

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WOOD COUNTY

and

**WOOD COUNTY PARK AND FORESTRY EMPLOYEES,
LOCAL 344, AFSCME, AFL-CIO**

Case 142
No. 60224
MA-11563

(Union Activity Grievance)

Appearances:

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 44, Stevens Point, Wisconsin 54481, on behalf of Local 344.

Mr. Dean R. Dietrich, Ruder, Ware & Michler, S.C., Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, on behalf of the County.

ARBITRATION AWARD

According to the terms of the 1998-2000 collective bargaining agreement between Wood County and Wood County Park and Forestry Employees, Local 344, AFSCME, AFL-CIO, the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding whether the County violated the collective bargaining agreement by not paying Alan Zieher to attend two unit clarification hearings in the year 2000. The hearing herein was scheduled and held at Wisconsin Rapids, Wisconsin, on October 30, 2001. No stenographic transcript of the proceedings was made. The parties agreed to file their briefs through the Arbitrator postmarked by December 10, 2001, and they reserved the right to file reply briefs postmarked January 7, 2002. All briefs were received by the Arbitrator by January 8, 2002, whereupon the record was closed in this case.

To maximize the ability of the parties we serve to utilize the Internet 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.

ISSUES

The parties stipulated that the following issues should be decided in this case:

Did the Employer violate the collective bargaining agreement when it did not compensate Alan Zieher under Article 10.10, for attending two unit clarification hearings in the year 2000? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 10 – GRIEVANCE PROCEDURE

. . .

- 10.09 Grievance Conference: Employees or Stewards must obtain the consent of their immediate supervisors to leave their assigned work area to confer during their shift regarding a grievance. Such consent will not be unreasonably denied, and such conference and/or investigations will need to be held at mutually convenient times. It is agreed, however, that meetings between and among employees regarding grievances will be held prior to, or following an employee's shift or during paid breaks whenever possible.
- 10.10 Compensation: Union representatives who have been excused from work by their supervisor will be compensated for time spent during their regular working hours in attending grievance adjustment meetings with Management or other authorized joint Union/Management meetings.

ARTICLE 18 – JURY DUTY

- 18.01 An employee subpoenaed or called upon to serve jury duty shall receive his/her regular pay for time spent in jury service, provided that the employee will deposit any compensation he/she receives as a result of jury service with the Employer, less mileage payments. In return, the employee will receive his/her regular pay, except in cases where jury pay exceeds the regular day's pay.
- 18.02 Any employee who is released from jury service with at least one-half (1/2) of the work day remaining shall report to work at his/her earliest opportunity following release.

FACTS

Alan Zieher (Zieher) has been employed by the County for the past five years as an Equipment Maintenance Technician. Zieher has also been the Union Steward and President of Local 344, the AFSCME Local, which represents the Park and Forestry employees, for the past four years.

Prior to October 30, 2000, 1/ Zieher, as Union President and Chief Steward, had received wages to attend employee disciplinary meetings, employee evaluation meetings and for negotiation sessions which occurred during regular work hours. 2/ In regard to the disciplinary and evaluation meetings, the County always requested Zieher's presence as the Union representative at these meetings. For negotiation sessions, Zieher was never asked whether he was available to attend these meetings in advance thereof. Rather, Zieher normally received advance notice from the County of these meetings and the date on which they would occur. Zieher never submitted a written request to his supervisor, Ron Arendt (Arendt) to attend any of these meetings. After receiving notice of a meeting, Zieher generally talked to Arendt about attending and Arendt always granted permission for Zieher to attend. For these permitted meetings with management, Zieher merely recorded his work hours on his time card by placing thereon the number of regular work hours for that day. Zieher was then paid for his normal working hours.

1/ All dates hereafter shall be in 2000 unless stated otherwise.

2/ Zieher did not receive pay beyond his regular work hours on these days even though the meetings may have gone beyond his quitting time.

A WERC unit clarification (U.C.) hearing was scheduled and held regarding the proper placement of two positions which concerned the Park and Forestry Department as well as the Courthouse Department of the County (separate AFSCME bargaining units). Zieher was not contacted in advance of the scheduling of these hearing dates for his agreement thereto. However, after the October 30th hearing date was scheduled, Zieher had several conversations with his supervisor Ron Arendt regarding whether Arendt would allow Zieher to attend the October 30th hearing in pay status pursuant to Article 10.10. At first, Arendt indicated that if the U.C. hearing constituted legitimate Union business, Zieher could attend in pay status, but that Arendt would have to check on this with his supervisors. Zieher thereafter had at least one more conversation with Arendt but Arendt did not give Zieher a firm answer regarding Zieher's attendance in pay status at the October 30th U.C. hearing.

