

ARBITRATION DECISION NO.:

55

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health,
Oakwood Forensic Center

DATE OF ARBITRATION:

October 16, 1987

DATE OF DECISION:

October 30, 1987

GRIEVANT:

James Ladden

OCB GRIEVANCE NO.:

G-86-0101

ARBITRATOR:

Harry Graham

FOR THE UNION:

Daniel S. Smith

FOR THE EMPLOYER:

John Rauch

KEY WORDS:

Standard Work Week
Change Of Schedule
Past Practice

ARTICLES:

Article 5 - Management
Rights
Article 13 - Work Week,
Schedules and Overtime
 §13.01-Standard
Work Week
Article 25 - Grievance
Procedure
 §25.03-Arbitration

Procedures

FACTS:

In 1985 a strike occurred at the Oakwood Forensic Center. As part of the settlement of that dispute, the parties entered into an agreement which was termed a Supplemental Agreement. The Supplemental Agreement provided 26 weekends off duty per year for Psychiatric Attendants (PA's) and Psychiatric Attendant Supervisor I's (PAC's). In addition, this document provided that the Supplemental Agreement would remain in effect until the Master Agreement expired on June 30, 1986. On June 27, 1986, the Center notified the PA's and PAC's that effective July 1, 1986, their work schedules would change and they would work a schedule which provided for 17 weekends off per year. A grievance was filed and processed through the grievance procedure without being resolved.

Article 13, Section 13.01 dealing with the "Standard Work Week" discusses the situation at issue by providing that "work days and days off for full-time employees who work non-standard work weeks shall be scheduled according to current practice..." The "current practice" at the Oakwood Forensic Center at the time the Agreement was negotiated was to provide 26 weekends off duty per year. Given that fact and the clear expression of Article 13 and Section 13.01 to continue the "current practice", the conclusion is inescapable that the Center violated the Agreement when it changed the schedules under review. It is important to note that economic necessity is not a valid reason to violate contractual obligation, unless specifically permitted by the contract.

ARBITRATOR'S OPINION:

The Arbitrator held the grievance must be sustained and the Center was directed to restore the work schedule in effect prior to the present collective bargaining agreement.

AWARD:

The grievance is sustained.

TEXT OF THE OPINION:

In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

and

**State of Ohio, Department of
Mental Health, Oakwood
Forensic Center**

Grievance No.:

G-86-0101

Grievant:

James Ladden

Appearances:

For OCSEA/AFSCME Local 11:

Daniel S. Smith
OCSEA/AFSCME Local 11
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Columbus, OH. 43212

For State of Ohio:

John Rauch
Office of Collective Bargaining
65 East State St.
Columbus, OH. 43215

Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter on October 16, 1987 before Harry Graham. At that hearing both parties were provided complete opportunity to present testimony and evidence. No post-hearing briefs were filed in this dispute and the record was declared closed on October 16, 1987 at 11:15AM.

Issue:

At the hearing the parties were able to agree upon the issue in dispute between them. That issue is:

Did the Employer violate the Collective Bargaining Agreement when the schedules of Psychiatric Attendants and Psychiatric Attendant Supervisor 's (now termed Psychiatric Attendant Coordinators) were changed reducing the number of weekends off from 26 to 17 per years? If so, what shall the remedy be?

Facts:

There is agreement between the parties concerning the facts that give rise to this controversy. The Ohio Department of Mental Health operates a facility in Lima, OH. known as the Oakwood Forensic Center. At that facility people who are residents of the correctional facilities of the State and who are experiencing mental difficulties are referred for treatment. During the 1980's the patient population at Oakwood has declined substantially.

In 1985 a strike occurred at the Oakwood Forensic Center. As part of the settlement of that dispute the parties entered into an agreement which they termed a Supplemental Agreement. That document provided it would remain in effect during the term of the Master Agreement and as long as the AFSCME Local Union at the site remained recognized as the sole and exclusive bargaining agent for employees. The Master Agreement to which the Supplemental Agreement referred expired on June 30, 1986. It was replaced by the present Agreement dated July 1, 1986.

The Supplemental Agreement provided 26 weekends off duty per year for Psychiatric

Attendants (PA'S) and Psychiatric Attendant Supervisor I's (hereinafter known as PAC'S). During 1986 the Oakwood Forensic Center experienced great financial distress. It was sustaining a deficit in its budget. In order to deal with these problems the Center, on June 27, 1986, notified the PA's and PAC's that their work schedule would change. Effective July 1, 1986 they would work a schedule which provided for 17 weekends off per year.

A grievance protesting this schedule change was filed. It was processed through the machinery of the parties without being resolved. Accordingly as provided in the Agreement the Union advanced the grievance to arbitration. No claim of procedural irregularity is made and the parties agree that it is properly before the Arbitrator for determination on its merits.

Position of the Union:

The Union insists that the Employer acted improperly under the terms of the Agreement. At Article 13, Work Week, Section 13.01 the parties have agreed upon work schedules. The Agreement provides that:

Work days and days off for full-time employees who work non-standard work weeks shall be scheduled according to current practice or so that each employee shall have at least two (2) days off in any nine (9) day period. In addition, the Employer agrees to schedule each employee with at least seventeen (17) weekends off per year in the Department of Mental Health....

In the opinion of the Union the schedule change implemented by the Employer is in violation of Section 13.01, in particular the language that obligates it to schedule according to "current practice." The change violates that provision of the Agreement according to the Union.

