BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL UNION NO. 579

and

GREEN COUNTY HIGHWAY DEPARTMENT

Case 147
No. 60425
MA-11609

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Mark Floyd**, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Attorney William E. Morgan, Corporation Counsel, Green County, Green County Courthouse, 1016 16th Avenue, Monroe, Wisconsin 53566, appearing on behalf of the County.

ARBITRATION AWARD

Green County, hereinafter County, and Teamsters Local Union No. 579, hereinafter Union, are parties to a collective bargaining agreement that was in effect at all times relevant to this proceeding which provides for final and binding arbitration of certain disputes. A request to initiate arbitration was filed with the Commission on October 4, 2001. Commissioner Paul A. Hahn was appointed to act as Arbitrator on October 18, 2001. The hearing took place on February 12, 2002 in the Green County Courthouse in Monroe, Wisconsin. The hearing was not transcribed. The parties were given the opportunity to file post hearing briefs. Initial post hearing briefs were received by the Arbitrator on March 20, 2002 (County) and March 22, 2002 (Union). The County filed a reply brief on April 16, 2002. The Union declined to file a reply brief**.** The record was closed on April 18, 2002.

ISSUE

The parties stipulated to the following issue as follows:

1. Is Work Rule No. 1, posted on January 4, 2001, reasonable?

2. Is Work Rule No. 1, as revised on September 28, 2001 reasonable?

3. Did the County have just cause to discipline the employees in joint exhibits 15 through 29 as a result of the events on March 16, 2001? If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 4 – SENIORITY

Section 1: Seniority rights shall prevail at all times during the life of this Agreement provided ability and skill are reasonably equal.

Section 2: All Employees' seniority shall commence on the first day of employment, within the Highway Department, and all employment shall be considered to be continuous unless terminated by discharge, resignation, or if an employee is laid off and not re-employed within two (2) years from the date of layoff.

Section 3: In laying off employees because of a reduction in forces, the employees with the least seniority shall be laid off first provided that those remaining are capable of carrying on the Employer's usual operations effectively. In re-employing those employees with the greatest length of service shall be called back first provided they are capable of performing the available work.

Section 4: A Seniority List shall be made of the employees showing their names and dates of employment and this list shall be furnished to the Union twice a year. Said list shall consist of four (4) groups: Mechanics, Foremen, Patrolmen in all Highway Department shops outside of Monroe, All Others.

Section 5: Seniority shall prevail when extra work is available; provided, however, that if a particular job is customarily performed by a particular employee, he/she shall have the first opportunity to perform said extra work.

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ARTICLE 8 – GRIEVANCE AND ARBITRATION

Section 5: The Arbitrator shall not have the authority to add to, detract from, or modify, in any way, the terms of this Agreement. The Arbitrator shall be limited to the subject matter of the grievance and the evidence and testimony presented at the hearing. Upon mutual agreement by the parties, more than one grievance may be heard by the same Arbitrator.

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ARTICLE 20 – VACATION

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Section 7: The following vacation procedure will be followed in the selection of vacations:

1. Vacations may be taken any time from January 1, through December 31, but no back-to-back vacations may be taken any time.

2. Conflicts for vacation time will be settled on a first come first serve basis. If conflicts still exist, they will then be settled by seniority.

3. Employees who have earned more than one week of vacation shall be permitted to take all such vacation at once, or to split the vacation in weekly intervals or of periods of not less than one day.

4. Vacations may be exchanged by mutual agreement of the employees and with the approval of the Highway Commissioner.

5. The Employer shall permit six regular employees to be on vacation at one time. The Commissioner, at his/her sole discretion, may waive this limitation if the situation warrants.

6. All time lost because of on-the-job injury or illness shall count as time worked for vacation purposes.

7. One week of vacation time must be taken by the employee. The remaining vacation earned may either be taken as vacation time off or vacation pay in lieu of time off, whichever the employee prefers. Additionally, once every three (3) anniversary years, an employee may place up to five (5) days of unused vacation in the employee's sick leave bank.

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ARTICLE 29 – MANAGEMENT RIGHTS

The Union recognizes the rights and responsibilities belonging solely to the Employer, prominent among, but by no means wholly inclusive are the right to hire, promote, discharge or discipline for cause. The Employer retains the right to decide the work to be done; the location of the work; determination of the amount and quality of the work needed and by whom it is to be performed; to schedule the hours and assignment of duties; and to establish reasonable work rules. The Union also recognizes that the Employer retains all rights, powers or authority that it has prior to this agreement except as modified by this Agreement. Reasonableness of management's decisions are subject to grievance procedure.

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ARTICLE 31 – WORKWEEK

Section 1 – Workweek: All employees shall be guaranteed forty (40) hours per week for Monday through Friday workweek, except as provided below in Section 5. Time and one-half (1-1/2) shall be paid for all hours worked over eight (8) hours in any one day and over forty (40) hours in any week, whichever is greater. All Saturday and Sunday work shall be paid at the time and one-half (1-1/2) rate.

It is also agreed that for the purposes of computing overtime, Funeral Leave days, Sick Leave days, Vacation days, Personal days, and Jury Duty days shall be counted as days worked.

Section 2 – Guaranteed Call-In Pay: Any employee who has completed his/her work for the day and is recalled to work, or called in on Saturday, Sunday or holiday for emergency shall receive the minimum of two (2) hours pay at his/her regular overtime rate. This call-in pay shall not be subtracted from guaranteed forty (40) hour workweek.

Section 3: All employees shall have a regular starting time of 7:00 a.m. and a regular quitting time of 3:30 p.m. This starting time to be changed only by mutual agreement of both parties.

Section 4: When an employee is called out for emergency service such as snowstorms, ice storms, floods, tornadoes or other destructive weather conditions, all hours worked prior to 7:00 a.m. starting time will be paid at the time and one-half (1-1/2 x's) rate of pay.

Section 5 – Lost Time Provision: The employer may, at its discretion, lay off each employee up to a maximum of 40 hours per calendar year. However, in no event shall the employer give any employee lost time in two consecutive pay periods within the month of December.

After the beginning of his/her assigned shift and upon the approval of the Highway Commissioner or his/her designee, an individual employee may request and be granted the remainder of the workday off without pay.

Section 6: In the event the Employer is unable to get enough employees to agree to perform extra work, then those with the least seniority shall be obligated to report to or remain at work provided:

1. The employee is qualified to perform the work; and

2. The employee is directly notified that he/she is to report to or remain at work; and

3. The employee is able to perform the work within the requirements of the law.

Section 7: Patrolmen shall have a maximum of thirty-five (35) minutes from the time of being called in by the Department to report to work.

STATEMENT OF THE CASE

This arbitration involves Green County and Teamsters Local Union No. 579. (Jt. 1) The Union alleges that the County violated the collective bargaining agreement by disciplining fifteen employees for failure to be available to work on the evening of Friday, March 16, 2001, when the County called them out to plow and salt roads due to the development of freezing rain after the employees had already ended their work day. (Jt. 15-29) The arbitration also involves the allegation by the Union that the County violated the collective bargaining agreement by establishing work rule number 1 regarding time off requests effective as of December 29, 2000 and as revised to be effective September 28, 2001. (Jt. 2 & 31) The work rules are part of this decision as appendices A and B.

Green County operates a Highway Department responsible for the care and maintenance of the public highways in Green County. The County employs patrolmen and others to maintain those highways including snow removal and salting as conditions warrant during the winter. There are approximately eleven assigned patrolmen of which seven are

regularly assigned to cover certain sections of the County. All County Highway employees who have been trained are on-call to assist in maintaining the roads as it relates to this matter during the winter months.

The County has had a practice, supported by the call-in provisions of the labor agreement, of calling out employees by phone in the event of a snow storm starting with the most senior employee and working down a seniority list to the least senior employee. Employees at the first call could refuse the call out, as well as employees who were on paid time off, holiday, vacation, etc. The County called through the seniority list the first time and if not enough employees responded to the call out, the County called the employees a second time starting with the least senior employee on the seniority list and working to the top. If an employee was called the second time and was available the employee was required to come in and go to work. If the employee was not available on the second call and was not off on approved leave, the employee was subject to discipline. In other words, all employees had to make themselves available for a call-in except those that were on an approved leave. This practice tended to ensure that the least senior employees had to respond to call outs more than the most senior employees. If employees were left a message on an answering machine or voice mail on the first call, and reported in or called in soon enough, they also were not disciplined.

The March 16, 2001, weather forecast indicated a weather free weekend when the employees departed work on late Friday afternoon. Forecasts are normally relayed to the employees through the Highway Department dispatcher. However, in the early evening freezing rain started to fall. The Green County Sheriff Department called the Highway Department to request that salt crews be called out because of three accidents due to the resultant icing conditions on the highways. The County, pursuant to its previous practice, went through the seniority list but only called employees once. The County left messages at the employees' homes where it could. Several employees responded to those messages and came in. Employees who did not respond to those messages were disciplined. The County only made one call rather than the previous practice of two calls based on work rule number one that it had initiated.

