

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**SAWYER COUNTY COURTHOUSE EMPLOYEES UNION
LOCAL 1213-C, AFSCME, AFL-CIO**

and

SAWYER COUNTY

Case 136
No. 60718
MA-11695

(Grievant Louise Ladenthin)

Appearances:

Mr. James E. Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1701 East 7th Street, Superior, Wisconsin 54880, appearing on behalf of the Union.

Weld, Riley, Prenz & Ricci, S.C., by **Attorney Kathryn J. Prenz**, 3624 Oakwood Hills Parkway, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the County.

ARBITRATION AWARD

Sawyer County Courthouse Employees Union, Local 1213-C, AFSCME, AFL-CIO, hereinafter the Union, with the concurrence of Sawyer County, hereinafter the County, requested the Wisconsin Employment Relations Commission to appoint a member of its staff to serve as Arbitrator to hear and decide the instant dispute involving Louise Ladenthin, hereinafter the Grievant, in accordance with the grievance and arbitration procedures contained in the parties' collective bargaining agreement, hereinafter the Agreement. The undersigned, Stephen G. Bohrer, was so designated. On April 8, 2002, a hearing was held in Hayward, Wisconsin. The hearing was not transcribed. On June 3, 2002, the parties submitted their initial briefs. On July 3, 2002, and after receiving each of the parties' written waiver of any reply briefs, the record was closed.

ISSUES

The parties did not agree on a statement of the issues. The Union would state the issues as follows:

1. Did the Employer violate the terms of the collective bargaining agreement when it denied the Grievant payment for longevity for the hours she worked as a County EMT?
2. And if so; the appropriate remedy is for the Employer to make the Grievant whole for any and all lost longevity payments for hours the Grievant worked as a County EMT.

The County would state the issues as follows:

1. Is the County required to apply the longevity rates to the hours worked by the Grievant as an EMT outside of her regular work day when such hours are voluntary, are not required by the County, and when such work has been treated by the parties as nonbargaining unit work?
2. If so, what is the appropriate remedy?

The Arbitrator states the issues as follows:

1. Did the County violate the Agreement when it did not apply the longevity rates to the hours worked by the Grievant as an Emergency Medical Technician outside of her regular work day?
2. If so, what is the appropriate remedy?

PERTINENT AGREEMENT PROVISIONS

ARTICLE 2 – RECOGNITION

The Employer recognizes the Union as the exclusive bargaining representative for all regular full-time and regular part-time employees of Sawyer County who work in the County Courthouse and annexes, excluding all professional

employees, all employees of the Health and Human Services Department, the County Highway Department and Law Enforcement personnel, also excluding all elected officials and all managerial, supervisory and confidential employees pursuant to certification by the Wisconsin Employment Relations Commission or as modified by mutual agreement on all matters with respect to wages, hours and conditions of employment.

. . .

APPENDIX A SALARY SCHEDULE

. . .

Longevity: Effective July 1, 2001, employees shall be paid longevity in accordance with the following schedule:

After five (5) years – 5 ¢ per hour
After ten (10) years – 10 ¢ per hour
After fifteen (15) years – 15 ¢ per hour
After twenty (20) years – 20 ¢ per hour
After twenty five (25) years – 25 ¢ per hour

BACKGROUND

The County is a municipal employer and operates an Emergency Ambulance Service Department. The Department provides ambulance services throughout the County and has four stations located at Hayward, Stone Lake, Radisson, and Winter, Wisconsin. The administrative office for the Department is located at the Hayward station where the Grievant and Administrator Brian Cody work. The Union represents various employees, including the Grievant.

The Grievant occupies the position of Ambulance Service Secretary I and has held that position since February 26, 1979. The following is the most recent update of the Grievant's job description, dated June 8, 1990:

1. Job Title: Clerk/Secretary/Emergency Medical Tech. for the Sawyer County Ambulance Service and Emergency Government Office.
2. Job functions and duties: Bookkeeping, typing, filing, receipting, general clerical knowledge.

Receipt all moneys – private pay, Medicare, insurance.

Bill for services rendered and send statements monthly.

Post and balance entries in ledger.

Maintain current records on affiliated Emergency Medical Technicians and their training.

Assist in setting up education for EMTs.

Maintain ambulance interiors including equipment and supplies.

Assist in developing emergency contingency plans.

Assist in filing reports for State and Federal offices.

Secretary for local Emergency Planning Committee (LEPC).

Assist Ambulance Administrator/Emergency Government Coordinator with daily duties.

3. Education and experience: Must be certified by the State of Wisconsin as an Emergency Medical Technician (WI State Statute 146.50, WI Administrative Code H20). Must keep this certification current at all times. Must be certified in C.P.R. at all times (AHA, BLS Course C, or American Red Cross C.P.R. for the Professional Rescuer). Must have valid WI vehicle operator's license.

4. Physical requirements: Must be mentally, physically and emotionally capable of performing said job description.

5. Age: Must be at least 18 years of age.

The Grievant and Cody are the only two persons that work out of the Hayward location. The Grievant's regular work day is from 8:00 a.m. to 4:00 p.m., Monday through Friday, and her duties are primarily clerical in nature. However, and during this time period, the Grievant also works as an Emergency Medical Technician (EMT). As an EMT, the Grievant is required to make ambulance runs on those occasions when the 911 Dispatcher places three unanswered calls for an ambulance to the other three ambulance stations.

On evenings and weekends, the Grievant works as an EMT crew member at one of the other three ambulance stations. She is one person in a pool of about eighty EMTs that work for the County of which forty EMTs actively make regular ambulance runs from the other three stations. The Grievant signs up for this work and it is voluntary in that the County does not require the Grievant to do this work. EMTs are not represented by a union.

The County unilaterally sets the wage rate for EMTs. At the time of the hearing, EMT work was paid at the rate of \$18.00 for the first hour, and \$11.00 per hour for every hour thereafter. The Grievant earned this EMT rate of pay regardless of where she performed the work. Thus, the Grievant received this rate of pay whether she performed EMT work during her regular work day or on evenings and weekends at the other three stations. Otherwise, and according to the Agreement, the Grievant was earning \$14.42 per hour effective January 1, 2001, and \$14.85 per hour effective January 1, 2002. The Union has played no role in negotiating the wage rates set for EMT work.

During bargaining, and as a part of the current Agreement, the parties negotiated and agreed to a new provision regarding longevity and as specifically enumerated above. Soon thereafter, the Grievant noticed that while she was receiving longevity payment for her EMT work during her regular work hours, she was not receiving such payment for those times when she worked as an EMT on evenings and weekends. On September 20, 2001, the Union filed a grievance alleging that the County had violated the longevity provision of the Agreement when it refused to pay the Grievant longevity pay for all hours worked as an EMT. The grievance was then advanced to arbitration.

Additional background information is set forth in the Positions of the Parties and in the Discussion below.

POSITIONS OF THE PARTIES

The Union

The Union makes three arguments in support of its assertion that the Grievant is entitled to longevity pay for her after hours work as an EMT. First, Appendix A of the Agreement states that employees shall be paid an additional longevity rate based upon their years of service for all hours worked. This language does not state that longevity shall only apply to "some hours worked," nor does it exclude any classification of employee from being eligible for longevity pay. Therefore, the Grievant is entitled to the longevity rate of pay for all hours worked since the Agreement became effective on July 1, 2001.

Second, the Grievant's EMT work is a part of her job duties. The very nature of EMT work cannot be confined to a regular work schedule. Therefore, the Agreement's longevity rate of pay should apply to the Grievant's EMT work at all times that she is performing it.

Third, the parties never intended during bargaining to exclude the longevity rate from any hours worked as an EMT. If there was such an intent, it would have been stated as an exclusion in the Agreement. Therefore, the evidence of bargaining history supports the Union's position.

With regard to the County's reliance upon a letter from its attorney to Administrator Cody, this is an opinion of how EMT hours should be treated under the federal Fair Labor Standards Act. This has nothing to do with the contractual obligations derived from the parties' Agreement. The issue before this Arbitrator deals with the Agreement and not an interpretation of federal law.

