

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
THE LABOR ASSOCIATION OF WISCONSIN, INC.

and

VILLAGE OF EAST TROY

Case 47
No. 59577
MA-11340

Appearances:

Mr. Kevin W. Naylor, Labor Consultant, The Labor Association of Wisconsin, Inc., 2835 North Mayfair Road, Wauwatosa, WI 53222, appearing on behalf of the Union.

Ms. Linda Gray and Ms. Victoria Oleniczak, Gray, Hudec & Oleniczak, L.L.P., Attorneys at Law, 2847C Buell Drive, P.O. Box 287, East Troy, WI 53120, appearing on behalf of the Village.

WRITTEN CONFIRMATION OF ARBITRATION AWARD

The Union and the Village named above are parties to a 1998-2000 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint Arbitrator Karen J. Mawhinney to hear and resolve the grievances of Aleta Bourdo and Dianna Falkenberg. A hearing was held on April 12, 2001, in East Troy, Wisconsin. At the conclusion of the hearing, the parties argued their case and the Arbitrator issued a bench decision, denying the grievance. This document is a confirmation of that bench decision.

On December 11, 2000, the Grievants were scheduled to work between 7:30 a.m. to 4:00 p.m. The Village was getting a lot of snow that day, and Village Police Chief David Fox declared a snow emergency. Village Trustee Willard Stubbs stopped by and told Bourdo and Falkenberg that they could go home early if they cleared it with the Chief first. Bourdo spoke to the Chief around 10:00 a.m. that morning, and the Chief said they could go home. While Bourdo testified that the Chief said they could go home with pay, the Chief did not recall discussing the matter of pay. Bourdo told Falkenberg that the Chief said they would get paid.

Falkenberg did not talk to the Chief that day. Both of them stayed until early afternoon, when the Chief asked them why they were still there. Bourdo left at 2:06 p.m. and Falkenberg left at 1:45 p.m. The difference in time was deducted from Bourdo's paycheck and Falkenberg's compensatory time bank.

Village Administrator/Clerk-Treasurer Kenneth Witt spoke with Falkenberg on December 11th at about 9:00 a.m. and told her that employees could leave early if they had any compensatory time or vacation time to use. Bourdo was also present when Witt said that. Witt did not speak with Chief Fox about the matter.

Bourdo has worked for the Village for 14 years and recalled that once before, probably in 1989, she left early in a snowstorm and was paid for the entire day.

The labor contract does not address the issue of pay for employees leaving early or being absent due to inclement weather. The Village has a Personnel Policy Manual that states that there shall be no pay allowed for hours not worked on bad weather days or other emergencies, except that employees may use vacation time or compensatory time with mutual agreement between a supervisor and an employee.

In a bench decision, the Arbitrator denied the grievance because the labor contract did not provide for pay for leaving early or being absent in inclement weather or other emergencies. The evidence is not clear that the employees detrimentally relied on representations from the Village Chief that they would be paid where they also received contradictory information from the Village Administrator. There is no past practice that would be clear and unequivocal, readily ascertainable over a reasonable period of time and accepted by both parties. There was only one similar instance in the past 14 years.

The Village did not violate the collective bargaining agreement by deducting pay or compensatory time from the Grievants for time not worked on December 11, 2000.

Dated at Elkhorn, Wisconsin this 16th day of April, 2001.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator