BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
KAUKAUNA CITY EMPLOYEES UNION, LOCAL 130, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO	:	Case 70 No. 47517 MA-7294
and	:	
CITY OF KAUKAUNA	:	

Appearances:
Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Bruce Patterson, Employee Relations Consultant, appearing on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the City or Employer respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing was held on August 19, 1992, in Kaukauna, Wisconsin. The hearing was not transcribed. Afterwards, the parties filed briefs, whereupon the record was closed October 13, 1992. Based on the entire record, I issue the following Award.

ISSUE

The parties stipulated to the following issue:

> Did the City violate Article IV, Sections 1, 2 or 4 or Article V, Sections 4 or 6 of the parties' collective bargaining agreement when it did not call in the grievant on February 16, 1992 to work overtime? If so, what should the remedy be?

PERTINENT CONTRACT PROVISIONS

The parties' 1991-92 collective bargaining agreement contains the following pertinent provisions:

ARTICLE IV

SENIORITY - LAYOFF

SECTION 1. The Employer agrees to recognize seniority.

Section 2. Seniority is defined to be the total time elapsed since the date of original employment, provided, however, that no time prior to discharge for cause or a quit shall be included, and provided that seniority shall not be diminished by temporary layoff or leaves of absence or contingencies beyond the control of the parties to this Agreement.

. . .

Section 4. A seniority roster will be maintained showing the names and date of promotion. The seniority list as attached is correct as of January 1, 1992, Appendix "B".

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ARTICLE V

NORMAL WORK DAY AND WORK WEEK

. . .

Section 4. When calling employees to work overtime, they will be called in the order that they appear on the seniority roster, within their classification.

. . .

Section 6. Sunday Work: Double time (2x) shall be paid for all hours worked on Sunday.

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ARTICLE XVI

MANAGEMENT RIGHTS

Except as otherwise specifically provided herein, the Management of the City of Kaukauna and the direction of the work force, including but not limited to the right to hire, to discipline or discharge for proper cause, to decide job qualifications, to lay off for lack of work or funds, to abolish positions, to make

reasonable rules and regulations governing conduct and safety, to determine schedules of work, to sub-contract work (no employee shall be laid off due to the subcontract provision), together with the right to determine the methods, processes, and manner of performing work, are vested exclusively in Management.

FACTS

The facts are undisputed. On Saturday, February 15, 1992, 1/ certain Street Department employes worked overtime removing snow. The work was not completed that day and the City decided to continue the project the next day. Eight employes were directed to report to work the next day: four heavy equipment operators and four truck drivers. The eight employes chosen for this overtime work were selected because of their seniority in the classifications needed (i.e. heavy equipment operator and truck driver). Gordon Van Dera, a truck driver, was told he would not be needed the next day as enough truck drivers were already scheduled to work.

On Sunday, February 16, the snow removal work proceeded as planned. The heavy equipment operators started working at 3:00 a.m. to prepare the snow for removal and the truck drivers began hauling the snow away at 5:00 a.m. Several hours into the project, one of the heavy equipment operators completed the work he could perform with his grader. At that point, he was directed by the Street Department foreman to park his grader and drive a truck hauling snow which he did for the next two and one-quarter hours until the entire snow removal project was finished.

When Gordon Van Dera learned of the foregoing, he filed the instant grievance which contended he should have been called into work to drive the truck at that point in the project when the heavy equipment operator began driving truck. Van Dera had more seniority than the heavy equipment operator who drove the truck during the February 16 snow removal. Had the City decided to call in more than four truck drivers that day, Van Dera would have been the next employe called in based on his seniority.

The record indicates that during the regular work day, employes in the Street Department are regularly transferred from one classification to another. For example, heavy equipment operators can be, and are, assigned to drive truck. Employes who are assigned to a higher position are paid the higher rate for the time outside their regular classifications, while employes who are assigned to a lower position continue to receive their regular rate of pay. Insofar as the record shows, this was the first time employes were transferred from one classification to another during an overtime situation.

1/ All dates hereinafter refer to 1992.

POSITIONS OF THE PARTIES

The Union' s position is that the City violated the labor agreement when it did not call in the grievant to work overtime on February 16, 1992. The Union acknowledges in this regard that during the regular workday, employes are readily transferred between classifications. However, according to the Union there is a "substantive difference" between what occurs during a regularly scheduled workday and what happens when overtime is involved. It asserts that when overtime is involved, seniority has always been the primary consideration in determining who will be assigned the available overtime. In the Union's view, what the City did here is find an "end around" seniority by maintaining that they now have the right to reassign work among those working overtime. The Union believes that if the City's new interpretation on overtime is found valid, this will undercut the role that seniority has historically played in the department. The Union asks the arbitrator to see through this maneuver and not allow this assault on the seniority principle to prevail. Focusing attention on the events of February 16, the Union also submits that the City should have known when they made the assignment in question that they would be one truck driver short because of how they scheduled individuals, and they should have scheduled back-up within the truck driver classification. According to the Union, the City could have either scheduled Van Dera to work that day or they should have been prepared to call him in when another truck driver was needed. The Union emphasizes though that it never told the City how to treat the employes it already called into work. In order to remedy this contractual breach, the Union requests that the grievance be sustained and the grievant made whole for the wages he would have earned that day. In the Union' s view, a makewhole remedy should consist of two hours of pay at straight time (i.e., call-in pay) and two and one-quarter hours at double time (i.e., the actual time spent by the heavy equipment operator on the truck).

