BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1147

and

CITY OF WISCONSIN RAPIDS WATER WORKS AND LIGHTING COMMISSION

Case 129
No. 58001
MA-10804

(Call-In Pay Grievance)

Appearances:

Ms. Marianne Goldstein Robbins, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Mr. Jeffrey Jones, Ruder, Ware & Michler, Attorneys at Law, 500 Third Street, Suite 700, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the Employer.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the Employer or Utility, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was not transcribed, was held on January 6, 2000, in Wisconsin Rapids, Wisconsin. Afterwards, the parties filed briefs. The record was closed on March 20, 2000, when the undersigned was notified that the parties would not be filing reply briefs. Based upon the entire record, the undersigned issues the following Award.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case. The Union framed the issue as follows:

> Did the Utility violate the parties' collective bargaining agreement when it denied a second call-in payment to the grievants, Paul Seebruck and Robert Dickinson, for work performed on July 3, 1999? If so, what is the appropriate remedy?

The Commission framed the issue as follows:

> Whether the Utility violated the terms of Article XI(A) and (B) by refusing to pay the grievants 12 hours of call-in pay each for July 3, 1999? If so, what is the appropriate remedy?

Having reviewed the record and the arguments in this case, the undersigned finds the Union's issue appropriate for purposes of deciding this dispute. Consequently, the Union's issue will be decided herein.

PERTINENT CONTRACT PROVISIONS

The parties' 1997-99 collective bargaining agreement contained the following pertinent provisions:

ARTICLE XI – CALL BACK PAY

A. Call Back Pay: Employees who are called back to work after having been released from duty shall be paid 3 hours call time plus actual time worked, but no less than 6 hours; except that such minimum shall not again be paid for subsequent call back unless there is a lapse of 2 hours or more from the starting time of the previous call back.

B. Work Availability: Men called back to work shall be considered available for 2 hours following such call back even though released from duty within the call back period. Men called back and having completed their duties shall notify the Filter Plant Operator where they will be available for the remainder of the call back period.

BACKGROUND

The Utility provides electric and water service to the citizens of Wisconsin Rapids and outlying areas. The Utility employs individuals in various positions in its Line and Water Departments, some of whom are (Electric) Linemen and (Water Department) Servicemen. The Utility currently employs ten Linemen and eight Water Department employes. The Union represents those employes.

The Linemen and Water Department employes are subject to call-ins for, respectively, power outages and water disruptions such as breaks in water mains. In 1999, there were 277 Electric Department call-ins as a result of power outages and 60 Water Department call-ins as a result of water disruptions. The Utility dispatches workers to correct power outages and/or water disruptions as quickly as possible.

The parties' most recent collective bargaining agreement (hereinafter CBA) contains an article dealing with call-in pay. That language is found in Article XI, Sections A and B is involved in the instant dispute. While that language will be reviewed in detail in the **DISCUSSION** section, suffice it to say here that it provides that employes who are called in to duty while off duty receive a minimum of six hours pay for doing so. In 1999, bargaining unit employes received approximately $40,000 in call-in pay. The language in Article XI, Sections A and B, has remained the same since 1982.

In October, 1998, a bargaining unit employe inquired whether the phrase "starting time", which is used in Article XI, Section A, meant when a trouble call was received by the Employer or when the employe called in to work actually punched in on the time clock. In response to this inquiry, the Utility's General Manger, Rick Skifton, issued the following memorandum:

> There are some misconceptions about how long you have to be available or on stand-by once you punch out after completing the call, you were called in for.
>
> ARTICLE XI states in part: a lapse of 2 hours or more from the starting time of the previous call.
>
> The starting time is when you punch in. So if you were called in at 10:00, punched in at 10:30, finished the job and punched out at 11:00, you would have to make yourself available for call back until 12:30.
>
> If you have any questions, feel free to stop in.

The Union did not grieve the above memorandum.

. . .

