BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GREEN BAY MUNICIPAL EMPLOYEES UNION PARK DEPARTMENT LOCAL 1672, AFSCME, AFL-CIO

and

CITY OF GREEN BAY PARKS DEPARTMENT

Case 274
No. 55089
MA-9895

Appearances:

Mr. Bob Baxter,, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Jerry H. Hanson, Assistant City Attorney, City of Green Bay, Law Department, appearing on behalf of the City.

ARBITRATION AWARD

Local 1672, Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the City of Green Bay, hereinafter referred to as the City or the Employer, are parties to a collective agreement which provides for final and binding arbitration of grievances arising thereunder. The Union made a request, with the concurrence of the Employer, that the Wisconsin Employment Relations Commission designate a commissioner or member of its staff to hear and decide a grievance filed by the Union. The undersigned was so designated. A hearing was held in Green Bay, Wisconsin on October 28, 1997. The hearing was transcribed, the parties filed post-hearing briefs, and the record was closed on March 9, 1998.

To maximize the ability of the parties we serve to utilize the Internat and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUE

The Union posits the issue as follows: Did the Employer violate the Labor Agreement and/or Memorandum of Agreement by assigning seasonal maintenance employees to do pool maintenance work after 3:00 PM on February 19, 1997, in lieu of regular full-time employees? If so, what is the appropriate remedy?

The City states the issue as "(w)hether management bargained away, through the March 26, 1997, Memorandum of Agreement, its rights to have SME's perform duties, such as moving a boiler after 3:00 P.M., without having to pay the most senior full-time employee overtime.

I adopt the Union's statement of the issue.

PERTINENT CONTRACT PROVISIONS

Article 11, Section (B):

Except where otherwise noted (see paragraphs K and L), the work day schedule shall be 7:00 AM to 3:00 PM with a half ((1/2) hour on the job lunch period . . . .

Article 11, Section (F):

The daily hours for seasonal maintenance employees shall be 7:00 AM to 12:00 noon and from 12:30 PM to 3:30 PM . . .

Article 11, Section (J):

All overtime shall be by seniority among those qualified to perform the work (i.e., Senior Park Maintenance Worker will be called first for overtime involving driving trucks) . . .

When the employer has less than one week notice of the need for overtime it shall solicit interest among qualified employees and award the overtime to the most senior interested employee(s) . . .

Article 13, Section (F):

Employees with greater seniority shall have preference on all jobs where qualified . .

Article 13, Section(H):

Seniority shall be established for each employee. Seniority shall consist of the total calendar time elapsed since the date of original employment; however, regular full-time employees shall have seniority preference over seasonal maintenance employees and the seniority of seasonal maintenance employees and regular full-time employees shall be listed separately.

Memorandum of Agreement (in part):

(Paragraph 3) The overall interest between the parties signatory to both Collective Bargaining Agreement and the Memorandum of Understanding is the agreement that no work performed by the SME's (seasonal maintenance employees) will in anyway take away overtime that would be done by the regular full-time work force. SME's may flood rinks and broom rinks for the purpose of flooding until they are built up. . .

(Paragraph 5) From noon to nine (9) o'clock PM, SME's may flood rinks and from Monday through Thursday may also clean rinks. From noon to break, SME's shall perform whatever duties of work are assigned. On Friday, Saturday, and Sunday from noon to nine (9) o'clock and other days after break, SME's shall perform such duties as painting shelters, repair and painting of benches, barrels, pick up litter, and such other work that will not conflict with that which has been normally assigned to full-time employees and performed as overtime such as cleaning lots and walks, and emergency call-in work. . .

BACKGROUND

Colburn Park is owned and operated as a recreational facility by the City of Green Bay. It includes an outdoor swimming pool. After the close of the swimming season in 1996, city park authorities determined that a defective boiler in the basement of the building at Colburn Park needed to be replaced. These authorities decided to disconnect the flawed boiler, move it out of the way, and replace it with a working boiler from a building in another city park.

On February 17, 1997, a private contractor employed by the City disconnected the gas, electric, and duct work on both the defective boiler in the Colburn Park building and the replacement boiler. In anticipation of the removal of the defective boiler and its replacement by the replacement boiler by February 20, the City had made tentative arrangements with the contractor to connect its gas, electric, and duct work on that date, if that met the approval of the City's Parks Superintendent.