On October 25th, Zieher and Arendt spoke again on the subject. At this time, Arendt stated that he did not believe it was necessary for Zieher to attend the U.C. hearing but that if

or vacation for that purpose. On October 27th, Zieher submitted the following memo with a "request for approval of absence" form essentially drafted in the alternative, requesting either compensation time "under protest" or requesting the use of paid time off under Article 10 to attend the October 30th U.C. hearing:

. . . With the attached request for approval of absence form I am requesting to attend the unit clarification hearing scheduled for October 30th at 10 AM in the courthouse regarding [sic] the position occupied by Don Pelot. I am requesting that I am able to attend with pay under article 10 of the collective bargaining agreement. If this is refused I am requesting compensatory time off under protest to attend the hearing.

On the morning of October 30th, Zieher had another conversation with Arendt. Arendt told Zieher he would be granted compensation time to attend the U.C. hearing that day, but that if Zieher were subpoenaed it might be different, implying that Zieher might then be paid to attend under a separate provision of the labor contract. 3/ Zieher stated herein that he testified at the U.C. hearing.

3/ Article 18 concerns employees receiving pay if they have been "subpoenaed or called upon to serve jury duty." This provision of the labor agreement is not before me as the grievance specifically references only the language contained in Article 10.10 and the Union did not argue a violation of Article 18 herein. Also, Zieher never requested pay for October 30th pursuant to Article 18.

Zieher spent 6.5 hours in attendance at the U.C. hearing on October 30th. No settlement discussions were held at that hearing. The U.C. hearing was not concluded and the resumption of it was scheduled for November 8th. Zieher then submitted a memo and a "request for approval of absence" form that was essentially identical to that which he submitted on October 27th in order to attend the October 30th hearing. Zieher was charged compensation time for both October 30th and November 8th in the amount of 13 hours. 4/

4/ At some point after October 30th, Arendt offered to pay Zieher for his attendance at the October 30th hearing if Zieher took comp time for the hearing on November 8th. Zieher declined, stating he was entitled to pay for both days.

The Union and the County have never before had a WERC U.C. proceeding regarding any County AFSCME unit. Zieher admitted that Arendt never gave him permission to attend

subpoenaed for the October 30th hearing, but that he did receive a subpoena for that day prior to October 30th. 5/ However, Zieher never showed his subpoena to Arendt. During their various conversations, Arendt stated that he told Zieher he felt that the U.C. hearing was different from meetings in which grievances are processed and from bargaining and that it was not clear that Zieher was needed to represent the Union at the U.C. hearings.

5/ The Union did not place a copy of Zieher's subpoena into this record.

Union Representative David Urban, who served on the Union bargaining team concerning the parties' initial contract, stated herein that AFSCME Representative Jeffrey Wickland advised the union committee during those negotiations that it was in the best interest of unit employees to get Article 10.10 into the contract so that employees representing the Union would be paid for future grievance processing and negotiations. Urban stated that his only experience with Article 10.10 was in attending bargaining sessions on work days and that he was always paid for his regular work hours on those days and he was always granted permission to attend as a Union committeeman.

The Union also offered the testimony of Ann Arndt, President of AFSCME Local 2486 which represents Courthouse Department employees in a bargaining unit separate from the instant one. The Union stated it wished to offer Arndt's testimony regarding past practice and the proper interpretation of Local 2486's contract language which the Union asserted is similar but not identical to that contained in Article 10.10. The Arbitrator refused to take this evidence on the grounds that the Courthouse unit contract is separate and distinct from the Park and Forestry contract, that the latter contract did not exist at the time the County agreed to the Courthouse language and because Arndt was not present at the Park and Forestry unit negotiations when Article 10.10 was agreed upon.

On November 17, Zieher filed a grievance in which he stated the facts as follows:

Employee was not compensated for time spent at an authorized joint Union/Management meeting.

The grievance also listed "Article 10.10 and all other relevant parts of the collective bargaining agreement" as being violated and sought a make-whole remedy, specifically that Zieher's compensation time bank be credited with 13 hours and that he be paid "wages" for the time he spent "attending the meeting."