The Union's primary witness with respect to an alleged past practice was Utility bookkeeper Joel Matthews. He testified that he located five instances where an employe was called in to work twice in a day and subsequently received two call-in payments for doing so. In all five instances, more than two hours elapsed from the time the employe punched in in response to the first call-in, to the time the employe punched in for the second call-in. Thus, in these five instances, there were more than two hours that elapsed between punch-ins (i.e. between the employe's first punch-in and their second punch-in). Matthews located these five instances after reviewing about 25% of the roughly 15,000 employe time cards which have been generated by unit members since 1982. Matthews testified that in the course of reviewing these time cards, he found no instances where more than two hours elapsed between punch-ins, and the employe did not receive a second call-in payment.

The specifics in these five instances are as follows.

On December 2, 1982, Roger Aton was called in to work to respond to a trouble call at 3:23 a.m. He did so and punched in at 4:00 a.m. After responding to the trouble call, he punched out at 5:21 a.m. A second trouble call came in at 5:50 a.m. In response to that call, Aton was contacted and asked to return to work. He did so and punched back in at 6:04 a.m. Aton's pay records indicate he was paid two call-ins of six hours each for the work he performed that day.

On December 3, 1983, Thomas Johnston was called in to work to respond to a trouble call at 10:15 a.m. He did so and punched in at 10:31 a.m. After responding to the trouble call, he punched out at 11:33 a.m. A second trouble call came in at 12:25 p.m. In response to that call, Johnston was called and asked to return to work. He did so and punched back in at 12:43 p.m. Johnston's pay records indicate he was paid two call-ins of six hours each for the work he performed that day.

On April 20, 1989, Richard Skifton was called in to work to respond to a trouble call at 4:15 a.m. He did so and punched in at 4:47 a.m. After responding to the trouble call, he punched out at 5:38 a.m. A second trouble call came in at 6:30 a.m. In response to that call, Skifton was contacted and asked to return to work. He did so and punched back in at 7:12 a.m. Skifton's pay records indicate he was paid two call-ins of six hours each for the work he performed that day.

On September 27, 1992, Mark Brux was called in to work to respond to a trouble call at 10:00 a.m. He did so and punched in at 10:34 a.m. After responding to the trouble call, he punched out at 11:39 a.m. A second trouble call came in at 12:15 p.m. In response to that call, Brux was called and asked to return to work. He did so and punched back in at 12:52 p.m. Brux's pay records indicate he was paid two call-ins of six hours each for the work he performed that day.

On October 8, 1998, James Spencer was called in to work to respond to a trouble call at 3:41 p.m. He did so and punched in at 3:52 p.m. After responding to the trouble call, he punched out at 4:45 p.m. A second trouble call came in at 5:44 p.m. In response to that call, Spencer was contacted and asked to return to work. He did so and punched back in at 5:54 p.m. Spencer's pay records indicate he was paid two call-ins of six hours each for the work he performed that day.

. . .

Electric Superintendent Dick Barden testified that when he was in the bargaining unit, he personally had several instances that were identical to those referenced above (i.e. where he was called in twice in a day and where more than two hours elapsed between punch-ins). He testified that when these instances occurred, though, he received just one call-in payment for the day, not two. He could not recall the dates when these instances occurred.

FACTS

Shortly before 6:30 a.m. on July 3, 1999, the Utility received a trouble call with respect to a power outage. At 6:30 a.m., Lineman Robert Dickinson and Paul Seebruck were called in to work to respond to the trouble call. Dickinson and Seebruck did so and punched in at 7:00 a.m. After responding to the trouble call, they punched out at 8:11 a.m.

At 8:45 a.m., the Utility received a second trouble call concerning another power outage. At 8:50 a.m., Dickinson and Seebruck were contacted with respect to the second trouble call and asked to report to work. Both did so and punched back in at 9:14 a.m.

Afterwards, both Dickinson and Seebruck requested two call-in payments of six hours each (for a total of twelve hours call-in pay for the day) for the work they performed on July 3, 1999. They maintained they were entitled to two call-in payments for that day because two hours had elapsed between their initial punch-in time of 7:00 a.m. and their second punch-in time of 9:14 a.m. The Employer paid each employe one call-in payment of six hours, but refused to pay them a second call-in payment for the work they performed on July 3, 1999.

Dickinson and Seebruck then grieved the Utility's failure to pay them a second call-in payment for their work on July 3, 1999. The Employer denied the grievance. The grievance was then processed through the contractual grievance procedure and was ultimately appealed to arbitration.

