

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LAFAYETTE COUNTY MANOR EMPLOYEES,
LOCAL NO. 115, AFSCME, AFL-CIO**

and

LAFAYETTE COUNTY

Case 71
No. 55590
MA-10054

Appearances:

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1734 Arrowhead Drive, Beloit, Wisconsin 53511, appearing on behalf of the Union.

Brennan, Steil, Basting & MacDonald, S.C., by **Attorney Howard Goldberg**, 433 West Washington Avenue, Suite 100, Madison, Wisconsin 53701, appearing on behalf of the County.

ARBITRATION AWARD

On September 23, 1997, Local 115, AFSCME, AFL-CIO filed a request with the Wisconsin Employment Relations Commission to appoint a commissioner or member of its staff to serve as the sole arbitrator to hear and decide two grievances pending between the parties. The matter was assigned to the undersigned who conducted an evidentiary hearing on Friday, November 14, 1997 at Darlington, Wisconsin. No transcript was made and the parties waived the filing of briefs.

ISSUE

The parties stipulated to the following issue:

Did the employer violate the collective bargaining agreement by failing to pay the grievant time and one-half call-in pay for work performed on March 26, 1997 and, if so, what is the remedy.

POSITIONS OF THE PARTIES

Union Position

The grievant is not an “on call” employee. The grievant was called in on Wednesday, March 26 1997 which is her normally scheduled day off. Since the grievant was called in outside of her regular hours of work, she should have been paid time and one-half.

Employer Position

The grievant worked on March 26, 1997 from 6:30 a.m. to 3:00 p.m., which are the same hours of the day she normally works. Since she worked the same shift on March 26, 1997 as normal, she is not entitled to overtime pay.

RELEVANT CONTRACT LANGUAGE

Article 23 - Wages and Classifications

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Section 4. On-Call and Call-In Pay:

...

All employees not designated as “On-Call” who are called in to work during hours outside of the normal work shift shall be paid at the rate of time and one half (1 ½). Such employee shall be guaranteed a minimum of two (2) hours pay upon being called in pursuant to this paragraph.

BACKGROUND

The grievant, Becky Burris, is a permanent part-time employee of Lafayette Manor who works a regular schedule of hours from 6:30 a.m. to 3:00 p.m. on Monday, Tuesday, Thursday and Friday. At 5:30 a.m. on Wednesday, March 26, 1997 she was called in to work from 6:30 a.m. to 3:00 p.m. She has come in on many Wednesdays and has never been paid time and one-half. Only two maintenance employees (a supervisor and assistant supervisor) receive on-call pay. Employees who work a ten day payroll and are called in for an eleventh day of work in the pay period receive time and one-half for the work in excess of the tenth day. These are employees who are normally scheduled to work for ten days and who are called in another day in the fourteen-day pay period.

DISCUSSION

The contract language is unclear. It could mean, as the union suggests, that employees called in outside of their regular schedule of hours are to receive time and one-half. It could mean, as the employer suggests, that the language requires time and one-half pay only when the employee is called in to work on hours different from the hours they normally work.

When contract language is unclear, it is customary to look at bargaining history and/or past practice to ascertain the intent of the parties.

There is no bargaining history evidence in the record relative to the second paragraph of Article 23, Section 4. There is evidence in the record relative to the history of overtime pay for employees who work on more than ten days during a fourteen-day pay period. Mr. Larsen, the union representative, called Tim Hendricks who testified that a union member came to him and requested that the employer grant such pay. However, the record does not reflect that the employee's request was part of the contract bargaining process or that the request or response was based on an interpretation of Article 23, Section 4, paragraph two (the employee who approached Hendricks did not testify). Therefore bargaining history is not of assistance in interpreting the relevant contract provision.

Past Practice

The evidence is that employees who are not scheduled to work ten days in a pay period have never been paid time and one-half for working their regular shift on days outside of their normal schedule. The past practice evidence therefore supports the employer's position as to the facts of this grievance.

Finally, while it is not evidence deriving from the parties' particular relationship, it should be acknowledged that the word "shift" as used in industrial relations favors the employer's position. Robert's Dictionary of Industrial Relations (BNA 1966) defines shift as "A regularly scheduled period of work during the twenty-four hour day for a plant. The shift has a fixed beginning and ending each day." On March 26, 1997 the grievant worked the same shift as her normal work shift. The contract does not require time and one-half pay under these circumstances.

AWARD

The employer did not violate the contract. The grievance is dismissed.

Dated at Madison, Wisconsin this 31st day of March, 1998.

James R. Meier /s/

James R. Meier, Arbitrator