The County

The County makes four arguments in support of its assertion that the grievance should be denied. First, Article 2 states that the Agreement applies to regular full time and regular part time employees. While EMTs are employees of the County, they are neither regular full time nor regular part time employees. EMTs, at best, are casual voluntary employees. For example, bargaining unit employees Delores Cecil and Dian DeLong have chosen to work as EMTs outside of and in addition to their regular bargaining unit positions. The County has no authority to require Cecil and DeLong to work as EMTs outside of and in addition to their regular unit work and has no recourse if they refuse to do so. Although the County has on limited occasions required the Grievant to take ambulance runs during her regular work day and as a part of her regular job duties, this fact does not transfer her voluntary after-hours EMT work into bargaining unit work. The after hours EMT work is compensated at wage rates separate from the Agreement and has been unilaterally established by the County. The Union played no role in establishing the EMT wage rates and the Agreement makes no reference to the EMT position, its wage rate, or the hours of work for an EMT. Therefore, EMTs are not unit employees and the Agreement does not apply to non-bargaining unit work.

Second, the evidence of the parties' bargaining supports the County's position. Longevity was a new provision in the Agreement and was originally proposed by the Union. The three members of the County's negotiations committee, Shirley Suhsen, Arlene Brandt, and Don Trettin, all testified that throughout negotiations there was no discussion with regard to applying the longevity pay rate to EMT hours performed outside of the employees' regular performance of duties. They also testified that there was no discussion about applying the longevity pay rate to non-bargaining unit work and that the after hours EMT work is not covered by the Agreement. In addition, Suhsen testified that the Union never raised the issue that EMTs were regular part time employees. Since EMTs can reject work, this fact alone takes EMTs out of the definition of a regular part time employee. See, MANITOWOC COUNTY, DEC. NO. 18351-A (WERC, 3/83), JUNEAU COUNTY, DEC. NO. 18728-A (WERC, 1/86).

Any argument by the Union that the County should have inquired during negotiations whether longevity applies to non-bargaining work does not have merit. Such an argument is nonsensical since the parties were negotiating bargaining unit work. This is similar to the proposition that the County should have inquired during negotiations whether sick leave and vacation accrual applies to hours worked performing non-bargaining unit work.

Third, the evidence of the parties' past practice supports the County's position. On December 29, 1997, the County's labor counsel wrote a letter to Administrator Brian Cody regarding the Grievant's wage rate for her after hours EMT work and for overtime purposes. The Grievant responded to this letter in a note to Cody dated July 2, 1998, and acknowledged that her after hours EMT work is not subject to the wage rate under the Agreement. Thus, if those after hours EMT work are not subject to the Agreement's wage rate, then those same hours are also not subject to the Agreement's longevity provision.

Fourth, the Union's requested remedy is beyond the scope of the Arbitrator's authority. Article 6, Section F(3), states that the arbitrator shall not modify, add to or delete from the express terms of the Agreement. Article 2 provides that an employee must be a regular full time or a regular part time employee in order to be included in the bargaining unit. After hours EMT work does not fall into either of these categories. Therefore, this Arbitrator lacks authority to compel the application of longevity, a bargaining unit provision, to non-bargaining unit work.

DISCUSSION

The Grievant received payments pursuant to the longevity provision of the Agreement for those times when she was working her regular work hours. This included those instances when the Grievant worked as an EMT during her regular work hours. The Union takes issue with the County's decision to apply longevity only to the Grievant's EMT work during her regular work hours and not while she was working as an EMT at one of the other ambulance stations on evenings and weekends. Therefore, the issues for determination, and as determined by this Arbitrator, are whether the County violated the Agreement when it did not apply the longevity rates to the hours worked by the Grievant as an EMT outside her regular work day, and, if so, what is the appropriate remedy.

I agree with the Union that Appendix A of the Agreement is clear: all employees shall be paid longevity. However, Appendix A cannot be read in isolation. Appendix A must be understood in the context of the recognition clause provided for in Article 2 of the Agreement. This is because of the well established arbitral principle that portions must not be given independent construction and that a collective bargaining agreement must be construed as a whole. Elkouri & Elkouri, 5th Edition, p. 492 (1997).