On February 19, 1997, Charles Leurquin, Jr., a Maintenance Specialist I employed by the City of Green Bay, was assigned to relocate the defective boiler. Mr. Leurquin has been employed by the City of Green Bay Park Department for the past nineteen years, and has performed pool maintenance work for a number of those years. Since 1995 he has been assigned as the primary person to do pool maintenance.

Pool maintenance responsibilities include draining the pools in the spring and removing any debris that accumulated in them during the winter. During winters, pumps are repaired, boilers are dismantled and cleaned, and caulking and painting chores are performed. In addition, a certain amount of maintenance and scrubbing is done on a year-round basis.

Mr. Leurquin viewed his boiler relocation duties to which he was assigned on February 19, 1997 as a form of routine general pool maintenance work, but, paradoxically, also characterized it as "emergency." Mr. Leurquin further believes his duties on February 19 constituted the type of work that in the past had been assigned to the assistant pool maintenance person (a full-time position in which Mr. Leurquin had previously functioned). According to Mr. Leurquin, with the exception of one incident, this type of work had always been assigned to regular full-time Park Department employees after 3:00 PM. Mr. Leurquin asserted that except for his experience on February 19, 1997, the senior full-time maintenance person worked with him on any overtime pool maintenance work to which Mr. Leurquin was assigned. There is no record of any boiler relocation projects having ever been undertaken by the City of Green Bay Parks Department prior to February 19, 1997, by SME's or regular full-time employees.

Although Mr. Leurquin began work on February 19 at his usual starting time of 7:00 AM, he wasn't able to begin his Colburn Park assignment on February 19 until approximately 8 or 9 AM. Sometime in the early afternoon, three seasonal maintenance employees (SME's) were assigned to assist him.

A seasonal maintenance employee is identified in the collective bargaining agreement between the parties as " . . . a regular employee, but who has not been hired for year-round employment and who is on the active payroll during such times as directed by the Employer. [Article I(C).] Prior to January 1, 1997, the SME's worked a 34 week work-year with daily hours of 7:00 AM to 3:30 PM (including unpaid lunch period of half an hour). But beginning January 1, 1997, the SME's advanced to a 47 week work-year, with daily hours of work commencing at 12:00 noon and ending at 9:00 PM in the months of December, January, and February (including unpaid lunch period of 1 hour).

By contrast, the work-day schedule for full-time employees has traditionally been 7:00 AM to 3:00 PM (including an on-the-job lunch period of half an hour).

Sometime between 2:15 and 2:30 PM on February 19, Mr. Leurquin called his supervisor, Superintendent of Parks, Keith Wilhelm. Mr. Leurquin explained that 1) he would be unable to complete moving the defective boiler by the regular quitting time of 3:00 PM, 2) asked permission to finish the assignment on overtime, 3) pointed out that he had three "part-timers" (SME's) with him, and 4) suggested the Union would be concerned if the SME's continued to work with him after 3:00 PM (instead of first giving full-time employees the opportunity of overtime work).

At hearing, Mr. Leurquin explained his "emergency" characterization of his Colburn Park work on February 19th. Mr. Leurquin simply believed that if the work was not completed in time for the contractor to fire up the boiler the following day the pipes inside the park building would be in danger of freezing. While Mr. Leurquin claimed no expertise as to weather forecasting, he knew that water freezes at temperatures of 32 degrees or less and that February winter weather in Green Bay can be cold. Mr. Leurquin believed that the outdoor temperature would probably sink below 32 degrees on the night of February 19.

Mr. Wilhelm professed to be unconcerned as to the SME's because he believed the boiler relocation project was within the parameters of the agreement between the City and the Union. He also understood Mr. Leurquin to be asking permission for himself to work overtime to finish the project.

Neither did Mr. Wilhelm share Mr. Leurquin's fears as to possible pipe freezing. He said he did not regard the situation as constituting an emergency because he knew the outdoor ice rinks had already melted and believed the ambient temperature in the unheated large basement room at the Colburn building to be in the 40 to 50 degree range. Nonetheless, he granted Mr. Leurquin's request to work overtime to finish the boiler relocation, with the assistance of the SME's with whom Mr. Leurquin had been working.

The boiler relocation was apparently completed by 5:00 PM on February 19. Two SME's left that job site at that time. Mr. Leurquin punched out at 6:00 PM; the remaining SME stayed with him until 6:00 and assisted on cleaning up.