Prior to the March 16, 2001 incident, the County in December 29 of 2000 had initiated work rule number 1 because it was having problems getting employees to report to work on a call out, particularly mechanics. The work rule essentially gave all employees of the Highway Department the opportunity to sign up for as many as twelve plow days off during the course of the winter months. The employees could use these scheduled plow days to be unavailable for a call out. The idea was that if employees did not sign up for winter plow days or vacation or personal days or sick days then they had to make themselves available for a call out. In this way management would know exactly which employees were available and which employees were not. Because, management reasoned, they would know exactly which employees were

available and not available, management would only make one call through the seniority list. This rule was revised on September 28, 2001, following discussions with the Union, to allow more employees to be off for winter plow days or for a combination of winter plow days, vacation, sick or personal time and set up the use of pagers issued by the County which could be voluntarily used by employees. In the event of a call out, the County would still call the employee's home first and then try to call the employee by pager. It was the intent of revised work rule number one that employees had to be available unless they had exercised their right to winter plow days and other paid days off.

The Union takes the position that the work rules are unreasonable although the purpose behind them, to ensure the availability of enough employees to make the highways safe, is legitimate. The Union also recognizes the County's right to establish work rules. However, the Union takes the position that regardless of the work rule, two calls through the seniority list were required based on past practice and therefore two calls should have been made to each employee on March 16, 2001. Employees did not receive a second call and were therefore disciplined unjustly. The parties tried to resolve the work rule situation during the grievance procedure before proceeding to arbitration.

The matter was appealed to arbitration. No issue was raised as to the arbitrability of the grievances. It should be noted that the contract provisions cited under the heading "relevant contract provisions" are the only provisions of the parties' collective bargaining agreement allowed to the Arbitrator from which to make a decision, the entire labor agreement was not made part of the record. Hearing in the matter was held by the Arbitrator on February 12, 2002.

POSITIONS OF THE PARTIES

Union's Position

The Union does not dispute the County's right to formulate and implement reasonable work rules and that work rule number one had the legitimate interest of assembling a full crew in the case of a snow/ice event. The Union argues that the unreasonableness of work rule number one arises in its application. The Union argues that the County held a meeting with the entire bargaining unit prior to the implementation of work rule number one and assured employees that they would not be disciplined until after they had received two phone calls. The Union argues that the establishment of plow days, which could be signed up for in advance, limited employees in the use of vacation and personal days. This arguably would limit the employees on the number of days they could be off, particularly weekends during the winter months. Because of the work rule all but six employees were tied to their homes every weekend from the 1st of October to the 15th of May. Past history, the Union points out, revealed heavy snow falls during the 2001 snow season and there was only one time when the County was unable to accomplish a full call out. The rule established by the County is a drastic measure, unwarranted and unreasonable.

The Union argues that the County did not have just cause to discipline fifteen employees as it is clear and undisputed that the County did not make two calls on the evening of March 16, 2001 as it said it would do despite the establishment of work rule number one. The Union argues that one employee in addition should not have been disciplined because he was given an approved one-half day of vacation for March 16 from noon onward and therefore did not have to be available on March 16th. A second employee was disciplined because when he was called on March 16th he admitted that he had been drinking an alcoholic beverage that evening which did not allow him to report to work under CDL license rules. The Union points out that in December of 2000 another employee was disciplined for a similar incident but that disciplining action was nullified on further consideration. The Union argues that this nullification of the prior incident set a precedent to be followed in this case, and the employee who had been drinking alcohol on March 16, 2001 should not have been disciplined. The Union argues that even if employees on March 16, 2001 who were not available and would not have been available even had a second call been made, the County shares in the blame under the collective bargaining agreement and any work rule as it did not follow correct call out procedures by making two calls through the seniority list.

The Union argues that the revised work rule dated September 28, 2001 is also unreasonable. Although the new work rule corrects many of the inadequacies of the original rule, the Union submits that it raises new issues in its provisions as it relates specifically to pagers. The Union argues that requiring employees to pay for pagers that are lost or broken for any reason is unreasonable and that the work rule requiring an employee only ten minutes to respond to a page is also unreasonable. The Union argues that the work rule requires the employee who volunteers to carry a pager to wear it year round as essentially tying the employee to an electronic leash without any compensation for wearing the pager.

The Union argues that the collective bargaining agreement addresses call out issues and has done a sufficient job of regulating callouts and assembling a full work crew and the necessity of the work rule is suspect even though recognizing management's right to formulate a reasonable work rule. In conclusion, the Union requests that work rule number one be found unreasonable and all fifteen disciplinary actions taken pursuant to work rule number one be rescinded and the effected employees be made whole. Additionally the Union asks that the revised work rule dated September 28, 2001 be termed unreasonable and the County asked to change the unreasonable provisions of the work rule.