After the grievance was filed, the parties began negotiations for a successor labor agreement. In those negotiations, the Employer proposed replacing the current language found in Article XI, Section A with the following language:

> Employees who are called back to work after having been released from duty shall be paid 2 hours call time plus the actual time worked but no less than 3 hours. After reporting to work on the call-in, the employee shall be available for two hours beginning from the time he or she "punched in" to cover any calls received within that two-hour period. If the employee is released because initial call-in is complete and no other calls have been received, that employee is still responsible for any calls received within that two hour period at no additional call time pay, regardless of when the employee punches back in.

At the hearing, Employer representatives testified that the last sentence of this proposal was intended to "clarify" the existing language.

POSITIONS OF THE PARTIES

Union

The Union contends that the Employer violated the CBA when it paid the grievants just one call-in payment for their work on July 3, 1999. In the Union's view, the grievants are contractually entitled to a second call-in payment (i.e. an additional six hours of pay) for that day. It makes the following arguments to support this contention.

The Union begins by addressing the language contained in Article XI, Section A. According to the Union, that section provides that a six-hour minimum call-in payment is required for each call-in, except where there is not "a lapse of two hours or more from the starting time of the previous call back." The Union reads this language to mean that if there is more than a two-hour lapse, then a second call-in payment is required; however, if there is less than a two-hour lapse, then a second call-in payment is not required.

As the Union sees it, the basic question involved herein is how the two-hour lapse period referenced in Section A is to be measured. Specifically, what is the start point and what is the end point? The Union argues that the start point for measuring the two-hour lapse is when the employe punches in for the first time, and the end point is when the employe punches

in for the second time. Thus, the Union's position is that the two-hour lapse period should be measured from punch-in to punch-in. In the Union's view, that proposed interpretation is more straightforward than is the Employer's proposed interpretation (i.e. that the two-hour lapse period is measured from the first punch-in to the second time an employe is called in.)

If the arbitrator finds that the contract language is ambiguous, and needs to use an interpretive guide to determine its meaning, the Union believes that the parties' past practice can supply that guidance. The Union avers it presented "overwhelming evidence" that a binding past practice exists. According to the Union, the past practice is that the two-hour lapse period has historically been measured from first punch-in to second punch-in. The Union asserts that this practice was 1) clear and consistent; 2) of long duration; and 3) mutually accepted by both parties. It elaborates on these three points as follows. First, it asserts that on each of the five known occasions where there has been a two-hour or more lapse from the first punch-in in response to a call-in to the second punch-in, a second call-in payment has been paid. Conversely, it avers that there are no cases documented in the record where more than two hours elapsed between punch-ins, and the employe did not receive a second call-in payment. Second, the Union asserts that this practice has been existence since 1982. The Union acknowledges that call-ins are a frequent occurrence at the Utility, but it maintains that having two call-ins on the same date where the punch-ins are more than two hours apart is quite rare. The Union argues that under these circumstances, a relatively small number of repetitions should be sufficient to create a binding past practice. Third, the Union submits that in each of the documented instances where a second call-in payment was made, the payment was approved by management. Given the foregoing, the Union believes this practice meets the established arbitral criteria for a practice to be considered binding. The Union asks the arbitrator to enforce the practice.

Next, the Union claims that its interpretation of Article XI is reinforced by the Utility's "subsequent attempt to amend the contract language to obtain the very provision now omitted from the contract." To support this premise, it notes that in negotiations for the 2000-2002 CBA, the Utility proposed to change Article XI to provide that an employe will not receive a second call-in payment where the employe is called in a second time within two hours of the first punch-in "regardless of when the employe punches back in." While Utility witnesses testified at the arbitration hearing that this proposed language was merely a "clarification" of the present language, the Union sees it as more than that; namely, how the Utility would like to handle call-in payments.

According to the Union, what the Utility is essentially saying here is that there "should be" a provision which measures the two-hour lapse from first punch-in to second call-in (rather than the second punch-in), so that the second call-in payment would be less vulnerable to abuse. The Union contends that there is no record evidence that employes have abused this

provision. Aside from that though, the Union believes this argument should be made in bargaining – not in grievance arbitration. In the Union's view, the Utility's argument underscores the Utility's inappropriate motivation in trying to obtain contract concessions through the instant arbitration.

