work day and/or the standard work week shall be paid at one and one-half (1 1/2) times the regular hourly rate of pay. When deemed necessary, employees shall work reasonable amounts of overtime and shall not be released from duty unless a circumstance exists whereby the employee's absence is necessary and approval is received from the Commissioner or foreman.

For Recycling Department employees:
All hours worked in excess of forty (40) hours per week and before 6:00 a.m. or after 6:00 p.m. shall be paid at one and one-half (1 1/2) times the regular hourly pay.

COUNTY'S POSITION:

The County contends that in negotiations the Union wanted recycling employees to have the same regular work week as highway employees, 8:00 a.m. - 4:30 p.m., and to be paid time and a half for all hours outside this work schedule. The County did not agree to this because recycling employees worked a non-regular schedule which is determined by the flow of material from truck arrivals, so it offered a forty hour week with overtime for hours worked before 6:00 a.m. and after 6:00 p.m. It points to the testimony at the hearing that a highway employee who works nine hours on Monday and eight hours the rest of the week is paid for one hour of overtime and not for one hour overtime on Monday and an additional hour for working forty-one hours in a week. It argues that the same contract interpretation should apply to the recycling employee who works ten hours one day, two after 6:00 p.m. and eight hours the other four days and the employee would get two hours of overtime but no additional overtime for working forty-two in the week as the additional two hours have already been paid as overtime. It asserts that the consistent past practice in the Highway Department is the best example of contract interpretation.

The County notes that two Union witnesses' testimony provided conflicting interpretations of the contract, whereas the County provided a series of exhibits on overtime that illustrated the County's interpretation is consistent with governmental rules. It concludes that the grievance should be denied.

DISCUSSION:

Section 4.08 provides that for Recycling Department employees, all hours worked in excess of forty hours per week and before 6:00 a.m. or after 6:00 p.m. shall be paid at one and one-half times the regular hourly rate. The issue presented here is whether the hours worked before 6:00 a.m. and after 6:00 p.m. which are paid at time and one-half count towards the basic forty hours per week. Nothing in Section 4.08 specifically states that they are nor does it state that they are not. In short, the contract is silent.

The negotiating history does not shed any light on the matter as there were no proposals that specifically addressed the issue of the hours worked before 6:00 a.m. or after 6:00 p.m. as being part of the basic forty hours worked to trigger overtime for all hours worked thereafter.

As to past practice, the language in Section 4.08 relating to Recycling Department employees is new because these employees were accreted to the Highway unit and this is the first time the language was included. However, it is undisputed that the Highway Department employees who are paid over eight hours in a day and/or forty in a week do not count the hours in excess of eight in a day as part of the basic forty hours. The evidence failed to establish that the parties agreed to a different calculation for the Recycling Department employees. Additionally, contrary to the Union's assertion, the evidence indicated that if a Recycling Department employee worked eight hours each day on Monday, Tuesday, Wednesday and Thursday and nine hours on Friday with one hour worked after 6:00 p.m., the employee would

get only one hour of pay at time and one-half. The employe would not be paid time and one-half twice for the same hour worked. The employe worked forty-one hours in the week and one hour after 6:00 p.m. but is not entitled to both the weekly premium and the after 6:00 p.m. premium.

The Union has argued, however, that if an employe works nine hours on Monday, one being after 6:00 p.m., and then eight hours on Tuesday, Wednesday, Thursday and Friday, that employe is entitled to two hours of overtime, one hour on Monday and one hour on Friday, applying both premiums. This is simply not logical. Two employes work forty-one hours in a week, one of which is after 6:00 p.m., yet one gets two hours of overtime and the other gets one hour of overtime. The Union offered no explanation for such an unusual result. It must be concluded that the parties never agreed to or intended such a difference in calculating overtime. Therefore, the undersigned finds that the evidence failed to establish that hours worked before 6:00 a.m. or after 6:00 p.m. are counted as hours worked to make up the forty hours per week after which overtime must be paid. In other words, overtime hours paid before 6:00 a.m. or after 6:00 p.m. are excluded from the forty hours required to be worked for weekly overtime.

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 collective bargaining agreement by the manner in which it calculated overtime compensation for the Recycling Department employes and the grievance is denied in all respects.

Dated at Madison, Wisconsin, this 17th day of October, 1997.

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