

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 PORTAGE COUNTY DEPUTY SHERIFF'S : Case 86
 ASSOCIATION, WPPA/LEER DIVISION : No. 45625
 : MA-6678
 and :
 :
 PORTAGE COUNTY :
 :

Appearances:

Steven J. Urso, Representative, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 7 North Pinckney Street, Suite 220, Madison, WI 53703, appearing on behalf of the Portage County Deputy Sheriff's Association.
Philip H. Deger, Personnel Director, Portage County, 1516 Church Street, Stevens Point, WI 54481, appearing on behalf of Portage County.

ARBITRATION AWARD

Portage County Deputy Sheriff's Association, WPPA/LEER Division (hereinafter Association), and Portage County (hereinafter Employer or County) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an impartial arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On April 12, 1991, the Association filed a request to initiate grievance arbitration with the Commission. The County concurred in said request and on May 31, 1991, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing in the matter was held on August 29, 1991, in Stevens Point, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs or the waiver thereof, the last of which was received December 4, 1991. Full consideration has been given to the evidence and arguments of the parties in reaching this decision.

STATEMENT OF FACTS

Deputy Baumhofer was off-duty when he was called at home by the District Attorney's office on September 24 and by the Corporation Counsel's office on September 26. Said telephone calls were business related and each lasted approximately 30 minutes. On September 24, 1990, Deputy Koehmstedt was off-duty when he received a business related telephone call from the District Attorney's office. The record does not show the length of the call.

Both deputies (hereinafter Grievants) applied for call-in pay and overtime for all time actually worked. They were paid for the time actually worked but were denied call-in pay. Grievance 90-195 was filed on October 12, 1990, seeking call-in pay. The grievance was processed through the grievance procedure and is properly before this Arbitrator.

PERTINENT CONTRACT LANGUAGE

SECTION XV - HOURS OF WORK

A.Normal Work Week: Employees shall work a work week averaging forty (40) hours based on a 2088 hour annual schedule prepared by the Sheriff. Prior to any change in work schedule, the Sheriff shall confer with the Association and give consideration to any recommendations of the Association. The present schedule shall be administered by the Sheriff in accordance with past decisions on offsets for employees. This shall not interfere with the Sheriff's authority to change work schedules.

. . .

C.Overtime: All permanent full-time employees of the department performing work in excess of the standard work day or work week as called for in Paragraph "A" above, (sic) shall be compensated at the rate of one-and-one-half (1-1/2) their hourly rate of pay or compensatory time off at the rate of one-and-one-half (1-1/2) at the discretion of the employee. If the employee chooses compensatory time off, the Sheriff may schedule the compensatory time off at his discretion. The hourly rate shall be determined by the monthly rate divided by one-hundred-seventy-three (173).

. . .

SECTION XX - CALL-IN AND STEP-UP PAY

A.When an employee is called to duty outside his normal shift, he shall be compensated at a rate of time-and-one-half based upon his normal hourly rate and such employee shall received a minimum of two (2) hours compensation at the time-and-one-half rate in addition to all hours worked. An employee shall not be entitled to a minimum of two (2) hours compensation when he is instructed to report early for a particular shift, provided that it is less than two (2) hours immediately contiguous to the start of his shift, or is required to remain after the close of his shift.

B.When an employee is ordered to appear in court or to attend a department meeting and is failed to be notified that either has been cancelled, and reports at the specific time, the employee shall be compensated at the rate of time-and-one-half his normal rate for the appropriate minimum hours. An employee shall received a minimum of thirty six (36) hours notice for court appearances. If the court appearance is cancelled, call-in time will still apply if within thirty six (36) hours prior to scheduled trial.

ISSUE

The parties stipulated to framing the issue as follows:

Did the County violated the labor agreement by not paying call-in to Deputies Baumhofer and Koehmstedt for the three separate occasions when they were called at home by the District Attorney and the Corporation Counsel?

If so, what should the remedy be?

POSITION OF THE PARTIES

The Association argues that the contract language speaks for itself; that the only circumstances that are specifically excluded from call-in pay involve work immediately contiguous within two hours of the start of the shift and those hours at the end of the regular shift which extend the shift; that neither of these situations are involved here; that the County did not present any evidence contradicting the Grievants' right to call-in pay; that the County did not present any evidence nor call any witnesses suggesting that call-in pay did not apply to the situation involved herein or that the intent of the contract language was other than what the Association claims it is; that prior history supports the Association's position; and that it cannot be concluded that the Grievants had no requirement to respond to calls they received on business matters while at home. For a remedy, the Association seeks imposition of a policy previously used by the parties to resolve a similar dispute but which policy has since expired by agreement of the parties.