In sum, the Union believes that the existing contract language, past practice and bargaining history all support the payment of a second call-in payment where there is a lapse of more than two hours between the first and second punch-in. Since that did not happen here, the Union contends the Utility violated the CBA. In order to remedy the Employer's contractual breach, the Union seeks a make-whole award.

Employer

The Employer contends it did not violate Article XI as claimed by the Union when it paid the grievants just one call-in payment for their work on July 3, 1999. In the Employer's view, the grievants are not contractually entitled to a second call-in payment (i.e. an additional six hours of pay) for that day. It makes the following arguments to support this contention.

First, the Employer contends that there is no past practice which will assist the arbitrator as an interpretive guide. As the Employer sees it, the Union has failed to establish a binding past practice that when more than two hours elapse between punch-ins, the employe will receive a second call-in payment. To support the premise that no such past practice exists, the Employer notes that the Union identified just five incidents that buttress their position to the contrary. The Employer avers that given the large number of call-ins for power outages and water main breaks that occur each year (i.e. 337 in 1999 alone), plus the fact that employers commonly make mistakes in computing wages, five incidents over 18 years should not establish a binding past practice. The Employer believes that is particularly true in this case because the five incidents which the Union relies on may have simply been errors, mistakes, or oversights by supervisors. Given the foregoing, the Employer submits that the Union's past practice claim is not supported by the evidence.

Next, the Employer addresses the Union's claim that the parties' bargaining history supports the Union's proffered interpretation of Article XI. Simply put, it disagrees. For background purposes, the Employer notes that parties often submit proposals to clarify language which has led to a dispute during the term of a prior CBA. It avers that is all it did here. According to the Employer, its proposed new language for Article XI of the parties' successor CBA was meant to clarify the meaning of that provision in light of the pending grievance. To support this premise, it notes that three Employer witnesses at the arbitration hearing testified to that effect (i.e. that the Utility's intent in submitting the proposal was to clarify the meaning of Article XI.)

The Employer maintains that since the parties' past practice and bargaining history are of no help here, the arbitrator is left with just the language of Article XI to decide this case. The Employer reads that language to provide that an employe is responsible for trouble calls received within the two-hour period following an employe's punch-in for an initial call-in; in other words, an employe is responsible, and is considered available, for trouble calls received within the two-hour period as measured from an employe's punch-in time for a first call-in. According to the Employer, an employe is not entitled to an additional six hours of call-in pay unless the trouble call is received after this two-hour period has expired; if a trouble call is received within the two-hour period, then the employe is not entitled to a second call-in payment. The Employer submits that this was the parties' intent when they agreed to the language of Article XI(A) and (B). The Employer believes that the Union's claim to the contrary is without merit.

The Employer asks the arbitrator to not disregard Section B in interpreting the article, but rather to read Sections A and B together. In the Employer's view, the Union's reliance on just Section A of that article is too narrow. The Employer asserts that when Section A is read in conjunction with Section B, it establishes that the parties never intended for employes to receive two call-in payments under the circumstances which occurred on July 3, 1999. The Employer reads the first sentence of Section B (i.e. the sentence which begins "Men called back to work shall be considered available for 2 hours following such call back". . .) to mean that an employe is considered available to respond for trouble calls received within the two-hour period. The Employer argues that no other reading of the language is plausible. The Employer contends that if the parties had intended that the two-hour period was to be measured from an employe's punch-in time in response to a first call-in to the employe's second punch-in time in response to a second call in, they could have easily so stated in the provision. It notes, however, they did not.

The Employer further maintains that the interpretation just referenced is supported by the testimony of witnesses Barden, Reinolt and Skifton who all testified that an employe is responsible for all trouble calls received by the Utility within the two-hour period as measured from the employe's punch-in time in response to an initial call-in. The Employer asks the arbitrator to give great weight to their testimonies. In the Employer's opinion, of all the witnesses who testified at the hearing, Barden and Reinolt have the least interest in the matter and therefore are the most impartial.

