

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

GREATER FOX RIVER VALLEY DISTRICT  
COUNCIL OF UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA,  
A.F.L. - C.I.O.

and

ALFREDSON BROTHERS CONSTRUCTION

Case 2  
No. 52182  
A-5330

Appearances:

- Mr. Ronald Kopp, Secretary/Business Manager, and Mr. James E. Moore, Secretary/Business Manager, United Brotherhood of Carpenters and Joiners of America, Greater Fox River Valley District Council, 2845 County Road JJ, Neenah, WI 54956, representing the Greater Fox River Valley District Council of United Brotherhood of Carpenters and Joiners of America, A.F.L. - C.I.O.
- Mr. Paul Lawent, General Counsel, Wisconsin Chapter of the Associated General Contractors of America, Inc., 4814 East Broadway, Madison, WI 53716, representing Alfredson Brothers Construction.

ARBITRATION AWARD

Alfredson Brothers Construction (hereinafter Contractor) is a signatory to a collective bargaining agreement between the Greater Fox River Valley District Council of United Brotherhood of Carpenters and Joiners A.F.L. - C.I.O. (hereinafter Union) and the Wisconsin Chapter of the Associated General Contractors of America, Inc. (hereinafter Association). Said agreement, in effect at all times relevant to this proceeding, provides for final and binding arbitration of certain disputes by an arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission). On January 31, 1995, the Union filed with the Commission a request to initiate grievance arbitration, and the Contractor concurred. The Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing on the matter was held on June 27, 1995, in Marinette, Wisconsin, at which time the parties were given the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed, and the parties waived their right to file briefs in this matter. Full consideration has been given the evidence and arguments of the parties in reaching this decision.

## BACKGROUND

The underlying facts are not in dispute.

Members of the Union worked for the Contractor on Monday, December 26, 1994, and Monday, January 2, 1995. They were paid straight time for all hours worked these two days.

## PERTINENT CONTRACT LANGUAGE

### **ARTICLE XI HOURS OF WORK**

...

#### **Section 11.2 Overtime, Saturday, Sunday and Holiday Work**

...

(b) All time worked on Sundays and legal holidays shall be paid for at double the established hourly rate of pay. Time worked between 6:00 a.m. Sunday and 6:00 a.m. Monday is considered Sunday work. The same principle applied to Holidays.

...

**Section 11.5 Legal Holidays:** New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. All of the above mentioned legal holidays shall be the days designated by the Federal Government as the legal holidays. The day of Christmas Eve shall also be considered a holiday for employees working after the regular day shift and the second and third shifts pursuant to Section 11.4 (Shift Work).

## ISSUES

The parties stipulated that the Arbitrator would frame the issues for decision in the Award. I frame the issues as follows:

1. Did the Contractor violate Section 11.2 of the collective bargaining agreement when it did not pay double time to employes for time worked on December 26, 1994, and

January 2, 1995?

2. If so, what is the appropriate remedy?

### POSITIONS OF THE PARTIES

The Union argues that Monday, December 26, 1994, and Monday, January 2, 1995, were designated by the Federal Government as legal holidays, that the Contractor did not pay employees double the established hourly rate of pay for hours worked those two days, that this violates Section 11.2 of the collective bargaining agreement, and that said employees should be made whole.

The Contractor argues that said days were not designated by the Federal Government as legal holidays; that it should not be required to pay double time for work on days that are not clearly delineated as holidays by the Federal Government; that even if such days were designated as legal holidays by the Federal Government, the Contractor was not aware of said designation when it bid on the job at issue here; that the Contractor's belief that these Mondays were not legal holidays was reasonable in that the actual holiday fell on a Sunday; and that since the employees did not work on Sunday or the actual Holiday, and since the Contractor's belief that the days were not legal holidays was reasonable, the Contractor should not now be required to pay double time.

### DISCUSSION

I have no reason to doubt the Contractor's testimony that it was not aware that Monday, December 2, 1994, and Monday, January 2, 1995, were federally designated legal holidays when it bid on the job at issue here. But such lack of knowledge does not negate the contractual requirement that the Contractor pay double time for hours worked on legal holidays.

As for the Contractor's evidence which raises a question as to whether these days were, indeed, federally designated holidays, such evidence is outweighed by the evidence of the Union showing that said days were so designated and that every other contractor which is signatory to this agreement considered these days as such and paid double time, as required by the agreement.

Thus, I find that Monday, December 26, 1994, and Monday, January 2, 1995, were designated by the Federal Government as legal holidays, that Article 11.2 (b) of the collective bargaining agreement requires work performed on those days to be paid at double the established hourly rate of pay, and that the Contractor did not pay double the hourly rate of pay for hours worked on those two days.

Therefore, for the reasons stated above, the Arbitrator issues the following

AWARD

1. That the Contractor violated Section 11.2 of the collective bargaining agreement when it did not pay double time to employes for time worked on December 26, 1994, and January 2, 1995.
2. That said employes shall be made whole for time worked on December 26, 1994, and January 2, 1995.

Dated at Madison, Wisconsin, this 22nd day of August, 1995.

By James W. Engmann /s/  
James W. Engmann, Arbitrator