County

The County argues that work rule number one as initially put into effect and revised reasonably related to a legitimate objective of County management and therefore is not unreasonable. The County argues that its operation is often at the mercy of nature and

employees are frequently called out to perform a variety of tasks outside of normal working hours. The County notes that when an employee is hired they are advised that their employment necessarily requires them to report for duties outside the normal work hours when a situation warrants it. In these cases, the most senior employee is called for overtime work first. These employees have the right to refuse work and less senior employees can then be compelled to work, but that in the end even the most senior employees can be compelled to work if no other employees are available. The County notes that this situation worked well for years but that in recent years in a number of instances the County could not get sufficient employees to appear for work during overtime hours. The County argues that handling these situations by issuing discipline for failure to appear is not in the best interest of the employees or the County. This situation led to the establishment of work rule number one and its revision.

The County argues that contrary to the Union position at the arbitration hearing, the new work rule gives the employees more flexible time off and does not bind the employees to their homes. Prior to the work rule, the County argues, the employees had to make themselves available unless they were on a paid day off. Absent that, they were in effect available for overtime 365 days per year. In contrast, the County argues, work rule number one allows an employee much more latitude, allowing the employee a nearly unlimited number of days throughout the year that the employee can make himself unavailable. The work rule also balances the seniority rights of Union members as least senior Union members can sign up for plow days off.

As to the Union complaint at the arbitration hearing regarding the pagers, the County points out that pagers are only provided to employees who elect to receive a pager. The County notes that discipline only may result if an employee does not, when after being paged, respond within ten minutes. The County argues that in the case of the call out on March 16, 2001, three employees called back in excess of twenty minutes from messages being left on their answering machines at home and those employees were not disciplined. The County further argues that the objection of the Union to employees paying for lost or broken pagers is without merit. As the pagers are provided at no cost to the employee, it is not unreasonable to expect that employees who are careless with equipment will be required to cover the cost of that equipment.

As to the discipline of the fifteen employees, the County argues that the County had just cause to issue the discipline to the fifteen employees which the County divides into three groups. The largest group concerns thirteen employees who were disciplined for being unavailable which the Union argues should not have been disciplined because the County on March 16, 2001 did not make two phone calls to employees. The County posits that the labor agreement does not make reference to a requirement of two calls either under the seniority or the call-in articles. The County disputes the Union's argument that it has been the practice for the County to make two calls through the seniority list.

The second group concerns a specific grievance related to one employee who was unavailable to work because he had consumed alcohol. The County argues that the employee was disciplined for being unavailable and that the argument of past practice by the Union due to a previous incident, where in a similar situation an employee was ultimately not disciplined, occurred prior to the adoption of work rule number one and therefore is not a binding past practice because of the interruption of work rule one; one incident also does not rise to the level of a past practice.

As to the final grievance or third group involving the employee who received a half day of vacation to attend a funeral, the County points out that the record establishes that the employee did not complete adequate paperwork to ensure that he would be considered unavailable for the evening of March 16, 2001. Failing to complete this paperwork and ensuring that the County knew that he would not be available, the employee justly received the discipline given to him by the County.

In conclusion, the County requests that work rule number one and its revision be found to be reasonably related to a legitimate objective of the County, and that the Arbitrator find that any discipline which flowed from that work rule was a legitimate exercise of management's authority under the contract. The County asks that all fifteen grievances be denied.

DISCUSSION

This dispute involves to a limited degree contract interpretation and to a greater degree discipline of fifteen employees of the Green County Highway Department and the reasonableness of the County's work rule one and a subsequent revision. The Union does not dispute the County's right to establish reasonable work rules. It also does not dispute that the reason behind the work rule to ensure that the County has sufficient employees to clear and make the roads safe during adverse weather conditions is legitimate. Further, the Union, through its witnesses, agrees that it is the County's management that decides when the need arises to call out employees and how many employees must work. There is also no disagreement that ultimately seniority will control who must work and that all employees are obligated to work regardless of seniority if they are available and there is a need. Nor are the essential facts disputed as to the events of March 16,2001 which resulted in the grievances brought to arbitration.

Fifteen employees were disciplined for not making themselves available for the March 16th callout. Patrol Superintendent Marti began the callout at 7:40 p.m. As per his normal practice, Marti called those employees that have an assigned section. After that, he proceeded to call employees on a seniority list. (Jt. 11) Marti went through the list one time.

Those employees he reached came to work with the exception of one employee who had drunk alcohol and therefore could not work. (Grievant DeNure) Other employees were left messages and two of those employees called back and came to work. However, fourteen employees could not be reached and did not respond to any message that Marti left, at least not in a timely enough fashion that they would have been told to come in. Marti completed the call out at 8:09 p.m. (Jt. 11) Of these fourteen, one employee (Greivant Brown) had been given one-half day vacation on the 16th starting at 11:00 a.m., when he left to attend a funeral. Several employees received a one-half day suspension without pay because they were unavailable on a previous occasion and the rest received warning letters. (Jt. 15-29)

The Union argues that the discipline is without just cause because the employees were not called a second time as has been the clear practice of the parties. In other words, once Marti made the first call through the seniority list starting with the most senior, the Union argues that Marti was obligated to reverse direction and start from the bottom of the seniority list and work up until he had enough employees for the call out. There is no issue that Marti made a second call; he did not, and the County argues that under the work rule, Marti was not obligated to make the second call.

