BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

PLATT CONSTRUCTION COMPANY

and

OPERATIVE PLASTERERS' AND CEMENT MASONS LOCAL UNION NO. 599

Case 2
No. 72041
A-6550

Appearances:

Mathew R. Robbins, The Previant Law Firm, 1555 North Rivercenter Drive, Suite 202, Milwaukee Wisconsin 53212, for the Union.

Michael Peratt, Corporate Secretary, 7407 South 27th Street, Franklin, Wisconsin 53132, for Platt Construction, Inc.

ARBITRATION AWARD

Pursuant to the terms of the 2011-2016 contract, the Union asked the Wisconsin Employment Relations Commission to assign an arbitrator to decide a fringe benefit grievance. I was assigned to the matter. The Employer agreed the grievance should proceed to arbitration and a hearing was held in Franklin, Wisconsin on June 18, 2013. There is no transcript of the hearing and the parties made oral arguments at its conclusion.

ISSUE

At the beginning of the hearing, the parties agreed that the issue to be decided is:

> Did the Employer violate the contract when it failed to make fringe benefit contributions for a bargaining unit employee while on light duty? If so, what remedy is appropriate?

DISCUSSION

A bargaining unit employee was injured on the job and unable to perform bargaining unit work. The Employer brought him back off workers compensation to do light duty non-bargaining unit work.

Article 20, Section 1 of the Heavy and Highway Construction contract states in relevant part:

> The Employer shall for each hour worked by an employee make fringe benefit contributions . . .

The Union argues that this contract language clearly spells out the Employer's fringe benefit obligations for any work performed by a bargaining unit employee. The Employer asserts that this contractual obligation is limited to hours of bargaining unit work. The Employer argues that because there is no contractual reference to payment of fringe benefits for light duty work (unlike specific light duty provisions in the Union's Building Trades contract), it has no contractual fringe benefit obligation as to such work.

The Employer's position is not an unreasonable one. However, it asks me to conclude that the intent of the parties is best established by words that are not in the contract (i.e. the absence of a light duty provision specifying an obligation to pay fringe benefits) than by those words that are present. My role is to interpret the words of the contract as written. Because the contractual phrase "each hour worked" does not exclude hours of light duty work, I conclude the Union must prevail.

As a remedy, the Employer shall make the fringe benefit contributions for the hours of light duty work performed by the employee.

Dated at Madison, Wisconsin, this 26th day of June, 2013.

Peter G. Davis /s/

Peter G. Davis, Arbitrator

PGD/gjc
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