Both parties agreed that in November, 1996, outside regular working hours, pipes burst at the Joannes Aquatic Center, another recreational facility owned and operated by the City of Green Bay. As a result of this flooding emergency, wet insulation had to be taken out immediately. Full-time employees were first contacted and requested to assist in containing the damage. SME's were subsequently also called-in and worked side-by-side with the full-timers. It does not appear that any full-time employee who wished to work overtime on this damage-containment project was denied the opportunity to do so.

It also appears uncontroverted that in the past SME's have been assigned "scheduled" overtime to paint the pools at three of the City parks. What is not clear is whether this painting assignment was also (first) offered to full-time employees. In any event, scheduled" overtime is overtime that would be known in advance to be scheduled for a day certain; unscheduled overtime can be emergency work; it can also be work that is so close to being finished at the close of the regular work-day schedule that it makes sense to complete it on the same day.

It appears that the position descriptions for both SME's and full-time park employees are virtually identical.

Finally, according to the Union Bargaining Committee Chairperson Stephen Hoffman, the Labor Agreement in effect between the parties was negotiated in the fall of 1996; the Memorandum of Understanding (Agreement) was also negotiated in the fall of 1996, but after bargaining on the Labor Agreement had been completed.

According to Mr. Hoffman, the language contained in paragraph 3 of the Memorandum was proposed solely by the Union, and the language contained in paragraph 5 of the Memorandum had been proposed solely by the City. Both paragraphs were subsequently agreed to by the parties. Mr. Hoffman stated that while Union was agreeable to the City working the SME's outside their normal contractual hours, its purpose in proposing paragraph 3 was to protect any overtime that was normally done by full-timers.

POSITIONS OF THE PARTIES

Union:

The Union believes the contract language is clear and unambiguous, supports the Union's contention, and therefore makes it unnecessary to invoke any past practice. In support of its contention the Union notes that if there were no Memorandum of Agreement the Employer would be in clear violation of the Labor Agreement because the SME's would not have been on regular time after 3:30 PM and the Employer would have been contractually required to award the overtime to the most senior interested employees.

The Union also points to the language contained in the Memorandum of Agreement: "(t)he overall intent between the parties signatory to both the Collective Bargaining Agreement and the Memorandum of Understanding is the Agreement that no work performed by the SME's will in any way take away overtime that would be done by the regular full-time work force."

According to the Union, this language was negotiated by the Union based on both contract language and practices within the bargaining unit, as well as the Union's wish to protect the overtime rights of the full-time work force. The Union emphasizes that the *quid pro quo* for granting the City the right to work the SME's outside the work-day of full-time employees was the Employer's assurance that the overtime rights of the full-time work force would not be eroded.

The Union reminds the arbitrator that he has no authority to ignore "clear-cut contractual language" or dispense his own brand of justice in derogation of contract language.

In the alternative, the Union argues that if the contract language is ambiguous, past practice supports the Union's case in the instant matter. The Union claims it is undisputed that full-time employees have done pool maintenance work after 3:00 PM in the past. The Union notes that even when the pipes burst at the Joannes Aquatic Center resulting in SME's and full-time employees being called in and working side by side, it was only after the Employer had gone through the seniority list of the full-time employees that it then turned to the SME seniority list to obtain more help.

The Union argues that working overtime for time and a half wages is a past practice benefit established for full-time employees. In the Union's opinion, this "benefit" is of long-standing, consistent, and mutually accepted by the parties.

Finally, the Union argues that the bargaining history supports the Union's position. The Union highlighted the hearing testimony of Local Union President Steve Hoffman in which Mr. Hoffman explained the Union's purpose in negotiating the Memorandum of Agreement was to protect any overtime that was normally done by full-timers.

City:

The City argues that it did not bargain away its right to have SME's perform tasks like moving a boiler after 3:00 PM by entering into the Memorandum of Agreement. Pointing to Memorandum language that states " . . . (f)rom noon to break SME's shall perform whatever duties of work are assigned," the City asserts it retained its right to direct the SME duties.

The City highlights other Memorandum language, as well:

"On . . . other days after break, SME's shall perform such duties . . . and such other work that will not conflict with that which has been normally assigned to full-time employees and performed as overtime such as clean lots and walks, and emergency call-in work."

From this, the City concludes that the parties agreed that SME's may be assigned any type of work as long as it doesn't take away from the full-time employees (FTE's) normally assigned overtime or emergency call-in work.