There is no language in Article 31, Section 6 regarding call out procedures that requires a second call. Nor is there any language in the work rule or its revision that requires a second call. I find however, that the record supports that prior to the work rule, employees would be called twice. The record confirms the practice before the work rule that when Marti went through the list the first time he would not call anyone that was on paid leave. Any employee could refuse to come in with the first call and the employee would not be disciplined. If Marti worked his way back up the list calling employees a second time, the employee had to come in. If the employee was unavailable to answer the second call or was unavailable to come in because of drinking, the employee was disciplined. The issue is whether this practice carried over once the work rule and its revisions were placed into effect on December 29,2000 and September 28, 2001. (Jt. 2 and 31)

Without discussing the work rules in detail at this point, the County had in the original work rule a system of six weekends or twelve plow days that employees could schedule off in addition to paid time off from October 1 through May 15 in order to give employees more opportunity to make themselves unavailable. The initial work rule was in effect at the time of the March 16th incident. There is nothing in the work rule that states how many times the County must call, once or twice. After the work rule was posted, the County held a meeting with the employees to go over the work rule. Four employees, including the Union steward, testified that at this meeting with County management they were explicitly told that the County would still make two calls. This testimony was not refuted or contradicted by County witnesses. The Highway Commissioner testified, as it regards his refusal of time off for an

employee on February 25, 2001 (Webb), that Webb could refuse the first call and if the County could fill the slots needed for a call out it was okay but that if called a second time because the County could not fill the slots, Webb would be expected to work. This understanding was confirmed by Highway Commissioner Cecil on Webb's request for time off. (Jt. 4)

I find that the practice of a second call was in effect on March 16, 2001 and therefore the employees on that date should have received a second call. The County may have believed that the work rule provided a method using plow days for all employees to schedule off when they wanted and protect themselves from being unavailable when called and therefore only one call was needed, however I find that this was never made clear to the employees after the work rule was implemented; it is clear the work rule language itself does not make this clear.

This confusion or lack of clarity works against the County. I find that the County was obligated on March 16, 2001 to make a second call to the employees. As to thirteen of the fifteen employees, I find that I must sustain their grievances. It is true that as testified to by employees Gutzmer and Foulker they would not have been home to receive a second call as they were basically out for the evening, and Marti could have completed a second call by 8:45 p.m. It can be reasonably presumed that other grievants were in the same position. Since these two employees would not have been available for a second call, arguably their discipline under the accepted call out system should stand. But I believe these thirteen employees were expected to be treated the same by the parties, and it would be unreasonable to single them out because they testified to support the Union's position as to no second call which was never in dispute. Therefore, my decision will be to sustain their grievances as well.

Two employees of the fifteen, DeNure and Brown, were treated separately by the parties. DeNure had been disciplined in December of 2000 for not being available; DeNure received a warning letter. (Jt. 8) On March 16, 2001, DeNure left after his shift ended, a Friday. The weather forecast was for no storms or adverse weather over the weekend. When called by Patrol Superintendent Marti at 7:48 p.m. that Friday evening, DeNure testified that he had drunk a couple of beers and therefore could not be available. DeNure, because of the previous discipline, received a one-half day suspension without pay. (Jt. 27)

The Union argues that DeNure should not have been disciplined, not because he did not receive a second call [clearly a second call would not have made any difference in his case], but that in a previous similar incident, an employee had been issued discipline which was later pulled. Union witness Intergand testified that his discipline in December of 2000 for being unavailable due to alcohol consumption had been pulled but that he did not know the reason why. Highway Superintendent Cecil testified that the discipline was pulled because it was before the work rule; this is how the County argued that the incident with DeNure was different because the work rule on March 16th was in effect. DeNure cannot use the defense of

the failure of a second call which abrogates the discipline of his fellow employees. While the facts appear to be the same except for the establishment of the work rule, one prior incident does not establish a precedent or a practice that the County has to follow. Therefore I find that the County had the right to discipline DeNure and that his grievance will be denied. Whether or not I find some or all of work rule one reasonable does not matter in the case of DeNure.