Article 2 states that the Union represents “all regular full-time and regular part-time employees of Sawyer County who work in the County Courthouse and annexes. . . .” Putting aside the issue of whether the Grievant is a “regular full-time” or a “regular part-time” employee while doing after hours EMT work, this language in Article 2 limits the Agreement’s coverage to work done “in the County Courthouse and annexes.” Thus, if the Grievant’s after hours EMT work at the other three ambulance stations is done “in the County Courthouse and annexes,” then it can be said that it is bargaining unit work and the Agreement would apply, including longevity. If, on the other hand, the disputed work is not done “in the County Courthouse and annexes,” then it is considered non-bargaining unit work and the provisions of the Agreement would not apply.

When determining the parties’ contractual intent, arbitrators generally look to the express language of the agreement, statements made at precontract negotiations, bargaining history and past practice. Elkouri, supra, at 479. In this case, the meaning of the phrase “work in the County Courthouse and annexes” is not clear by its terms. It is unclear, from the language itself, what is meant by the term “annex” and whether the parties intended to include the County’s three ambulance stations, where the EMT crews perform their work, within the meaning of that term. Therefore, I look toward the evidence of the parties’ bargaining and the parties’ past practice for interpreting this phrase.

County witnesses Suhsen, Brandt and Trettin all testified that there was no discussion throughout the most recent negotiations with regard to applying the longevity pay rate to EMT hours performed outside of employees’ regular performance of duties. These three had been on the County’s negotiations committee for eight, twenty-two and four years, respectively. Based upon their prior years of bargaining experience, they did not expect to discuss this type of work during the most recent bargain. It had never been discussed before and, consequently, they did not expect it to be a part of this bargain. If the Union had raised the possibility, according to Suhsen, she definitely would have remembered. Further, she would have emphatically disagreed to bargain over this type of work. According to Brandt, she was under the impression that such work had never been on the union payroll. According to Trettin, if it had come up, he would have disagreed to applying the Agreement to this kind of work.

I find that this lack of discussion during bargaining with regard to after hours EMT work supports the County’s position. It was reasonable for the County to believe that the scope of the work which was being bargained had not changed. This absence of change is consistent with the evidence that the EMTs at the three other stations had never been represented and the County had always separately and unilaterally set their wage rates and with no input from the Union. Thus, any assertion made by the Union that the County was obligated at the most recent round of bargaining to state that the negotiations did not apply to such work does not have merit. I agree with the County that it does not make sense to intentionally exclude discussion during bargaining over work which the parties have historically not included.

In addition, it is significant that the County has no ability to discipline the Grievant if she refuses to perform her after hours EMT work. Contrary to any assertion by the Union, this work is not a part of the Grievant's job duties. A review of the Grievant's job description bears this out. Although the Grievant uses the same skills to perform both types of work, the evidence is that her after hours EMT work is voluntary and in addition to her regular duties. Further, there was no evidence that any provision under the Agreement had ever been applied to the Grievant, or anyone else, while performing after hours EMT work.

I do agree with the Union that the Grievant's after hours EMT work is important and valuable. Without a doubt, the Grievant's services in this regard are vital to her community and to the citizens of Sawyer County. However, the evidence is that this type of work is not the kind that the parties intended to be included as a part of their Agreement covering work done "in the Courthouse and annexes." Hence, such work is not bargaining unit work. When the County decided not to pay the Grievant a longevity rate for her work in that capacity, its actions, therefore, did not affect the Agreement.

With regard to the Grievant's note dated July 2, 1998, I find that the content is unclear and that it does not purport what the County asserts it to say. Therefore, I do not attach any significance to this document.

Finally, it should be noted that I make no conclusion with regard to whether the Grievant was working as a "regular part-time" or a "regular full-time" employee while performing her after hours EMT work. A determination of this is not necessary.

In conclusion, the evidence supports the view that the parties did not intend that after hours EMT work be included within the meaning of the phrase "in the County Courthouse and annexes" and as a part of the recognition clause in Article 2 of the Agreement. Therefore, I find that such work is non-bargaining unit work and the County's decision not to pay the Grievant the Agreement's longevity rate for after hours EMT work is not a violation of the Agreement.

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

AWARD

The County did not violate the Agreement when it did not apply the longevity rates to the hours worked by the Grievant as an Emergency Medical Technician outside of her regular work day. Therefore, the grievance is denied.

Dated at Eau Claire, Wisconsin this 15th day of October, 2002.

Stephen G. Bohrer /s/

Stephen G. Bohrer, Arbitrator

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