The City believes the arbitrator should give effect to all clauses and words in the contract, and, further, should give precedence to the more specific over the more general, if a language conflict should be found to exist.

The City denies that the work in question was either work normally assigned as overtime to FTE's or emergency call-in work.. The City notes that moving a boiler cannot be deemed overtime normally assigned to FTE's because there is no record that moving a boiler was ever done in the past,

As to the question of whether the work constituted emergency call-in work, the City notes that while bargaining unit member Charles Leurquin believed an emergency existed due to wintry February temperatures, Mr. Leurquin's alarm was not shared by Park Supervisor Keith Wilhelm. The City argues that even if Mr. Leurquin's alarm over possible pipe freezing was justified, it was an alarm which management did not share.

The City also contends that under "the old system" (Pre-Memorandum of Agreement) the job would have been completed without overtime in that the SME's would have started work with Mr. Leurquin at 7:00 AM and would have thus been finished by 1:00 PM as to two SME's and 2:00 PM as to the third.

Finally, the City argues that as to bargaining history it should be obvious that the City had no intention to be restricted from assigning SME's pool maintenance work or any other work that normally would have been assigned after 3:00 PM. The City points to the language in the Memorandum of Agreement which allows SME's to perform what ever duties are assigned from noon until break, and after break "such other work" that will not conflict with normally assigned overtime of the FTE's and emergency call-in work.

Union Reply:

In reply, the Union accuses the City of raising new issues. Specifically, the Union objects to the City's submission of an affidavit from Park Superintendent Keith Wilhelm with the City's brief. The affidavit supplemented Mr. Wilhelm's testimony, and specified, *inter alia*, that although a private contractor was scheduled to reconnect the working boiler moved to the Colburn Park building on February 20, 1997, that reconnection date could have been changed if needed. 1/

1/ The Union's objection to the admission into evidence of the affidavis is sustained. Accordingly, the affidavit will not be and has not been considered by the undersigned. Its introduction is untimely, and to seek its admission into evidence through this back-door conduit is inappropriate. See Elkouri, 5th edition (1997) 376.

The Union also objects to the City's submission with its brief of a Local Climatological Data sheet, Green Bay, Wisconsin, for February, 1997. (The City requested the arbitrator to take judicial notice of the temperature information contained on the sheet which, according to the City, demonstrated the low probability of the Colburn Park pipe freezing in February, 1997.) The Union points out that it has not had an opportunity to test this data by cross-examination. 2/ The Union further notes that the data fails to establish the proximity between the airport (where the data was collected) and the Colburn Park building, fails to establish the Colburn Park building temperature at the time the boiler was moved., and fails to establish what effect, if any, the wind chill factor may have had on the building temperature.

2/ The Union's objection to consideration of the proposed exhibit is also sustained. The Green Bay area climatological data of which the City urges the arbitrator to take judicial (arbitral) notice is neither so widely known nor universally established as to warrant regard in this light. In addition, like the affidavit the City also submitted with its brief, the data is not timely. As the Union points out in its response, new evidence should not be submitted in post-hearing briefs. Elkouri, 5th edition (1997) 376.

The Union requests the arbitrator to take judicial notice that water freezes at 32 degrees Fahrenheit and (presumably using the data the City attempted to submit) that the average temperature on both February 19 and 20, 1997, was below freezing.

The Union asserts that its framing of the issue is the more appropriate one. The Union believes that Paragraph 3 of the Memorandum of Agreement is clear and leaves no question is any reasonable person's mind as to the intent of the parties. On the other hand, the Union argues that the language of Paragraph 5 of the Memorandum of Agreement " . . . does not address the work that was done which gave rise to this dispute."

The Union notes that the Memorandum of Agreement lists specific work the SME's are permitted (e.g., painting shelters, repair and painting of benches, and picking up litter), but does not

list boiler relocation. Therefore, according to the Union, the Employer cannot expand those specifically listed duties to now include the work that gave rise to this dispute.

The Union "vehemently disagrees" with the Employer's argument that this type of work (boiler relocation) has not been normally assigned to full-time employees. The Union views the work in question as constituting "pool maintenance work." The Union notes that full-time employees were given overtime assignments to perform pool maintenance work when the pipes burst at the Joannes Aquatic Center, and that SME's were called in only after all of the full-time employees had been asked.