In sum then, the Employer believes that Article XI, Sections A and B establish that an employe is not entitled to an additional six hours of call-in pay unless a subsequent trouble call is received by the Utility after the two-hour period has expired. In this case, the grievants punched in at 7:00 a.m. in response to the initial call-in, so the Employer maintains they were responsible for all call-ins received by the Utility until two hours later (i.e. 9:00 a.m.). The Employer notes that the second trouble call was received at 8:45 a.m., so the Employer avers

that the grievants were "considered available" for that second call and, therefore, were not entitled to an additional six hours of call-in pay.

To further support this view, the Employer calls attention to the well-accepted arbitral principle that where one interpretation of a contract provision would lead to an unreasonable result, while an alternative interpretation, equally consistent, would lead to a reasonable result, the latter interpretation should be given effect. According to the Employer, the Union's reading of Article XI would lead to an unreasonable result. First, the Employer contends that if the Union's reading of Article XI is accepted, and the two-hour time period is measured from punch-in to punch-in, then the employe's entitlement to an additional call-in payment could depend on where they live. The Employer asserts that different employes' entitlement to a second call-in payment could differ because their ability to quickly respond to the call-in could vary because of how far they live from the Utility. The Employer avers that the parties could not possibly have intended such inconsistency and unfairness. Second, the Employer argues that the Union's reading of Article XI (i.e. that the two-hour period is measured from punch-in to punch-in) could also lead to employe abuse and endanger the welfare of others. To support this premise, it asserts that if an employe who has already responded to a call-in were to subsequently receive a second call-in within two hours of his initial punch-in time, that employe could purposely delay responding to the second call-in until the two-hour period had elapsed simply to receive a second call-in payment. The Employer contends the parties could not have intended to build such a disincentive for employes to respond quickly to call-ins into Article XI.

Given the foregoing, the Employer believes that a second call-in payment was not warranted by Article XI under the circumstances present here. It therefore asks that the grievance be denied.

DISCUSSION

This dispute involves whether the grievants are entitled to a second call-in payment for July 3, 1999. The Union contends that they are, while the Employer disputes that contention. The grievants received just one call-in payment for their work that day.

In the analysis that follows, attention will be focused first on the applicable contract language. If the language does not resolve the matter, attention will be given to evidence external to the agreement. The undersigned characterizes that evidence as involving an alleged past practice, and alleged bargaining history.

Both sides agree that the contract language applicable here is found in Article XI. My discussion begins with the following overview of Section A. The first part of this section (i.e. the portion of the section before the semicolon) provides that when employes are called back to duty while off duty, they will get a minimum of six hours pay for doing so. The second part of this section (i.e. the portion of the section after the semicolon) provides that this premium call-in payment does not have to be paid "again" (i.e. a second time) for a subsequent call back unless there is a two hour or more lapse from the starting time of the previous (i.e. first) call back. This means that if there is more than a two-hour lapse, then a second call-in payment is required; however, if there is less than a two-hour lapse, then a second call-in payment is not required.

In the context of this dispute, the focal point of the above-referenced language is the second part of Section A wherein it references the "lapse of two hours". The basic question is how this two-hour lapse period is to be measured. Specifically, what is the start point and what is the end point? Both sides agree that the start point for measuring the two-hour lapse is when the employe punches in for the first time. They disagree, though, over the end point. The Union argues it is when the employe punches in for the second time, while the Employer disputes that assertion. The Employer believes the end point is two hours following the employe's first punch-in.

The Union's proposed interpretation (i.e. that the two-hour lapse period is measured from punch-in to punch-in) certainly has a consistency and straightforwardness about it that is, on its face, appealing. However, as will be shown below, this interpretation lacks a foundation in the contract language.

The following analysis of Section B shows this. The first sentence of Section B provides that an employe who is called back to work "shall be considered available for two hours following such call back. . ." I have decided to begin by looking at three words/phrases which are used in this sentence. Those three words/phrases are "shall be", "available" and "call back". First, the phrase "shall be" is, of course, mandatory as opposed to optional. Second, the word "available" is not contractually defined. When a word is not contractually defined, it is a general principle of contract interpretation that the word is to be given its generally understood or ordinary meaning. In accordance with this principle, arbitrators usually give words their ordinary meaning in the absence of anything indicating that they were used in a different sense or that the parties intended some special meaning. Oftentimes, a dictionary is used to supply the usual and ordinary meaning for a term. The dictionary which the undersigned consulted, *The American Heritage Dictionary*, defines "available" as "accessible for use; at hand". Applying this dictionary definition to the word "available" means that the employe must be accessible, or at hand, to work. Third, although the phrase "call back" also is not contractually defined, it is unnecessary in this instance to consult a dictionary for the definition of the meaning of same because the parties agree that that phrase

