

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 : Case 96
 JUNEAU COUNTY HIGHWAY EMPLOYEES, : No. 47600
 LOCAL 569, AFSCME, AFL-CIO : MA-7321
 :
 and :
 :
 JUNEAU COUNTY (HIGHWAY DEPARTMENT) :
 :

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME,
Ms. Angeline D. Miller, Juneau County Corporation Counsel, on behalf of

AFL-CIO
 Juneau

ARBITRATION AWARD

Juneau County Highway Employees, Local 569, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a member of its staff to arbitrate in a dispute between the Union and Juneau County, hereinafter the County, in accordance with the grievance and arbitration provision in the parties' labor agreement. 1/ The County subsequently concurred in the request and the undersigned, David E. Shaw of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on October 7, 1992 in Mauston, Wisconsin. A stenographic transcript was not made of the hearing and the parties presented oral argument. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to agree on a statement of the issues.

The Union states the issues as follows:

Did the Employer violate the Collective Bargaining Agreement by its actions of February 18, 1992? If so, what is the appropriate remedy?

1/ The parties waived the Arbitration Board and the thirty-day time limit to issue an award.

The County states the issues as being:

- 1.) Can management allow Truck Drivers to make minor repairs on their vehicles to expedite efficiency of operations?
- 2.) Can management determine when an employe is "needed" for after-regular hours work?

Being unable to agree on a statement of the issues, the parties have agreed that the Arbitrator would frame the issues to be decided within the parameters of the parties' statements of the issues. The issues to be decided may be stated as follows:

Did the County violate the parties' Collective Bargaining Agreement by having employes Bell and Keichinger repair the salt spreader pan on Bell's truck the evening of February 18, 1992, instead of calling in the most senior mechanic, Bell, to do the repair?

If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 1992-1993 Agreement are cited:

ARTICLE VII - EMPLOYER'S RIGHTS

Subject to the provisions of this contract and applicable law, the County possesses the right to operate county government and all management rights repose in it. These rights include, but are not necessarily limited to the following:

A. To direct all operations of the County;

. . . .

C. To hire, promote, transfer, schedule and assign employees to positions within the county highway department;

. . . .

F. To maintain efficiency of county government operations;

G. To take reasonable action necessary to carry out the functions of the County in situations of emergency;

. . .

ARTICLE XX - MISCELLANEOUS PROVISIONS

. . .

8. Any employee working in a higher paid classification shall receive the higher rate of pay for all hours worked that day.

9. Two (2) employees shall be assigned together in brush and tree cutting. A mechanic shall be on duty at the county shop during all major storms, during the six (6) month period commencing November 1. All salters and sanders shall be equipped with amber lights to light the salt and sand distribution.

. . .

16. Whenever an employee is needed for any situation outside of regular working hours, the most senior person in each classification shall be called first. If he/she cannot come, the next senior person in that classification shall be called and so on, until each one in that classification is given a chance to respond to overtime. When this is exhausted, the personnel from other classifications shall be called according to seniority.

BACKGROUND

The County maintains and operates the Juneau County Highway Department and the Union is the collective bargaining representative for all regular full-time and regular part-time employees of the Highway Department. The instant grievance concerns management's actions on February 18, 1992.

On February 18, 1992 it had been snowing and sleeting during the day and Highway Department crews had been out plowing, sanding and salting; however, by the normal quitting time (3:30 p.m.) that day there was no precipitation falling and no more precipitation was forecast for that day. As he was punching out, Bell, an Operator in the Department, advised the County Highway Superintendent Dennis Dodge, that he had bent the pan on the salt spreader on his truck (No. 45). He explained that he had started to raise the box on the truck, momentarily forgetting he had a hitch on the truck. He then remembered the hitch and stopped, slightly bending the pan. Dodge told Bell that if it was minor, they could take care of it the next morning. The Grievant, Wells, a Mechanic in the Department, worked until 4:00 p.m. that day.

At approximately 8:00 p.m. on February 18th, the Juneau County Sheriff's Department called Dodge and advised him that it was raining and the roads were beginning to ice over. Dodge then went out and checked the roads and found that some were beginning to ice over. He then went to the Highway Shop and he and the State Highway Superintendent, Potter, began calling in all of the employees who usually plow. Bell and another operator, Keichinger, reported in at 8:57 p.m. and 8:55 p.m., respectively. Bell reminded Dodge that the pan on his truck was bent. If the pan is bent, the auger will hit the pan and wear a hole in it at that spot. Dodge told Bell that if it was something that could be taken care of in a few minutes, he should do it, and if it was not, he should take a different truck. Bell told Dodge that it was "minor". Bell and

Keichinger then left to get truck No. 45 and repair the pan. Dodge estimated it took the two of them less than 15 minutes to repair the pan, testifying that he went out into the Shop at approximately 9:10 p.m. and they were just lowering the truck down off the jacks. Bell and Keichinger used a torch to heat the metal of the pan and then used a jack to bend the pan sufficiently for the auger to clear it. Wells was not called in to make the repairs on Truck No. 45. The latest any employe was out that evening was 11:30 p.m.