The City's position is that it did not violate the labor agreement when it did not call in the grievant to work overtime on February 16, 1992. As background to support its position, the City notes that it regularly transfers employes from one classification to another during the workday in order to accomplish its tasks. Additionally, it notes that there is no contractual provision which requires work assignment by classification, nor is there any such practice evident from the record. Given the foregoing, the City believes it can likewise transfer employes from one classification to another in overtime situations, such as the one that occurred February 16. According to the City, the nature of the snow removal operation on that date at one point required more employes to drive truck than it did to operate heavy equipment. The Street Department foreman determined that another employe was not needed for the project and that those eight employes then working at the job site could finish the work. The City believes there is no foundation in the labor agreement for the Union's contention that the City was required to call in a truck driver at that point in the operation when a heavy equipment operator began driving the truck. In the City's view, it acted in a businesslike fashion in scheduling employes for an overtime work assignment on February 16 and also provided a staffing level which was normal for the nature of the work load on that date. The City therefore requests that the grievance be denied.

DISCUSSION

At issue here is whether the City complied with its contractual obligations when it assigned overtime for the snow hauling project on February 16, 1992. The City contends that it did while the Union disputes this assertion.

What happened here was that the City determined it needed a crew of eight employes to complete a particular snow removal project. It selected the following employes for the project: four heavy equipment operators and four truck drivers. At some point during the project, a heavy equipment operator was assigned to drive a truck. The Union submits that the grievant, who was not part of the eight employes originally selected to work overtime on that date, should have been called in at that point in the operation when a heavy equipment operator was assigned to drive a truck because he (the grievant) was senior to the heavy equipment operator who drove the truck.

In deciding whether the City complied with the contract or violated same by its actions on February 16, my analysis begins with a review of the pertinent contract language. Seniority is recognized and defined in the first two sections of Article IV. Seniority is applied to overtime in Article V, Section 4. That section provides that employes will be called in for overtime work based on seniority in their classification. Under this provision, eligibility for overtime is based on "seniority within their classification." Here, the City decided at the outset that the crew it needed for the project was four heavy equipment operators and four truck drivers, so the employes selected for the overtime work should have been the four most senior in those two classifications. They were. That being the case, there is no question that the City's selection of the eight original employes for the overtime project complied with Article V, Section 4.

The real issue in this case involves what happened after the aforementioned crew was set for the snow hauling project. As previously noted, at some point during the project the Street Department foreman decided that more truck drivers were needed than heavy equipment operators. He decided though to not call in another truck driver. Instead, he reassigned a heavy equipment operator to drive a truck. The operator so assigned had less seniority than the grievant. The Union contends that because the grievant was senior to the heavy equipment operator, he (the grievant) should have been called in at that point in the project when the heavy equipment operator was assigned to drive a truck. I disagree. To begin with, it is noted that there is no contractual provision which requires work assignments to be made by classification. For example, there is nothing in the contract that limits employes to operating just one type of equipment or restricts the transfer of employes from one classification, or type of equipment, to another. That being so, the Employer is not contractually precluded from moving employes from one piece of equipment to another. Additionally, no such practice is evident from the record. In fact, the practice is just the opposite. The record indicates in this regard that the City regularly transfers employes from one classification, or type of equipment, to another during the work day in order to complete job tasks. While the Union attempts to distinguish this fact by contending that there is a "substantive difference" between what occurs during a regular workday and what happens in an

overtime situation, the undersigned is not so persuaded. In my view, there is no contractual support for such a proposition. Since the Employer can transfer employes from one classification to another during the workday, the undersigned believes it is implicit from the Management Rights clause (Article XVI) that it can also do so in overtime situations outside the regular workday. Given the foregoing, it is held that the Employer was not contractually required to bring in a truck driver, specifically the grievant, at that point in the snow removal project when a heavy equipment operator was assigned to drive a truck. It therefore follows then that the City's failure to call in the grievant on February 16 to work overtime was not a contractual violation.

In so finding, the undersigned is well aware that this decision undercuts the role that seniority has historically played in the Street Department in overtime situations. As a practical matter, the Employer has found an "end around" seniority in overtime situations, such as the one that occurred February 16, by reassigning work among those employes working overtime. Be that as it may, there is nothing in the contract at present that precludes the Employer from doing so (i.e., reassigning work among those employes working overtime).

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the City did not violate Article IV, Sections 1, 2 or 4 or Article V, Sections 4 or 6 of the parties' collective bargaining agreement when it did not call in the grievant on February 16, 1992 to work overtime. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 16th day of December, 1992.

By

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Raleigh Jones, Arbitrator

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