The other separate case is patrolman Brown who worked out of Brodhead, a community a few miles away from the County's main office and garage in Monroe. Brown needed to attend a funeral and on Friday, March 16th asked Patrol Superintendent Marti for one-half a personal day to attend an out-of-state funeral leaving at 11:00 a.m. [Whether it was a personal day or vacation day is not material]. Brown did not fill out a leave slip, but it is clear from the testimony that leave slips were not always filled out. Brown had previously asked Highway Commissioner Cecil for a plow day on March 17th which was approved. Brown therefore reasoned that he had the rest of the day off on the 16th and was covered for the 17th. Brown was called out but not available on March 16th and because of that and his previous unavailability discipline in December of 2000, (Jt. 5) received discipline of a suspension of one-half day, similar to DeNure. (Jt. 26)

I find this discipline to be unreasonable. While the County may have thought that the personal time should have on Friday, March 16th only lasted to the end of the work day and therefore Brown should have been available, the better interpretation of personal days under the labor agreement is that the day is a calendar day and therefore the 16th lasted until midnight. Brown could reasonably expect that having received approval he could plan on being off for the rest of the calendar day not just through the end of his shift. It could, particularly for these highway department employees, limit the use of a personal day if the employees had to ensure that they were back home by the end of their normal shift to be available; their only alternative then would be to use other paid time or a plow day from the end of the shift until midnight. This would not be reasonable. Therefore, Brown's grievance will be sustained.

I now turn my discussion and decision to the reasonableness of work rule no. 1 and its revision in effect at the time of the hearing, which I have attached as appendix A and B for the ease of review by the parties on receipt of this decision. There is no allegation by the Union that other than being unreasonable the work rule violates any term of the collective bargaining agreement. (Jt. 30) It does not violate the Call In article but is, as argued by the Union, an unnecessary and unreasonable extension of the article which has worked well in the past. I find based on the record testimony that there have been incidents in the past where the County has had an inadequate number of employees to man a full call out crew to handle adverse road conditions. To the public that pays the taxes, one time is enough. Therefore it is and was legitimate for the County to attempt to ensure that enough employees would always be available for a call out. This it tried to do by allowing more employees to not have to gamble on a weather forecast, particularly for a weekend, and by, in the work rule, establishing plow days where an employee could arrange in advance, in addition to paid time off, to be legitimately unavailable for a call out.

The Union argues that the work rule and its revision now tie the employee even more to his home. I find this position hard to understand and accept. Before the work rule, employees to ensure they would be legitimately unavailable had to use paid time such as vacation, sick leave or personal days. Further, pursuant to the vacation article of the agreement only six employees could be off at a time. With the work rule, employees could now also protect themselves with the addition of twelve plow days and nine employees would be allowed off at a time using plow days and paid time. Further, less senior employees would have more opportunity to have time off. Therefore I find that the work rule allows more employees off and fewer employees need to be tied to their home; this finding is supported by the testimony of fourteen year Union steward Moen who testified that nine employees off was reasonable. Terry Roth, a twenty-four year patrolman, testified that before the work rule the employees knew they had better stay home. While Roth testified that he also believes the work rule does the same thing, under the work rule the employees can still gamble on the forecast and not be home; exactly what happened in the case before me and exactly what the employees did before the work rule.

I do not believe the work rule is an unreasonable extension of the call in article; it gives greater certainty to the County of the number of employees it knows will be available, and it allows more employees to ensure their safety to take an evening and weekend off.

I now turn to an analysis of the work rule and its revision to determine what parts I find reasonable and what parts I find unreasonable

I will first discuss the work rule effective December 29, 2000, which I have attached as appendix A. I have numbered the paragraphs in Joint Exhibit 2 (appendix A) for ease of referral. Joint Exhibit A two has two pages that seem somewhat repetitive, but since I was given the exhibit without further explanation I consider it as is. I find paragraphs one, two, three and four reasonable. Paragraph five I find is reasonable but lacks clarity. I assume this applies to days not scheduled in December as set forth in paragraph three. I find paragraph six to be reasonable. Paragraph seven I do not find unreasonable but it appears repetitious. Paragraph eight is reasonable and is important to uphold the whole purpose of the rule that if an employee is scheduled off but is at home and is called, the employee can still refuse and not be disciplined. I find paragraph nine to be reasonable. It is not unreasonable on the County's part to ask for twenty-four hours notice for time off. Paragraph ten is reasonable but again seems repetitive, as does paragraph eleven, also reasonable. I find paragraphs twelve, thirteen and fourteen reasonable though again they could be combined with other paragraphs which is not necessary now as the work rule has been revised. I do find it unreasonable that the work rule did not address how many times an employee would be called even though I believe that management only felt with the work rule it had to go through the seniority list once. This unreasonable aspect is reflected in my upholding the grievances of the thirteen employees who were not called twice. However, answering the stipulated issue of the parties, I find the work rule reasonable except as noted.