The County argues that the common understanding of the phrase "called to duty" is not applicable to relatively infrequent and brief telephone conversations to an employee at home; that the Association has failed to bargain a specific telephone consultation pay clause; that the agreement specifically deals with two categories of off-duty contact: court time and department meetings; that it is conspicuously silent in regard to off-duty telephone consultations; that the side letter agreement entered into by the parties to resolve a similar dispute supplanted the language found in the agreement and was not a mere interpretation of the agreement's call-in provision; that said side letter agreement, by its own terms, expired on December 31, 1985, unless it was renewed by written agreement of the parties, which did not occur; that the side letter agreement was intended to have no precedential effect in construing the language found in the agreement; that the County has consistently denied requests for such pay in the past; and that off-duty employees are not obligated to take such telephone calls. The County requests that the grievance be denied.

DISCUSSION

Under Section XV - Hours of Work, the parties agree that hours worked over the standard work day or week are compensated at one-and-one-half times the hourly rate. Thus, it is clear that if the telephone calls in question were in excess of the normal work day or week, these Grievants should be compensated at one-and-one-half times their hourly rate. The record appears to indicate that this did, indeed, happen.

But the Association argues that Section XX -- Call-In and Step-Up Pay requires that the Grievants also be paid a minimum two hours compensation at time-and-one-half in addition to the time actually worked. The County argues that call-in pay does not apply in this circumstance. Thus, the question is

whether a telephone call received at home comes within the definition of "call-in". Under the Association's interpretation of the term "call-in", said term applies to anytime an employe works outside the normal work day or work week, except for those circumstances specifically excluded in the contract. The County defines the term much more narrowly.

"Call-in pay" has been defined as follows:

The number of hours of pay guaranteed, usually by contract, to a worker who reports to work. . . call-in pay applies to a guarantee of a minimum number of hours when the worker is called in on a day on which he otherwise would not be scheduled to work. . . . 1/

One purpose of call-in pay is to compensate an employe for having to get ready for work and to travel to and from the work site on a day or at a time when the employe normally has off from work. Call-in pay in one way or another guarantees the employe a certain amount of pay in order to make the trip financially worthwhile for the employe called-in and to compensate the employe for the inconvenience caused by being called-in to work. Under this contract, employes receive premium pay of two hours at time-and-a-half for call-in pay, in addition to any hours actually worked paid at the appropriate rate. Another purpose of call-in pay is to discourage an employer from having an employe work on an off day by making it expensive for the employer to do so.

In the case at hand, we have a call; we do not have a call-in. The Grievants did have to work; talking to the District Attorney or the Corporation Counsel on the telephone about job related matters is work which must be compensated. The record appears to indicate that this did occur in this situation--the Grievants apparently received overtime for the time of the telephone call. But the Grievants did not have to do any of the activity associated with a call-in. They did not have to get ready for work, nor did they have to travel to the job site. They did not have to do so because this was a call, not a call-in. It was work, compensable at the overtime rate, but it was not a call-in compensable with the call-in premium pay required by Section XX of the contract.

Under the Association's theory of this case, the distinction between overtime pay and call-in pay is eliminated, except in those situations specifically excluded from call-in pay by the contract. That is not the purpose of call-in pay in general, nor did the Association convince me that was the purpose of the parties in creating Section XX. Call-in is a very specific type of overtime. It refers to the situation in which an employer contacts an off-duty employe and directs the employe to report to a job site. That did not happen here. The Grievants were called at home; they were not called in to work. Thus, Section XX - Call-In and Step-Up Pay of the contract does not apply to the circumstances of this case.

Even if Section XX did apply in this situation, the Arbitrator could not provide the remedy requested by the Association. The expired policy previously agreed to by the parties to resolve an earlier call-in dispute is a matter that must be negotiated into the contract by the parties, not imposed by a grievance arbitrator. If Section XX had applied in this situation, the remedy would have

1/ Harold S. Roberts, Roberts' Dictionary of Industrial Relations, Third Edition, (BNA, 1986).

been to order the Employer to pay the Grievants the call-in premium pay of two hours at time-and-a-half for each call-in. Such a remedy enforces the contract. The Association's proposed remedy would have the Arbitrator modify the contract, an action outside the arbitrator's scope of jurisdiction.

For the reasons stated above, the Arbitrator issues the following

AWARD

1. That the County did not violate the labor agreement by not paying call-in pay to Deputies Baumhofer and Koehmstedt for the three separate occasions when they were called at home by the District Attorney and the Corporation Counsel.

2. That the grievance is hereby denied and dismissed.

Dated at Madison, Wisconsin, this 7th day of February, 1992.

By _____
James W. Engmann, Arbitrator