refers to when the employe first punches in. When these three words/phrases are read in conjunction with the rest of the first sentence of Section B, the plain meaning of same is that employes who are called back to work shall be accessible (i.e. "available") to respond to and handle the trouble calls which are received in a two-hour period. This two-hour period is measured from the employe's punch-in time for their initial (i.e. first) call-in to two hours thereafter (i.e. two hours following their initial punch-in). The employe is considered to be on call during this two-hour period. The obvious end point for measuring when this two-hour period lapses is exactly two hours after the employe first punched in. If another trouble call is received within this two hour period (as measured from the employe's first punch-in), the called-in employe is not entitled to a second call-in payment regardless of when the employe punches in the second time. However, if another trouble call is received after this two-hour period (as measured from the employe's first punch-in) has expired, then the employe is entitled to a second call-in payment.

In contract interpretation cases, arbitrators try to determine and give effect to the mutual intent of the parties. If the parties here had intended that the two-hour period was to be measured from an employe's punch-in time in response to a first call-in to the employe's second punch-in time in response to a second call in, they could have easily so stated in the provision. They did not. The language does not say either explicitly or implicitly that the end point for measuring the two-hour lapse period is the employe's second punch-in time. That being so, there is nothing in the contract language which supports the Union's proposed interpretation. Additionally, arbitrators try to avoid interpretations which lead to an unreasonable result. In this case, acceptance of the Union's reading of the language (i.e. that the two-hour time period is measured from first punch-in to second punch-in) would create a disincentive for employes to respond as quickly as possible to call-ins. The disincentive is this: employes who were called in a second time could purposely delay responding to same until the two-hour period had elapsed. If they did so, they would receive a second call-in payment. In the opinion of the undersigned, the parties could not have mutually intended to build this incentive to delay into Article XI when they agreed to that provision. Finally, the undersigned considers it noteworthy that if the Union's interpretation of the language were accepted, an employe's entitlement to a second call-in payment could depend on how far the employe lives from the Utility. The following example shows this. If two employes were contacted at the same time concerning a second call-in, the employe who lives further from the Utility, and thus takes longer to get into work, would be more likely to receive a second call-in payment than the employe who lives closer to the Utility. The undersigned believes it unlikely that the parties mutually intended for a second call-in payment to be dependent on where the employe lives.

Since Article XI, Section B provides that an employe who is called back to work is to respond to all trouble calls received by the Utility within the two-hour period as measured from the employe's first punch-in time, an employe is not entitled to a second call-in payment unless a subsequent trouble call is received by the Utility after the two-hour period has expired. In this particular case, the grievants punched in at 7:00 a.m. in response to the initial call-in. They were therefore responsible for all call-ins received by the Utility until 9:00 a.m. The second trouble call was received at 8:45 a.m., so the grievants were "considered available" for that second call and, therefore, were not entitled to a second call-in payment. The fact that they punched in a second time at 9:14 a.m. is not dispositive.

In litigating their case, the Union also relied on evidence external to the CBA to buttress their interpretation of Article XI. Specifically, it relied on an alleged past practice and alleged bargaining history. Past practice and bargaining history are forms of evidence which are commonly used and applied in contract interpretation cases. The rationale underlying their use is that they can yield reliable evidence of what a particular provision means. Thus, arbitrators traditionally look at past practice and bargaining history when the contract language is ambiguous. The key word in the previous sentence is "ambiguous". The reason that word is key is because that is not the case here. After reviewing Article XI, the undersigned found its meaning to be plain and clear. That being so, there is no need in this particular case to resort to using past practice or bargaining history to interpret the meaning of the contract language. Given that finding, the undersigned need not comment on the alleged past practice or the alleged bargaining history.

However, the Union sees this case, in part, as a past practice/bargaining history case. Obviously, were I to decide this case without reviewing the alleged past practice and bargaining history, I would not have addressed the Union's contentions regarding same. I have therefore decided in this particular case to review the alleged past practice and bargaining history in order to complete the record.