Keichinger, who is assigned to work in the Highway Shop as a Mechanic during the winter months, was paid at the Mechanic rate for the hours he worked on February 18th. Bell was paid at the Operator rates for the hours he worked on February 18th. There is a dispute as to whether the repair performed by Bell and Keichinger was "minor" and whether the weather on February 18 constituted a "major storm".

Wells filed a grievance on the basis that two employes other than a Mechanic had worked on the salt spreader after working hours on February 18, 1992, in violation of Article 19, 2/ paragraph 16 of the Agreement, and requested as a remedy that he be paid two hours call time. The grievance was processed through the grievance procedure and the parties, being unable to resolve the matter, proceeded to arbitrate the dispute before the undersigned.

POSITIONS OF THE PARTIES

Union:

The Union cites Article 20, Paragraphs 8, 9 and 16 of the Agreement, and asserts that those specific provisions supercede the general provisions of Article 7, Employer's Rights, relied upon by the County. In this case, two employes were told to perform Mechanic's duties, using a torch and jacks. Wells testified that when those tools are used to bend metal, it is Mechanic's work. Another employe, Miller, testified that torches are only used at outlying shops to cut bolts off of the plows. Further, the length of time the job takes is not determinative, as Article 20, paragraph 16, has no minimum time.

Article 20, paragraph 9, of the Agreement requires that a Mechanic be present at the Shop for all major storms. The County Highway Superintendent, Dodge, testified that a storm is considered "major" if roads are impassible and ice can make roads impassible. Also, both Dodge and the Highway Commissioner testified this was an "emergency" and the County cannot have it both ways.

As to the County's reliance on the job descriptions it presented, they are not in the Agreement and there is no evidence as to where they came from. While some of the duties set forth in the job descriptions are performed, that is meaningless. The Agreement, at Article 20, paragraph 8, requires that if an employe works in a higher paid classification, he gets the higher rate for all hours worked that day. Hence, if an Equipment Operator does Mechanic's work, then he gets Mechanic's pay for all work that day.

In this case the County violated Article 20, paragraph 16 of the Agreement when it did not call in Wells to perform the Mechanic's work on February 18th, and also violated paragraph 9 of that article by failing to have a Mechanic in the Shop during a major storm. By failing to pay Bell the Mechanic's rate for February 18th, the County violated Article 20, paragraph 8.

2/ Article 20 was "Article 19" in the prior agreement and the current agreement had not been typed at that time.

As to the latter, the Union asserts the County was put on notice of that alleged violation during discussions on the grievance and cannot now claim surprise. Further, there was no evidence presented as to the grievance discussions.

County:

The County contends that this case involves two issues: (1) whether the County may require employes to make minor repairs; and (2) whether management decides when employes are needed after regular hours. The original grievance that went before the County's Negotiations Committee only requested two hours of pay for Wells for February 18th and did not mention paragraphs 8 or 9 of Article 20. Therefore, those issues are not appropriately before the Arbitrator, even though the County has defended against those alleged violations. In rebuttal, the County also notes Bell did not request Mechanic's pay and asserts it would render the language of the grievance procedure useless to allow the Union to raise new issues at the last minute.

With regard to Article 20, paragraph 8, the job descriptions presented provide for employes performing minor repairs, so Bell was not entitled to Mechanic's pay. Keichinger was paid as a Mechanic on February 18th, so there is no issue as to him. In rebuttal to the Union's assertions, the job descriptions predate the Highway Commissioner and have been relied upon in determining the qualifications and duties of various employes. The County also asserts the job descriptions were discussed in the grievance discussions.

The County also cites Article 7, paragraphs A, C, F and G of the Agreement, as confirming management's right to direct operations, assign employes, maintain efficiency and to take action in the case of an emergency. Management has consistently claimed the right to decide who is needed to perform the work and to determine when an employe is needed after regular hours. In this case, after Bell first advised his supervisor of the bent pan, the supervisor decided it could wait until the next day to be repaired. After the storm arose and the supervisor was reminded of the bent pan, he told Bell to fix it if it was minor. He did so to maintain efficiency and the repair was done. The terms "minor" or "major" repair are not contractually defined and it is left for management to decide. Here, management (Dodge) decided it was a "minor" repair that an Operator could make. If the damage had been such that the auger could not operate, Dodge would have had Bell take a different truck and Wells would not have been called in any event. Management decides who is needed to perform the work and in this case decided a Mechanic was not necessary.

The County also contends that public safety was involved. There was a need to get the trucks on the road as quickly as possible and management considered that need in making its decision. It would have taken a Mechanic a half hour to get to the Shop and the fifteen minutes to make the repair. Dodge's decision was the most efficient. Management decided it was an "emergency" situation and Article 7 of the Agreement gives management the right to take action in such a situation. As with "major", the term "emergency" is not defined in the contract and it is left to management to decide when there is an emergency.