The Union takes further issue with the Employer's view that the boiler relocation work at the Colburn Park building did not constitute an emergency. The Union argues that the authorization of overtime for a full-time employee to complete the moving of the boiler on February 19 implies City Management's belief that " . . . there was a pressing need to get the work done."

The Union disagrees that the work would have been done without overtime under "the old system." The Union argues that under "the old system" the job would have had to be completed on overtime because the SME's would have been on lay-off (in the months of December, January, and February). The Union thus requests the arbitrator to discard the "false assumptions" relating to past practice of the City.

The Union contends the Employer's arguments as to bargaining history not only miss the point, but are " . . . based on fabrication and speculation." Citing Elkouri, Fourth Edition (Arbitrator Kerr) for the proposition that "(t)he collective bargaining agreement should be construed not narrowly and technically, but broadly so as to accomplish its evident aims," the Union argues that "rarely is the intent of the parties stated as boldly as it is in the instant case." The Union urges that the Labor Agreement and the Memorandum of Agreement work in conjunction with each other, and restates Paragraph 3 of the Memorandum as to the "overall intent between the parties."

DISCUSSION

The differing statements of the issue to be resolved offered by the parties make clear that each perceives a different interest to be at stake. The City seeks to protect what it perceives as its essential management rights in its assignment of work to the SME's. The Union, on the other hand, seeks to preserve what it views as overtime that, but for an expanded work year and an adjusted daily work schedule for seasonal maintenance employees, would have been awarded to full-time employees.

Each party looks to the Memorandum of Agreement for justification. Each believes it has successfully bargained for that which it claims.

In the Memorandum of Agreement, the parties generally express their overall interest " . . that no work done by the SME's will in any way take away overtime that would be done by the regular work force." More specifically, the City agrees that it will not assign work to its seasonal

maintenance employees that would " . . .conflict with that which has been normally assigned to full-time employees and performed as overtime such as cleaning lots and walks, and emergency call-in work."

Thus the issue confronting the parties boils down to determining the type of work to which the SME's were assigned after 3:00 PM on February 19, 1997. If completing the boiler relocation project constitutes "work normally assigned to full-time employees and performed as overtime such as cleaning lots and walks" or if it constitutes "emergency call-in work," then the City was contractually obligated to offer overtime work opportunities to three more of its full-time park employees instead of allowing the three SME's to complete the task they had begun earlier in the afternoon, along with full-time Park Employee Charles Leurquin.

The easier question asks whether completing the boiler relocation project on February 19 constitutes emergency call-in work. In my opinion it does not.

I recognize and respect the fact that Mr. Leurquin viewed the situation as an emergency. His conclusion was based on his belief that if the boiler was not relocated on February 19, the boiler hook-up could not be accomplished the following day as scheduled; if the boiler hook-up were delayed, Mr. Leurquin feared the pipes might freeze.

In Mr. Wilhelm's opinion, finishing the project on February 19 did not constitute an emergency. Standing alone, his testimonial conclusion could be discounted as retroactively self-serving. But it appears from his testimony that the conclusion he reached on February 19 was not mere whimsy. It was supported by objective considerations: 1) Mr. Wilhelm knew that February temperatures had warmed up sufficiently for the Green Bay ice rinks to have melted; 2) Mr. Wilhelm believed the ambient temperature in the large, unheated Colburn Park building basement was between 40 and 50 degrees Fahrenheit.

Since Mr. Wilhelm had a rational basis for his conclusion, its ultimate correctness or incorrectness is immaterial within the context of determining this grievance. Defining emergencies is, in part, what Mr. Wilhelm, as a manager, is paid to do. It is a responsibility to which Mr. Leurquin may offer input, and a wise manager would solicit Mr. Leurquin's input. But the ultimate decision as to emergency or not is solely that of Mr. Wilhelm.

It is true that Mr. Wilhelm had tentatively scheduled a private contractor to reconnect the working boiler on February. Very likely rescheduling that work would have worked a certain inconvenience on both Mr. Wilhelm and the contractor - an inconvenience that both undoubtedly preferred to avoid. But this kind of impetus to completing the project seems a distant cry from a genuine emergency, such as the one that occurred when the pipes actually burst at the Joannes Aquatic Center. In the latter instance, immediate action was required to contain and mitigate property damage that had already occurred; no such imperative is apparent in the instant matter.