POSITIONS OF THE PARTIES

The Union

The Union argued that because both the Union and the County fully participated in the WERC U.C. hearings which were designed to resolve union/management issues or disputes between them, and because both parties were interested in the outcome of the case and because Zieher attended the hearings as the Park and Forestry unit employees' representative and was subpoenaed as a witness therein, the County thereby "authorized" Zieher to attend the hearings as "joint Union/Management meetings" under Article 10.10. The Union noted that Zieher was given permission to attend the hearings if he used vacation or comp time. The Union asserted that Article 10.10 states that union representatives can be excused from work by their supervisors and compensated for time spent during regular working hours to attend grievance adjustment meetings and other "authorized joint Union/Management meetings."

In this case, the Union argued that Article 10.10 is not restricted to grievance adjustment meetings. The Union noted that it would not have caused the County undue hardship to grant Zieher paid time off under Article 10.10 for the 13 work hours during which he attended the U.C. hearings with advance approval. The Union also asserted that Zieher had been subpoenaed to attend the hearings and that the Zieher gave his subpoena to his direct supervisor, Mr. Francis, who, the Union asserted, then sent it on to the supervisor above, Ron Arendt. 6/ Therefore, the Union urged that the grievance should be sustained, that Zieher should be paid for the time he attended the U.C. hearings on October 30 and November 8, 2000, by having his comp time bank restored and by being paid for 13 hours at straight time.

6/ The Union submitted no evidence on this point at the hearing and raised it for the first time in its initial brief.

The County

The County argued that it had not violated the collective bargaining agreement by refusing to compensate Zieher for attending a two-day U.C. hearing. The County noted that in order to prevail in this case, the Union must show that the Grievant was excused from work by his supervisor to attend either a grievance adjustment meeting or "other authorized joint Union/Management meetings." The County also observed that the contract does not define such an authorized joint Union/Management meeting.

In the instant case, the County contended that Union witness Urban demonstrated the parties' intent that the phrase "other authorized joint Union/Management meetings" should

excused Zieher from work to attend the U.C. hearings. Rather, it granted Zieher's request to use comp time to attend those hearings. Thus, the County urged that the U.C. hearings were not joint union/management meetings and they were not "authorized" by the Employer.

In addition, the County noted that the October 30 and November 8 hearings were not grievance adjustment meetings. Furthermore, the County noted that it never agreed to pay Zieher to attend the U.C. hearings under Article 10.10, but that it only granted Zieher comp time to attend these: how Zieher chooses to use his comp time is up to him. Because the Union failed to prove that any supervisor ever excused Zieher and authorized that he be paid to attend the U.C. hearings pursuant to Article 10.10, the grievance should be denied on this basis.

Even if the Arbitrator were to find that Zieher had been excused to attend the U.C. hearings, these hearings could not be defined as grievance adjustment meetings or as other authorized joint Union/Management meetings pursuant to Article 10.10. The County noted that it would render the word "authorized" meaningless if the Arbitrator were to interpret the fact that the Union and the Employer had agreed to hold the U.C. hearings on certain dates, as constituting authorization under Article 10.10. Contracts should be interpreted to provide reasonable, not absurd results, and all words should be given full effect in a contract pursuant to arbitral rules of construction. The County noted that if the Arbitrator were to conclude that the County's action in agreeing to hold the U.C. hearings on certain dates made those meetings "authorized joint Union/Management meetings," the Employer would then refuse to agree to any daytime hearing dates with WERC in the future.

The County argued that the parties never intended that the U.C. hearings would qualify as authorized joint Union/Management meetings. The County noted that in this regard, Union witness Urban's testimony showed that the parties intended this phrase in Article 10.10 to refer to employees being paid to attend negotiation sessions or grievance adjustment sessions. As the County never agreed to excuse Zieher from work and pay him without his using his accrued comp time or vacation time, and as the U.C. hearings concerned neither grievances nor did they relate to labor negotiations, the Arbitrator should find that the U.C. hearings were not "authorized" joint Union/Management meetings under Article 10.10 and the grievance should be denied and dismissed in its entirety.

Reply Briefs

The Union

The Union argued that the language of Article 10.10 is clear and unambiguous. In the Union's view, it was "preposterous" for the County to contend that it had not "excused" Zieher from work on October 30 and November 8, given the County's admission herein that it

been subpoenaed to attend these. The record showed that Zieher went through channels to get these days off and that both the Union and the County participated in and agreed to schedule the U.C. hearings during the work day. The Union noted that the County could have scheduled the U.C. hearings after work hours to avoid Article 10.10 liability but it did not do so. Indeed, the Union observed that the County failed to put any evidence into the record to show that either the U.C. Hearing officer or the Union had insisted upon daytime hearings.

