

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

GENERAL TEAMSTERS UNION
LOCAL NO. 662, IBT

and

EAU CLAIRE COUNTY

Case 185
No. 51549
MA-8641

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Mr. John J. Brennan, on behalf of the Union.

Mr. Keith R. Zehms, Corporation Counsel, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Eau Claire, Wisconsin, on February 27, 1995. The hearing was not transcribed, and both parties there presented oral argument in lieu of briefs.

Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

Did the County violate Article 8.01 of the contract when it used reserve deputies and did not offer overtime to bargaining unit members when it conducted its January 31, 1994, video poker raid and, if so, what is the appropriate remedy?

DISCUSSION

The County's Sheriff's Department - in conjunction with the Eau Claire Police Department and the City of Altoona's Police Department - on January 31, 1994, 1/ conducted video poker raids on about 11 taverns during the normal daytime shift. It used unpaid reserve officers - who

1/ Unless otherwise stated, all dates hereinafter refer to 1994.

are not in the bargaining unit - to assist bargaining unit members in seven of those taverns, thereby making it unnecessary for the County to offer much overtime to bargaining unit members. All on duty bargaining unit members in the Detective Division, the MEG unit, and Process/Bailiff personnel were used in those raids, except for two deputies assigned to court duty, on duty patrol personnel, and the officer who initially conducted the undercover work which led to the raids.

The Union's grievance asserted that the Company's "failure to offer work to bargaining unit personnel before assigning reserve to video poker machine raid" violated Section 8.01 of the contract. In support thereof, the Union primarily argues that the January 31 raid constituted an emergency and that the County therefore violated Article 8.01 of the contract when only one bargaining unit member received 3 hours' overtime and when it used reserve deputies to cut down on overtime.

The County, in turn, asserts that there was no emergency; that it is not required in any event to offer overtime in the Detective Division when faced with an emergency; and that it, in any event, used all available officers in the Process Division. At the same time, it acknowledges that it used reserve deputies to limit overtime, but asserts that it was entitled to do so under the contract.

The resolution of this issue turns on Article 8.01 of the contract which provides in pertinent part:

. . .

In the event it becomes necessary to schedule personnel for overtime work to cover emergencies of regular employees, such work will be offered first to senior employees, in order of their seniority, in the division where need occurs, except where qualifications and/or practical scheduling requirements make the application of seniority unreasonable. Such divisions are understood to be Patrol, Jail, and Process/Bailiff. In no case shall an employee work more than sixteen (16) consecutive hours in the Jail or twelve (12) consecutive hours on the road in a twenty-four (24) hour period unless directed by the Employer.

It is recognized that it is desirable to maintain a viable reserve force for emergency use. In order to maintain this force and continue their training, reserve forces may be used to fill the above emergencies and absences of regular employees after complying with the procedure outlined in the preceding paragraph.

Additional time paid for shall be computed by each full one-tenth (1/10th) hour.

Under this language, the County must offer overtime on a seniority basis "to cover emergencies of regular employees. . ." The key question here, thus turns on whether the video poker raids constituted an "emergency".

The dictionary defines "emergency" as: "An unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action." See, The American Heritage Dictionary, Second College Edition, p. 448.

Measured by that definition, no "emergency" occurred here since the raids were carefully planned several weeks before they occurred and since the County in those preparations worked closely with the City of Eau Claire Police Department and the City of Altoona's Police Department. Such detailed planning ahead of time shows that the raids were not "an unexpected situation". To the contrary, everything about them was fully expected and carefully thought out.

By the same token, the raids were not "a sudden occurrence" since the presence of the videos hardly required "urgent" and "immediate" action. That is why the raids could have been put off indefinitely if the law enforcement authorities chose to conduct them at a later date. In that case, the only thing lost in the interim would have been the money spent on the illicit gambling.

Since the raids did not constitute an "emergency", I find that the County did not violate the contract when it used reserve deputies. 2/

In light of the above, it is my

AWARD

That the County did not violate Article 8.01 of the contract when it used reserve deputies and did not offer overtime to bargaining unit members when it conducted the January 31, 1994, raids; the grievance is therefore denied.

Dated at Madison, Wisconsin this 17th day of April, 1995.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

2/ Given this result, it is unnecessary to determine whether Article 8.01 also covers the Detective Division.