The County also asserts that the Agreement does not define what is "Mechanic's work" and that it is up to management to decide what is or is not mechanic's work. In rebuttal to the Union's assertion that there was a "major storm" on February 18th, the County asserts there was no storm forecast, and that while there was some danger due to freezing rain, Dodge did not feel the storm was "major".

DISCUSSION

The first matter to be decided is whether the alleged violations of Article 20, paragraphs 8 and 9, of the Agreement are appropriately before the Arbitrator. In that regard, it is noted that the grievance filed by Wells (Joint Ex. No. 2) cites only paragraph 16 of Article 20 and requests that he be given two hours of call time as a remedy. Wells also testified that he did not note a "major storm" in his grievance, nor did he request a remedy for other employes. It is further noted that all of the County's responses to the grievance address only the alleged violation of paragraph 16. That being the totality of the evidence presented as to the issues raised in the processing of this grievance, it is concluded that the only issue raised in the course of the grievance procedure and in the initial grievance involved the County's failure to call in Wells to perform the work. Even so, absent a specific contractual provision to the contrary, that does not preclude the Union from arguing that another provision of the Agreement, besides paragraph 16 of Article 20, was also violated by the County's failure to call in Wells. 3/ It appears, however, that the issue of whether Bell should receive out-of-class pay for doing the work is a new issue beyond the scope of the grievance and the parties' discussions and that issue will not be addressed in this award. 4/

With regard to the merits of the dispute, Article 20, paragraph 9, of the Agreement requires, in relevant part, that "A mechanic shall be on duty at the county shop during all major storms, during the six (6) month period commencing November 1." Dodge's un rebutted testimony was that while there was snow during the day on February 18th, all of the trucks were back in by quitting time and that later in the evening --- around 8:00 p.m., a light rain or mist began and roads started to ice over. Dodge's "storm sheet" (County Ex. No. 1) indicates it was +30 degrees with northwest winds 8-10 m.p.h. and a "light mist". That exhibit also shows that most of the employes called in that evening were done within 1 1/2 to 2 1/4 hours. There was no showing that the roads were impassible; rather, steps were being taken to avoid that situation. The term "major" used in Article 20, paragraph 9, is not defined in the contract. As a matter of contract interpretation, words are to be given their "ordinary and popularly accepted meaning" absent a showing they were used in a different sense or that the parties intended some "special colloquial meaning". Absent a showing of the parties' mutual understanding to the contrary, "the ordinary definition of terms as defined by a reliable dictionary should govern." 5/ The dictionary definition of the term in the context it is used in the Agreement is as follows:

major: . . . 2. Serious or dangerous; requiring great attention or concern; major difficulties; a major illness. 6/

The evidence cited above does not support a conclusion that the weather

3/ It is also noted in that regard that the County was prepared to defend, and did so, against the alleged violation of Article 20, paragraph 9 of the Agreement. See also, the discussion in Elkouri and Elkouri, How Arbitration Works, pp. 194-196.

4/ Ibid., pp. 196-197.

5/ Ibid., How Arbitration Works, pp. 305-307.

6/ The American Heritage Dictionary of the English Language, New College Edition.

conditions existing the evening of February 18, 1992 constituted a "major storm" within the meaning of Article 20, paragraph 9, of the Agreement.

As to the alleged violation of Article 20, paragraph 16, of the Agreement, the County asserts that it is up to management to decide when an employe is needed and in this case it was decided a mechanic was not needed to make the "minor" repair. The County in part relies upon the job descriptions for Highway Maintenance Worker I and II and for Equipment Operators I and II as establishing that making minor repairs falls within an Operator's normal duties and responsibilities. It is noted that the job descriptions are for classification titles that do not exist in the Department, although the Union's Chief Steward conceded the "positions" exist in that the work set forth in the descriptions is being performed. The question is how "minor" was the repair performed by Bell and Keichinger. Wells testified it would take at least a half an hour to set up the job and to do it the way they did, however, he was not present when the job was done. Dodge was at the Shop that night and testified that it did not even take a full fifteen minutes to perform the repair. There is no reason to doubt that Wells gave his best guess, but Dodge did not have to guess, and there is no apparent reason to doubt Dodge's testimony. It is therefore concluded that the repair took fifteen minutes or less to perform.

As to whether a Mechanic should have done the work, the job was simply one of straightening the pan just enough so that the auger would not hit it, i.e., not the level of repair work that Wells would have normally performed on the piece. It was Dodge's judgment that he needed to get the truck on the road quickly rather than have it more properly and completely repaired. That is management's decision to make.

It is concluded that under the circumstances, the County is deemed not to have violated either the letter or intent of Article 20, paragraph 16 of the Agreement.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 29th day of December, 1992.

By David E. Shaw /s/
David E. Shaw, Arbitrator