A closer question is presented as to whether the work in question is work which is normally assigned to full-time employees and performed as overtime such as cleaning lots or walks.

The City points out it never had occasion to relocate one of its park building boilers in the past. From there the City argues that since a city boiler has never been moved or relocated by city employees in the past (to the city's knowledge), it can not be deemed "work normally assigned to full-time employees and performed on overtime."

I reject that argument as focused too narrowly. However, the examples provided in the Memorandum of Agreement language do offer some help, i.e., " . . . such as cleaning walks or lots." Clearly the phrase is intended to be illustrative. It is also limiting. Moreover, the absence of other examples or illustrations also suggests a limitation to the kinds of work reserved for full-timers on overtime.

Common sense seems to confirm this judgment. Otherwise, given the similarity of position descriptions between the full-timers and SME's, there would be little work the City would be permitted to assign to the SME's after 3:00 PM if the full-timers wanted to do the same work on an overtime basis. In this event, the adjusted SME hours would be meaningless and the City would have struck a worthless bargain.

I do not believe that was the parties' intent. Under their bargain, the City obtained new hours for its SME's; the Union obtained a guarantee of certain overtime for the full-timers as well as additional dues revenue for the benefit of its entire membership. The bargain appears to have been a reasonable one for each side.

This is not to say the Memorandum language necessarily limits the overtime work reserved for full-time employees to only cleaning lots or walks. E.g., the examples could be read as including any work that involves property clean-up or maintenance, consistent with the parties' practice. Yet even with that broader interpretation, boiler relocation just doesn't seem to fit.

Simply stated, moving a boiler from one building to another appears to fit into an entirely different type of work category than "cleaning lots or walks." From this I necessarily infer that the work in question was not considered by the parties as meeting the definition of "work normally assigned to full-time employees such as cleaning lots or walks" at the time agreement to this language was reached.

The Union's points to the overtime assignments resulting from the pipes bursting at the Joannes Aquatic Center where full-time park employees were the first called-in (by seniority) to deal with the emergency. But the work produced by that occurrence was not "(overtime) work normally assigned to full-time employees." It was emergency call-in work. As such, it offers no precedent for the instant matter, for the instant matter was not an emergency.

Mr. Leurquin did assert that pool maintenance work had always been assigned to regular full-time park employees after 3:00 PM. He claimed that except for his experience on February 19,

1997, the senior full-time maintenance person worked with him on any overtime pool maintenance work to which Leurquin had been assigned. Unfortunately, Mr. Leurquin provided no specific examples of the work that was involved or give any indication of the number of instances. The information he gave is simply too vague to be of any material assistance. Moreover, it is not clear to me how "pool maintenance work" fits into the category of work described by the Memorandum's illustrative examples of "cleaning lots or walks."

Nor is the fact that one full-time employee was held-over to work on the project indicative that the work was of a type normally performed on overtime by full-time employees. As the primary pool maintenance person, Mr. Leurquin's continued presence after 3:00 PM may have been deemed necessary as a means of providing continued general direction to the SME's as the four men worked together to complete the project. But under the contract (Memorandum) language, the need to hold-over Mr. Leurquin to continue to act as the "working foreman" on the project does not necessarily trigger a requirement that his co-workers also be full-timers on overtime, instead of SME's. That depends on the nature of the work.

The Union emphasizes the general restriction in the Memorandum of Agreement in which the parties concur that " . . . no work performed by the SME's will in any way take away overtime that would be done by the regular full-time work force." The Union asserts this language is clear and unambiguous.

Standing alone, the Union-drafted language now relied on by the Union (paragraph 3) is clear and unambiguous. But it cannot be read in a vacuum. For the Union overlooks the language drafted by the City (paragraph 5) found two paragraphs later that shapes, hones, and limits the more general restriction to "work normally assigned to full-time employees and performed as overtime, such as cleaning lots and walks." Completing the task of relocating a boiler just isn't in the same work category as "cleaning lots and walks."

As the arbitrator of this dispute, I am restricted to the four corners of the agreement. My task is limited to determining the intent of the parties of which the best evidence is the actual language of the agreement. Within that parameter, based on the language of the Memorandum of Agreement and the evidence and testimony of this case, I have no alternative but to find for the City.

AWARD

The grievance is dismissed.

Dated at Madison, Wisconsin this 5th day of June, 1998.

A. Henry Hempe /s/
A. Henry Hempe, Arbitrator

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