In the Union's view, if the County were allowed to do as it did here, it would be able to interfere with the Union's statutory right to choose who will represent it. Further, the Union observed that the County could agree to a daytime hearing and later claim that it had not authorized the date in order to deny Union representatives paid time off. This would be coercive and contrary to the intent of Chapter 111. The Union contended, therefore, that if "authorized" were read to mean that the County must desire a meeting, that County could then justify refusals to meet and Union representation would be frustrated even though the Union has a statutory right to file and pursue unit clarifications.

The Union noted that dictionary definitions of "authorized" support its position and that the testimony of former Union representative Urban shows that the parties' practice has been to allow Union representatives Article 10.10 paid time off to attend meetings that are supported by statutory rights (such as negotiations and grievance arbitration). As U.C. hearings are also supported by statute, they should be covered by Article 10.10 pay.

In sum, the Union asserted that if the County wishes to restrict the clear, broad language of Article 10.10, it must bargain changes therein. The Union therefore sought an award sustaining the grievance; ordering the County to compensate Zieher for attending the U.C. hearings on October 30th and November 8th; ordering the County to restore 13 hours to Zieher's comp time bank; and otherwise making Zieher whole.

The County

The County argued that the Union's initial brief was inaccurate in some respects. For example, Arendt never authorized Zieher to attend the U.C. hearings. Rather, Arendt told Zieher that he would have to confer with his supervisors regarding Zieher's request to attend the U.C. hearings. After Arendt had done this, he told Zieher he would have to take comp time to attend the U.C. hearings. In addition, in the County's view, it was misleading for the Union to contend that Zieher represented the Park and Forestry bargaining unit at the U.C. hearings when Mr. Ugland was the true representative there.

Finally, whether Zieher was subpoenaed to appear at the U.C. hearings was irrelevant, in the County's view. As Zieher was not subpoenaed for jury duty as required by the County's interpretation of Article 18, the Union's argument on this point should fail. The County

therefore sought denial and dismissal of the grievance in its entirety.

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DISCUSSION

Article 10.10 allows “Union representatives” to be “compensated for time spent during their regular working hours” to attend “grievance adjustment meetings with Management or other authorized joint Union/Management meetings” if the representative has “been excused from work by their supervisor.” It is undisputed that Alan Zieher was a “union representative,” being both Union President and Union Steward at all times relevant to this case. Thus, the initial inquiry here must be whether Zieher’s supervisor, Ron Arendt, ever “excused” Zieher from work to attend the October 30 and November 8, 2000, U.C. hearings in pay status pursuant to Article 10.10.

The record in this case clearly showed that Arendt gave Zieher permission to attend the U.C. hearings if he used accrued comp time. However, the fact that Arendt granted Zieher’s request to take comp time to attend the U.C. hearings, cannot be equated with an excuse from work under Article 10.10 unless one of two other conditions listed in Article 10.10 is also met. The meeting must either be a grievance adjustment meeting with management or “other authorized joint Union/Management meetings.”

It is undisputed that the U.C. hearings on October 30th and November 8th did not involve grievance adjustment. Therefore, the question arises what constitutes an “authorized” joint Union/Management meeting. Here, the labor agreement is ambiguous in that it does not define the term “authorized” nor does it define the phrase “other authorized joint Union/Management meetings.” The rules of construction applicable to contract language indicate that the use of the word “other” in Article 10.10 shows that the parties intended “other authorized Union/Management meetings” to refer back to the last specifically listed item (appearing before the word “other”), “grievance adjustment meetings with management.”

The difficulty with applying this rule of construction in this case is that there are various levels of grievance adjustment meetings, from informal inquiries, to grievance step meetings, to formal interrogations of witnesses, to grievance arbitration hearings, so that reference back to the phrase “grievance adjustment meetings with management” is not particularly helpful. In addition, the parties failed to put specific evidence into this record to show what types of grievance adjustment meetings were covered by Article 10.10 pay in the past. In short, based upon this record and due to this contractual ambiguity, both parties could argue for favorable treatment in this case. Thus, as the word “other” refers back to an ambiguous term “grievance adjustment meeting with management,” evidence submitted herein regarding past practice and bargaining history becomes relevant to determine the parties’ intent.

