

ARTICLE 17. HOURS OF SERVICE AND OVERTIME

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Employees are required to work reasonable overtime as requested by management.

When it becomes necessary to work overtime, employees shall not be laid off during regular work hours to equalize time.

Overtime shall be equally distributed within the crew. Overtime needed from outside the crews shall be rotated beginning with the most senior man providing the employees are able to do the job. Hours refused shall be charged against the employee.

BACKGROUND & THE PARTIES' POSITIONS:

The Company manufactures specialty precast concrete, such as sewer pipe and other products. The Grievant, Daniel Dorr, is a machine operator who has been with the Company since June of 1987. At the time this grievance arose, Dorr stood 14th in seniority out of 29 employees.

On Saturday, May 16, 1992, 1/ the Company operated a crew on an overtime basis. The Company needed three functions performed -- it needed trucks loaded, benches built, and special structures built. Company President Bill Sweeney told his plant manager on the previous Friday to decide how many employees were needed for Saturday and to follow the contract for purposes of selecting employees by seniority and to get as many as needed. The plant manager said he needed seven employees, and seven employees on the seniority list were selected. Sweeney added two new employees -- Tim Fugate and Gary Kitelinger -- in order to get them trained. Fugate started his employment on April 27 and worked on making benches. Kitelinger started his employment on May 4 and worked on special structures.

Dorr has no dispute with the Company calling in Fugate, but disputes that Kitelinger should have been offered an opportunity for overtime when Dorr was not similarly offered the Saturday overtime. Although Dorr does not work on special structures as part of his regular job, he has performed such work to fill in. On May 15, he worked on the same structure that Kitelinger worked on during the Saturday May 16th overtime assignment, when Kitelinger worked with veteran employee Ruben Castaneula.

Sweeney estimates that it takes between 20 to 90 days for new employees to learn to make benches and special structures by themselves. May is the beginning of the busy season for the Company, and Fugate and Kitelinger had just started, with Kitelinger having only two weeks on the job up to the Saturday in question. Although Dorr never had any formal training on special structures, he has the experience to perform such work. Dorr believes that Kitelinger was already broken in on the job, and that the Company used him on May 16th because he would be making about \$9.00 an hour on overtime, compared to Dorr's overtime rate of about \$17.00.

The Company purchased this business two years ago, and admits that in the past, it never trained new employees on an overtime basis, but felt that its lack of training in the past was a mistake. Last year, six employees were assigned to special products, and only one of them is still there. Sweeney

1/ All dates refer to 1992 unless otherwise stated.

believes that such turnover was partly due to the lack of training, as well as the fact that some of those employees were not high quality workers. The Company's approach this year was to hire better quality employees and put more emphasis on training.

The Union argues that a more senior employee who was experienced and willing to perform overtime should have been offered the opportunity for overtime on May 16th, rather than new employees. The Union notes that in the past, the Company has not trained new employees on an overtime basis. The Company responds by noting that it was to its own detriment and expense to bring in new employees on an overtime basis for training, and that even if Fugate and Kitelinger had not worked on May 16th, Dorr would not have been offered overtime since the Company needed only seven regular employees, and it had already taken the top seven in order of seniority.

The Union asks that the Grievant be made whole for seven hours of lost overtime, and the Company asks that the grievance be dismissed.

DISCUSSION:

The Company has not violated the collective bargaining agreement by failing to offer Dorr an opportunity for overtime on May 16th. It did not violate the maintenance of standards clause, Article 4, as it was improving a training standard at its own expense and not at the expense of other employees.

It did not violate Article 17, because it selected employees for overtime work on May 16th in accordance with the seniority distribution requirement. Even if the Company did not ask Fugate and Kitelinger to come in for training on an overtime basis, the Company would not have asked Dorr to work on May 16th, because it already had the seven employees it needed for that day.

Dorr's main concern is that the day before, he was working on the same structure Kitelinger worked on for overtime, and Dorr believes that the Company attempted to save money by using Kitelinger at a lower wage rate. However, when the Company determined that it only needed seven employees and added Fugate and Kitelinger for training purposes, it was at the Company's extra expense, and not at Dorr's expense, since Dorr would not have been offered overtime in any event.

The Union has a legitimate interest in seeing that the Company does not use training as a subterfuge to undermine the collective bargaining agreement or the rights of more senior employees to be offered overtime first. However, on the facts of this case, an employee with two weeks of employment was not being used to undercut overtime opportunities for higher paid employees. Even if Dorr had no formal training on special structures and the Company had previously trained new employees on straight time, the Company was entitled to step up its training where it did not violate the collective bargaining agreement and where it did so at its own extra expense and without violating the rights of a more senior employee.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 21st day of August, 1992.

By _____
Karen J. Mawhinney, Arbitrator