Attention is focused first on the alleged past practice. In situations where a party wishes to clothe a course of conduct with contractual status, that practice must reflect as many elements of a contract as possible. Simply put, the practice must be the understood and accepted way of doing things over an extended period of time. Additionally, it must be understood by the parties that there is an obligation to continue doing things this way in the future.

According to the Union, the two-hour lapse period has historically been measured from first punch-in to second punch-in. To support its contention that a practice exists, the Union relies on the following points. First, it notes that on five prior occasions where there was a two-hour or more lapse from the first punch-in to the second punch-in, a second call-in payment was paid. Second, it maintains that having two call-ins on the same date where the

punch-ins are more than two hours apart are quite rare, so five instances should be sufficient to create a practice. Finally, it asserts that there are no cases documented in the record where more than two hours elapsed between punch-ins, and the employe did not receive a second call-in payment.

The Utility does not dispute that in the five instances cited by the Union, there were more than two hours that elapsed between punch-ins and the employes received two call-in payments. Instead, the Utility simply disputes that five instances are sufficient to create a practice. I disagree. Based on the rationale which follows, I find that five instances are sufficient in this particular case to create a practice concerning how the end point for the two-hour lapse period has been measured. To begin with, while call-ins are certainly a frequent occurrence at the Utility, that cannot be said about having two call-ins on the same date where the punch-ins are two hours or more apart. Insofar as the record shows, that happens infrequently. Second, the five cases cited by the Union are the only instances documented in the record where there was a two-hour or more lapse from the first punch-in to the second punch-in. In all five instances, a second call-in payment was paid. The instances which Electric Superintendent Barden testified about where he did not receive a second call-in payment under similar circumstances are not substantiated with documentary evidence such as timecards like the aforementioned five instances are. Third, in each of the five documented instances where a second call-in payment was made, the payment was approved by the Employer. The Employer's assertion that the second call-in payment in these five instances may have been an error or mistake is simply not substantiated by the record evidence. Given the foregoing, I conclude that the Union established that there is a practice that the Employer pays two call-in payments where there is a lapse of two hours or more between the first and second punch-in.

This practice is contrary to the contract language. Previously, I found that Article XI does not provide that the end point for measuring the two-hour lapse period is the employe's second punch-in time. It follows from this that Article XI does not require a second call-in payment when the employe's second punch-in is two hours or more after his first punch-in. Thus, the situation present here is that there is contract language which is plain and unambiguous, and a practice which is contrary to that language.

It is a generally accepted principle of contract interpretation that contract language which is clear and unambiguous outweighs or trumps a past practice. Even a well-established and long-standing practice cannot be used to give meaning to, or countervail, a provision which is clear and unambiguous. When a conflict exists between the clear and unambiguous language of the contract and a long-standing practice, arbitrators usually follow the contract, and not the past practice. In accordance with that generally-accepted view, the undersigned holds likewise. In this case, the practice clearly conflicts with the language in Article XI,

Section B because that section does not require two call-in payments under the instant circumstances; instead, it only requires one payment. Thus, in this case, the plain language of Article XI, Section B prevails, not the conflicting practice.

Having so found, the focus turns to the alleged bargaining history. The Union contends in this regard that the Utility's bargaining proposal to change the language of Article XI supports the Union's proffered interpretation of Article XI. The only portion of the Employer's bargaining proposal which is pertinent here is the last sentence of that proposal which essentially provides that an employe will not receive a second call-in payment where the employe is called in a second time within two hours of the first punch-in "regardless of when the employe punches back in." I read this portion of the bargaining proposal to clarify the meaning of Article XI in light of the instant grievance. Parties routinely submit bargaining proposals to clarify language which has caused a dispute. In my view, that is what happened here. I therefore find that the fact that the Employer made the instant bargaining proposal in negotiations after this grievance arose does not alter the outcome herein.

In light of the above, it is my

AWARD

That the Utility did not violate the parties' CBA when it denied a second call-in payment to the grievants, Paul Seebruck and Robert Dickinson, for work performed on July 3, 1999. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 7th day of April, 2000.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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