

BEFORE THE ARBITRATOR

In the Matter of

THE STATE OF OHIO, DEPARTMENT
OF MENTAL HEALTH, WESTERN
RESERVE PSYCHIATRIC HOSPITAL

and

THE OHIO HEALTH CARE EMPLOYEES
UNION, DISTRICT 1199, WV/KY/OH.

GRIEVANTS: KIM COLBERT and
FLO WILLIAMS
No. 23-18-900516-0469-02-12

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DECISION AND AWARD

This arbitration arises from a flextime dispute. Grievants Kim Colbert and Flo Williams are social workers at the Western Reserve Psychiatric Hospital. For a considerable period of time, both worked a four day ten hour flex schedule. As social workers they are required to attend "team meetings" regarding their patients. These meetings are conferences for all professionals involved in the treatment of a patient (and with the patient or family members) to discuss the current treatment of individual patients, its effectiveness, and whether or not that treatment should be changed. The meetings are attended by the doctors, nurses, social workers, therapists, vocational rehabilitation counselors, etc. The end result of these meetings is the writing of a formal treatment plan.

On May 5, 1990, Grievants had a discussion with their supervisor regarding their workloads. After that discussion, Grievants had cause to believe the problem had been solved. However, on May 9, 1990, Grievants received a memorandum stating that team meetings would now be held five days a week and, therefore, their four (10 hour) day work schedules would be changed

to five (8 hour) days. The memo had attached to it an explanation of the necessity for the changes which appeared to state a reasonable necessity for the change; to wit, to increase the attendance of case managers (employees of Community Mental Health Centers) at the team meetings. Grievants questioned the supervisor about the necessity for the change in schedule but received, according to their testimony, a response that the matter was "not up for discussion." Grievant Colbert testified that in her opinion there were many benefits to the patients and their families from the grievants' four ten hour day schedules, including being able to speak to family members after normal working hours. Furthermore, there were no complaints about Grievants completing their work assignments.

Approximately four months later, the hospital changed its policy and reverted to its old schedule of not having team meetings on Fridays, largely because the new schedule did not significantly increase attendance of case managers. In fact, the team meetings are now only scheduled on one or two days a week and not on Friday. However, the Grievants previous four day schedule was not restored. When Grievants' supervisor was asked why the Grievants were not restored to a four day schedule, the supervisor again stated that there would be no discussion and they were going to continue on a five day schedule.

The Hospital's labor relations officer testified that the five day schedule was continued because management had determined that a five day schedule is more consistent with the schedule of other

agencies with which the hospital interfaces. He noted that Western Reserve had been upgraded from a rehabilitation center to a hospital requiring many more services. He explained that the area of patient care is Medicaid certified and is also subject to Joint Common Standards (on Hospital Certification), and that if the hospital is to continue to receive funding, expanded services, including social workers, must be provided to an established level. He further testified that there is a shortage of social workers who are already doubling up and that having social workers on a four day schedule does not provide sufficient service on the fifth day and that all other hospital employees work a five day week.

It was the hospital's further testimony that the decision to revert to a five day schedule was made by the Governing Council, including the Hospital Director, the Director of Patient Services and the Directors of Medicine, Nursing and Education.

CONTRACT CLAUSE

24.11 Flexible Work Schedules

The present practice of flex time shall be continued. Extending the use of flexible work schedules shall be a subject for discussion in the Agency Professional Committees. Flexible work schedules can include adjusting the starting and quitting times of the work days and/or the number of hours worked per day and the number of days worked per week.

The Employer agrees to consider such options as four (4) ten (10) hour days, twelve (12) hour shifts, and/or other creative scheduling patterns that may assist in the recruitment and/or retention of nurses and other employees. The Employer will seek union input and address specific concerns regarding the development and establishment of such flexible work schedules.

Should recruitment difficulties become more severe in certain classifications, the Employer may explore and

implement various arrangements to assist in recruiting such as shift differential, pay supplements and variable weekend work plans.

In order to be able to implement some flexible work schedules, the Employer may allow a full-time employee(s) to work less than forty (40) hours in a week and more than forty (40) hours in the other week within the same pay period.

POSITION OF THE UNION

It is the position of the Union that the Hospital violated 24.11 of the contract by changing Grievants' schedule to five days; that the reason for the original change, team meetings, is no longer in place and that the Grievants can, in the opinion of some of the RN's and the Grievants, do a better job on a four day schedule, and that, therefore, there is no need to change Grievants' long time four day schedules.

POSITION OF THE HOSPITAL

It is the position of the Hospital that Section 24.11 does not guarantee any employee the right to continue a four day schedule. It also urges that although the original reason for changing to a five day schedule is no longer operative, there are many reasons why management believes a five day schedule is necessary for the Hospital to best accomplish its mission. It cites the previous decisions of Arbitrator Curry and Arbitrator Silver that the flextime provisions of the contract do not affect management's right to schedule employees.

DISCUSSION

On June 2, 1992, I issued a decision in the Matter of the Department of Human Services, Bureau of Child Support and Local

1199, in which I upheld the right of the agency to change flex schedules in the exercise of its management rights. In that decision, I concurred with the previous decision of Arbitrator Curry in State of Ohio and Ohio Health Care Employees Union, District 1199, Grievance Numbers 23-09-881206-0079, 23-09-89-317-0116 and 23-09-890907-0162, and of Arbitrator Howard D. Silver, in State of Ohio and Ohio Health Care Employees Union, District 1199, Grievance Number 27-22-910118-102-02-11. I held that unless the decision of management to change schedules was arbitrary or capricious, no violation of the contract occurred. (A copy of that decision is attached.) What was said in that decision does not require restatement herein.

In the instant case, the facts established that the original reason for the change to a five day schedule had a reasonable basis, to wit, the rescheduling of team meetings. Although the employees felt otherwise about the continuation of the four day week, management's decision must therefore have prevailed.

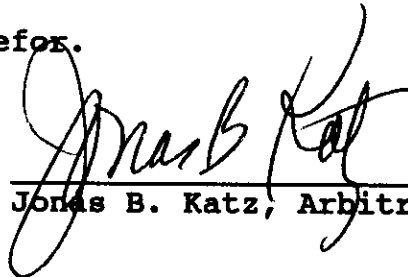
Likewise, the testimony of the Hospital's witness setting forth the reasons why the Governing Council of the Hospital opted to continue the five day week schedule after eliminating Friday team meetings as set forth above appear to state a reasonable exercise of management's authority and not a violation of the contract, notwithstanding the difference of opinion of the Union witnesses. As I observed during the hearing, no institution can be governed by consensus. One body or one person must set the direction and operation of the hospital, and so long as the

decision is not arbitrary or capricious, that decision prevails.

Notwithstanding the above, I am, as indicated at the hearing, disturbed by the lack of communication to the Grievants as to the reasons for the five day schedule, and a refusal of the supervisor to discuss and explain the reasons. I do not suggest that there must be collective bargaining on each schedule change, a matter addressed by SERB in State Employees Relations Board v. State of Ohio, Department of Mental Health, Fallsview Psychiatric Hospital, but consideration of the employees affected requires an explanation of the reasons. The employees might not agree, but at least they are informed of the reasons for the change. However that may be, the record in this case does not established that Western Reserve Hospital acted in an arbitrary or capricious manner in changing Grievants' schedules.

AWARD

The grievances are denied. However, in changing an employee's flex schedule, the employer should in the future give the employee an explanation of the reasons therefor.


Jonas B. Katz, Arbitrator

Issued at Cincinnati, Ohio
June 4, 1992