COURT OF APPEALS
DECISION
DATED AND FILED

January 24, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0565 **Cir. Ct. No. 00-CV-1804**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE ARBITRATION OF A DISPUTE BETWEEN LOCAL 236 LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO AND CITY OF MADISON:

LOCAL 236 LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,

PLAINTIFF-APPELLANT,

V.

CITY OF MADISON,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed*.

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Local 236 Laborers International Union of North America, AFL-CIO appeals a circuit court order which confirmed an arbitration decision concerning a grievance by Local 236 member Walter Dyer against his employer, the City of Madison, Engineering Division. The Union claims the arbitrator disregarded the plain language of the overtime pay provisions at issue. We disagree and affirm.

¶2 The facts found by the arbitrator are undisputed. Dyer worked under a collective bargaining agreement between the City of Madison and Local 236, which provided in relevant part:

> Employees who are called in or scheduled for overtime work and report for such work, and whose assignments are subsequently canceled either at the start of the work period or during the first two (2) hours of the work period, shall be granted a minimum of two (2) hours call-in pay.
>
> … Employees reporting for call-in assignments shall commence to accrue overtime twenty (20) minutes before they report, such time shall be included in the two (2) … hour call-in minimum, provided the employee reports for duty within one (1) hour from the time of the call-in.

Dyer was scheduled to work a shift beginning at 9:00 a.m. He was called at 7:45 a.m. that morning and asked to come in to work early. He arrived at 8:28 a.m. and worked until 11:00 p.m. The City treated Dyer as if he had reported to work at 8:08 a.m., and paid him the overtime rate for the fifty-two-minute period preceding the start of his regular shift.

¶3 Local 236 filed a grievance on Dyer's behalf claiming that Dyer should have been paid the overtime rate for the minimum two-hour period. The Union introduced pay records to show that another employee who had reported to work an hour and fifteen minutes before his scheduled shift had been paid the

overtime rate for two hours. The City responded with testimony from the city engineer that Dyer had been paid in accordance with the longstanding practice of the City, and that the instance cited by Dyer was an anomaly.

¶4 The arbitrator found the collective bargaining agreement to be ambiguous on the question whether the two-hour minimum provision should apply to a call-in that begins less than two hours before a regular shift. He ruled that it did not apply, based primarily on the city engineer's testimony regarding the City's longstanding practice, and the trial court affirmed.

¶5 Our review of an arbitration decision is extremely limited. We will not examine the merits of the decision for errors of law or fact, so long as the decision draws its essence from the collective bargaining agreement. *See* ***City of Milwaukee v. Milwaukee Police Ass'n***, 97 Wis. 2d 15, 24-25, 292 N.W.2d 841 (1980). We will only overturn an arbitration decision if there has been a perverse misconstruction of the contract or plainly established positive misconduct by the arbitrator, or if the award is illegal or exhibits manifest disregard for the law or violates strong public policy. ***Id.*** at 25-26. We are satisfied that the arbitrator's decision here drew its essence from the collective bargaining agreement and was not perverse, illegal, or contrary to public policy.

¶6 First, contrary to the Union's assertion, the arbitrator did not disregard clear and unambiguous contract language. The contract guarantees a minimum of two hours overtime pay when an assignment is "canceled" within the first two hours of the work period. It is not plain from the language of the contract that the start of a regular work shift cancels an assignment. The City's contention that canceling an assignment requires an affirmative action by the employer ending the task on which the employee is working is at least as reasonable an

interpretation of the provision as that offered by the Union. Moreover, the City's interpretation conforms with the apparent purpose of the two-hour minimum rule, which is to protect employees from having their time wasted by being sent home shortly after being called in.

¶7 The Union complains about the weight which the arbitrator gave to the city engineer's testimony regarding the City's past practice, noting that it was not supported by documentation. However, the Union has not persuaded us that the arbitrator's evidentiary decision regarding the weight he chose to give the engineer's testimony lies within the scope of our review. We see no basis to conclude that the arbitrator exceeded his authority.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).