The revised work rule of September 28, 2001, which I understand is now the only version of the work rule in effect, is Joint Exhibit 31. I refer to it as appendix B and since its paragraphs are numbered or bulleted I will refer to them as such. I find bullets one and two to be reasonable. I find the first numbered paragraph one to be reasonable. Paragraph two I find reasonable, and I note that after the original signup, employees can sign up for unlimited plow days. Paragraphs three and four I find reasonable, as well as five, six and seven. I find the third bulleted paragraph regarding advance notice for time off to be a reasonable requirement for advance notice. To this point, except for the twenty-four hour notice provision, Union steward Moen had no objection to the work rule revision's terms.

Moen's main concerns, as expressed on behalf of the Union, dealt at the hearing with those provisions of Joint 31 (Appendix B) that deal with pagers. Overall, I find the voluntary use of pagers to be reasonable, and therefore, I find the first paragraph under the Pager introductory bullet to be reasonable except for the sentence that states: "If lost or broken, the employer will replace it, however, the cost will be deducted from the employee's next paycheck" which I find unreasonable. Charging employees with lost or damaged property and deducting amounts from paychecks can be fraught with legal problems under applicable wage laws even if agreed to in a labor contract or work rules. It is better handled by discipline, and I question the reasonableness of this provision being unilaterally implemented. I find the first sentence of paragraph two to be unreasonable. Ten minutes is too short a time to respond to a page as the County seems to acknowledge in its brief. No evidence was offered at the hearing as to the range of the pagers, and I believe twenty minutes would be more reasonable, particularly if the call out is late at night when the availability of public phones in the County may be questionable. I find that paragraph three is reasonable. Moen testified that patrolmen are to report in thirty-five minutes and other employees have no set report time. I find this is the time after the employee with a pager makes contact with the County after being called on his pager. While I have found paragraph three to be reasonable, I recommend that the parties have more discussion on the report times. As to paragraph four under pagers, I find the first sentence which requires carrying the pagers year around to be unreasonable. The concern of the County at the hearing, and as shown by the scheduling provisions, is to cover the winter months. I would recommend that the pagers be carried from October 1 through May 15 as designated in the original work rule. I find the rest of paragraph four to be reasonable. Again, there is a lack of clarity on how many calls will be made. The language of paragraph four could be interpreted either way, although I would probably interpret it that the County is going to make just one call to those with pagers and just one call to those who do not carry them. This should be clarified and written into the work rule. Paragraphs 2 and 3 under pagers provide notice of possible discipline. I find this reasonable but suggest that language could be added "unless the employee was unable despite a reasonable effort to call (2) or report (3)."

By the time of this decision the parties will have had one winter season of experience under the revised work rule. It is apparent the employees have been using the work rule to schedule plow days. (Jt. 3 and 4) This experience should provide some guidance for the parties in clarifying the work rule and curing those provisions I have found unreasonable.

Based on the foregoing and the record as a whole, I issue the following

AWARD

The County violated the collective bargaining agreement when it disciplined all the employees in grievances Jt. 15-29 except Randy DeNure. The grievances as to those employees are sustained. The grievance of Randy DeNure is denied.

I find work rule one and its revision to be reasonable except for those provisions that I have found unreasonable.

REMEDY

All employees with the exception of Randy DeNure will have their disciplinary action removed from their personnel files and employees Brown, Foulker and Gutzmer, who were suspended for half a day, will receive back pay for that half day.

Those aspects of the work rules, issues one and two, that I have found unreasonable will be deleted. The recommendations as to the work rules are just that as I do not believe I was given the authority to mandate how the provisions of the work rule that I have found unreasonable or that need clarity should be modified or replaced.

Dated at Madison, Wisconsin, this 8th day of May, 2002.

Paul A. Hahn /s/

Paul A. Hahn, Arbitrator

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Jt. 2

Appendix A

WORK RULE NO. 1

TIME OFF REQUESTS

Effective as of December 29, 2000

1. Purpose: To ensure the efficient administration of the duties of the Green County Highway Department and to assure a fair allotment of time off.
2. This rule applies to all requests for time off including vacation, personal days, sick days when known in advance, and to winter plow days. Each employee shall be permitted up to six weekends (twelve days) off from winter plowing between the first of October and May 15. Winter plow days off will not be deducted from an employees (sic) vacation or sick leave banks.
3. All vacation shall be awarded in accordance with Article 20 of the current contract. Time off requests shall be selected on the basis of seniority in December of the outgoing year. Each employee will be allowed to select at this time all their vacation days, including any that will accrue to them in the ensuing year. Further, employees may also schedule their personal days, sick days (when known in advance), and their winter plow days.
4. Employees shall submit requests for all time off not scheduled as above at least 24 hours in advance. Winter plow day requests shall be submitted and approved no later than Thursday at 3:30 p.m. prior to the weekend in question.
5. No more than 6 employees will be allowed to schedule any particular day off for any reason without prior written approval of the Highway Commissioner or his designee. All days off will be on the basis of first come first serve except in the cases of when more than 6 employees want off, in which case they will be awarded on the basis of seniority.
6. Employees are urged to arrange time off in advance and are reminded that overtime is expected. Failure to respond to a request to work will be viewed as a refusal and will result in progressive discipline up to and including termination. Unless an employee has signed up for time off and it is approved, it is assumed that they are available for work. It is the employees (sic) responsibility to maintain current contact information in the office. Failure to do so will not be an excuse to discipline.