In labor arbitration, evidence of past practice and bargaining history is relevant to flesh out ambiguities. In the past, Article 10.10 meetings were always scheduled and noticed by the County and the County always agreed in advance to pay Union representatives pursuant to

representatives were never able, in the past, to call their own meetings and receive Article 10.10 pay therefor. In this case, the evidence showed that Zieher and other former Union representatives have been compensated pursuant to Article 10.10 to attend negotiation sessions with management as well as employee evaluations. In the past, Zieher never submitted a written request to attend any of these meetings as he did regarding the U.C. hearings. It is also clear on this record that there has never before been a U.C. hearing involving the Union and the County prior to the hearings that occurred on October 30th and November 8th.

In regard to bargaining history, former Union representative Urban clearly stated that AFSCME representative Wickland urged the Union bargaining team to place Article 10.10 into the contract so that Local Union representatives would be paid for contract negotiations and grievance meetings in the future. According to Urban, Wickland made no mention of any other types of meetings that would be included in Article 10.10 pay. As the evidence of bargaining history demonstrates that the parties never discussed whether U.C. hearings would be included within the phrase “other authorized joint Union/Management meetings,” one could argue from this that the parties failure to list U.C. hearings in some fashion in Article 10.10 means they intended to exclude them from coverage.

The Union has argued that dictionary definitions of “authorized” support its case. A close analysis of such definitions shows that these do not reveal which party (or parties) may authorize an action. Thus, the unabridged Dictionary of the English Language (College Edition, Random House, 1968), defines “authorized” as follows:

1. To give authority or official power to; empower. . . .
2. To give authority for; formal sanction (an act or usage).
3. To warrant or justify.

This dictionary also defines “authority” as:

1. The power to judge, act or command.
2. A power or right delegated or given; authorization

In my view, both parties must be involved in the authorization process but because the County would have to pay for a Union representative to attend these meetings, it must be the County that has the power to “authorize” such meetings for Article 10.10 pay. 7/

7/ The language of Article 10.10 is clear that grievance adjustment meetings with management are eligible for Article 10.10 treatment, without reference to authorization.

The Union has argued that because the County agreed to the U.C. hearing dates and times, because it fully participated and was interested in the outcome of the U.C. hearings, which were designed to resolve Union/Management disputes, these facts require a conclusion that the County “authorized” the U.C. hearings as Article 10.10 meetings. I disagree.

It is significant that the parties have never before had a U.C. hearing concerning this unit and there is no evidence to show what, if any, other hearings have been held involving these parties and whether Article 10.10 was an issue regarding these hearings. It is also important that the County never notified Zieher that he could attend the U.C. hearings pursuant to Article 10.10, as the County had done in the past with other Article 10.10 meetings. In addition, there was no evidence to demonstrate that the County ever formally sanctioned Zieher’s attendance at the U.C. hearings as Article 10.10 meetings. Rather, Arendt initially stated that if the hearings constituted legitimate union business, he would grant Zieher’s request to attend the hearings under Article 10.10, but that he would have to check this with his supervisors. Arendt thereafter never told Zieher that he could attend the U.C. hearings in pay status under Article 10.10. Finally, Arendt’s later offer to pay Zieher for one hearing day if he took comp time for the other day of the U.C. hearings, in my view, simply constituted an offer to settle the grievance, which is not relevant.

The Union has argued that the County could control or interfere with the Union’s statutory rights to choose who will represent it at statutory proceedings such as U.C. hearings, if the County prevails in this case. I disagree. The Union representatives at the County are free to attend meetings or hearings they feel are important to their members even if the County refuses to authorize them as “other authorized joint Union/Management meetings.” The Union representatives would then have to use vacation or comp time to attend such meetings, but the Employer’s actions should not interfere with, control or frustrate the Union in its pursuit of its statutory rights. 8/

8/ The Union argued that it would not constitute an undue hardship for the County to compensate Zieher in this case. There is no basis in the contract for applying such a standard.

Finally, the fact that Zieher was subpoenaed to appear at the U.C. hearings is irrelevant, in the Arbitrator’s view. In this regard, I note that the Union failed to submit any evidence herein to show that Arendt ever knew of Zieher’s subpoena. In addition, and more importantly, the grievance does not mention Zieher being subpoenaed, nor does it allege a violation of Article 18, which covers subpoenas. Thus, the Union’s subpoena argument must fail as this alleged violation of the contract was not properly placed before the Arbitrator in this case.

Based upon all of the relevant evidence and argument in this case, I issue the following

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AWARD

The Employer did not violate the collective bargaining agreement when it did not compensate Alan Zieher under Article 10.10 for attending two Unit Clarification hearings in the year 2000. The grievance is, therefore, denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin, this 5th day of February, 2002.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

SAG/ans