Subsequent to filing of the Grievance the parties engaged in discussion over the meaning of the Agreement as it applied to this situation. Thus, on July 31, 1986 the Executive Director of the Union, Russell G. Murray, wrote to the Chief Negotiator for the State, Edward Seidler, and discussed this issue. He pointed out that in his view the parties had agreed at the bargaining table to continue "current practice" with respect to employees receiving more than 17 weekends off per year. He stressed the Union view that it was

"most important that those individuals who were receiving more than seventeen (17) weekends off per year continue to do so under the new contract. That was the intent of the negotiations and that is the interpretation we should give to the contract language."

Subsequently, on September 4, 1986 Mr. Seidler responded to Mr. Murray's July 31, 1986 letter. He indicated that

"This letter confirms your construction of Article 13.01 which you stated in your July 31, 1986 letter, i.e. that the current practice phrase is applicable to both the non-standard work weeks and the scheduling of days off and that the statement of 17 weeks was a minimum rather than the standard. The continuance of current practice is dependent upon other staffing and fiscal conditions remaining the same.

In the opinion of the Union that letter is a clear expression of the understanding of the parties that the phrase "current practice" in Section 13.01 of the Agreement was to commit the State to continuation of the pre-existing schedule of weekend work at Oakwood. The correspondence between Murray and Seidler was undertaken with the Oakwood schedule change in mind. The

record indicates the parties came to a meeting of the minds to resolve this issue in the fashion sought by the Union but that the State did not implement the Agreement. This history, as well as the explicit language of the Agreement, bind the State to continue the work schedule that was in effect at Oakwood prior to the present Collective Bargaining Agreement taking effect. Consequently, the Union seeks a directive from the Arbitrator ordering the State to restore the 26 weekend off work schedule and payment for overtime opportunities lost as a result of the State's action.

Position of the Employer:

In the opinion of the State it has acted correctly in this situation. Article 5 of the Agreement, the Management Rights article, permits it to exercise the "inherent rights and authority to manage and operate its facilities and programs." That is what it did in this situation. It changed work schedules. It is permitted to do so under Article 5 of the Agreement the State asserts. No contract violation occurred since the affected employees receive the 17 weekends off per year stipulated in Article 13. As this is the case, it is impossible to find the Employer in violation of the Agreement in its view.

Should the Arbitrator render an award in favor of the Union in this dispute it will represent an impermissible exercise of arbitral authority under the Agreement. At Article 25, Section 25.03 the Arbitrator is prohibited from adding to or subtracting to the terms of the Agreement. An award restoring the prior work schedule at Oakwood would represent the type of contractual "addition to" or "subtraction from" that the parties specifically took pains to prevent. Consequently, the State urges a finding in its favor.

Oakwood has lost patient population. Under the budget formula employed to fund the institution this has resulted in reduced funding. The change in work schedule at issue in this proceeding was instituted to accommodate the institution to its changed economic circumstances. Should the Forensic Center be required to restore the work schedule that prevailed under the prior Agreement which called for 26 weekends off per year its financial woes will increase and adverse consequences will result for patients and employees alike. Given this set of circumstances the State urges an award in its favor.

Discussion:

This dispute as the parties acknowledge is purely one concerned with interpretation of the Collective Bargaining Agreement. Article 13, Section 13.01 dealing with the "Standard Work Week" discusses the situation at issue in this proceeding. It provides that "work days and days off for full-time employees who work non-standard work weeks shall be scheduled according to current practice...." (Emphasis added). The "current practice" at Oakwood Forensic Center at the time the Agreement was negotiated was to provide 26 weekends off duty per year. No question exists concerning that fact. Given that fact and the clear expression of the agreement of the parties in Article 13, Section 13.01 to continue the "current practice" the conclusion is inescapable that the Employer violated the Agreement by the schedule change under review in this proceeding.

This view is supported by the record made by the parties during the course of their discussions concerning the resolution of this dispute. Russell Murray, Executive Director of the Union, set forth its interpretation of the Agreement in his letter to the State's Chief Negotiator on July 31, 1986. In reply the Chief Negotiator indicated that "This letter confirms your construction of Article 13.01 which you stated in your July 31, 1986 letter...." Agreement was had between the parties. For some reason that agreement was not implemented. It does however, stand both as the expression

of the understanding of the parties and the correct interpretation of the Agreement on this issue.

Article 5, the Management Rights clause relied upon by the Employer to justify its actions in this dispute does not stand alone. It is modified by language found elsewhere in the Agreement. That is the language of Article 13. That language, making specific reference to maintenance of "current practice" with regard to work schedules must control the outcome of this dispute. This view is in accord with the long-standing principle of contract construction which holds that specific language must be given more weight than general language in determining the meaning of the Agreement. In this situation the parties specifically addressed the issue of work schedules in Article 13 and agreed the "current practice" would continue. That is what is required by the Agreement and that is what must occur under its plain language.

Similarly, the restriction upon the authority of the Arbitrator found at Article 25 does not apply to this dispute. That is due to the language of the Agreement at Article 13 which stands as the expression of the parties agreement and which must be given force by the neutral.

This Arbitrator clearly understands the fiscal distress being experienced by Oakwood Forensic Center and the adverse consequences it will experience as the result of returning to the prior work schedule. Despite the clear difficulties implementation of this award will impose on the Employer the Arbitrator is bound by the language of the Agreement. That language calls for maintenance of the status-quo and that is what must occur.

Award:

Based upon the preceding discussion the grievance must be SUSTAINED. The Oakwood Forensic Center is directed to restore forthwith the work schedule (Joint Exhibit 6 in this proceeding) in effect prior to present Collective Bargaining Agreement. The Arbitrator is persuaded that the request for overtime pay made by the Union is extraordinarily difficult to grant due to computational difficulties. Consequently, no back pay award is made.

Signed and dated this 30th day of October, 1987 at Beachwood, OH.

Harry Graham
Arbitrator