Scheduling Time Off

7. Vacation, personal, and sick time requests will be scheduled, by seniority, at the end of the year for the next year. Each employee, by seniority, will have the opportunity to schedule days off. After all employees have been given their turn

to request days off, it will be on a first come first serve basis. Employees are not required to schedule days off at this time, but to guarantee certain days off, it would be in your best interest.

8. Any employee with vacation, personal, or sick days scheduled off will not be considered for overtime for that day. If a full work crew can not be assembled, supervision will contact the employees with time off and ask them to work. No disciplinary action will be taken for a refusal from these employees.

9. Employees shall submit requests for all time off not scheduled as above at least 24 hours in advance. Employees may exchange approved days off, with another employee, with the approval of the Highway Commissioner or his designee.

Winter Plow Days Off

10. Each employee is permitted up to 12 days off from winter plow days between October 1st and May 15th.

11. Winter plow days off are intended so an employee may be excused from overtime work during the winter season. Winter plow days off will follow the same sign up schedule as vacation, personal, and sick days, as stated above.

12. Winter plow days are considered 12:00 a.m. to 7:00 a.m., 3:30 p.m. to 11:59 p.m. or weekends and holidays. Any employee with a winter plow day scheduled off will not be considered for overtime on that day. If a full work crew cannot be assembled, supervision will contact the employees with time off and ask them to work. No disciplinary action will be taken for a refusal from these employees.

13. Employees shall submit requests for all time off not scheduled as above at least 24 hours in advance. Employees may exchange approved days off, with another employee, with the approval of the Highway Commissioner or his designee.

14. Employees are urged to arrange time off in advance and are reminded that overtime is expected. Failure to respond to a request to work will be viewed as a refusal and will result in progressive discipline up to and including termination. Unless an employee has signed up for time off and it is approved, it is assumed that they are available for work. It is the employee's responsibility to maintain current contact information in the office. Failure to do so will not be an excuse to discipline.

Jt. 31

Appendix B

Work Rule #1
REVISED
September 28, 2001

- Purpose: To ensure the efficient administration of the duties of the Green County Highway Department and to assure a fair allotment of time off for all employees.
- This rule applies to all requests for time off including vacation, personal days, sick days when known in advance, and to winter plow days.

1. Initial sign up will be completed in December of each year for the next calendar year. Employees will be allowed to sign up for any or all of their vacation, personal or sick leave time when known in advance, by seniority, and up to 12 days of winter plow days off during the initial sign up.
2. After the initial sign up period for all employees is complete, all employees will be allowed to sign up for any additional vacation, personal days, sick days to which they are entitled, and for unlimited winter plow days. Sign up shall be on a first come, first serve basis.
3. At no time will more than six (6) employees be allowed to take off for vacation at one time.
4. At no time will more than nine (9) employees be allowed off for winter plow days, or for a combination of winter plow, vacation, sick or personal time.
5. All vacation shall be awarded in accordance with Article 20 of the current contract.
6. Winter plow days off will not be deducted from an employee's vacation or sick leave banks.
7. A winter plow day may be AM overtime, PM overtime, Saturday, Sunday or holiday, each of which will count as one plow day during the initial sign up.

- Employees shall submit requests for all time off not scheduled as above at least 24 hours in advance. Winter plow day requests which include a weekend shall be submitted for approval no later than Friday at noon prior to the weekend in question.
- Pagers will be made available, upon request, to each employee who is subject to this Work Rule.

1. Any pager issued to you is your responsibility. Pagers will be provided to employees at no cost and will be updated/replaced at no cost if they cease functioning due to ordinary wear and tear. If lost or broken, the employer will replace it, however, the cost will be deducted from the employee's next paycheck. Employees shall examine the pagers periodically to ensure they are functional. The employer will provide new batteries upon request at no cost.
2. When an employee receives a page, they shall respond via telephone within ten (10) minutes. Failure to do so may result in discipline.
3. All paged employees, who are required to report to work, shall do so within a reasonable amount of time or per the contract. In non-contract cases, reasonable shall be defined as an average of that employee's reporting times. Failure to so report may result in discipline.
4. For those employees who elect to carry a pager, the pagers will be used year round. However, the employer will continue to call the employee's home first. If contact is not made with the employee, the pager will be utilized. This shall constitute one call for the purposes of the call out.