**OCB AWARD NUMBER: 2707**

SUBJECT: Arb Summary # 2707

TO: All Advocates

FROM: Tom Dunn

OCB GRIEVANCE NUMBER: BWC-2020-03542-12

DEPARTMENT: Bureau of Workers’ Compensation

UNION: SEIU/1199

ARBITRATOR: Jerry B. Sellman

GRIEVANT NAME: Robin Bennie

MANAGEMENT ADVOCATE: Victor Dandridge

UNION ADVOCATE: Josh Norris

OCB REPRESENTATIVE: Tom Dunn

ARBITRATION DATE: September 22, 2022

DECISION DATE: December 7, 2022

DECISION: Grievance granted in part, denied in part.

CONTRACT SECTIONS 1.03, 6.02, 7.04, 33, Appendix E

OCB/BNA RESEARCH CODES:

KEYWORD SEARCH TERMS: Telework, Equipment, Internet, Mandatory Bargaining

**HOLDING: Grievance Granted in part, Denied in Part**. It is granted to the extent that the Grievant’s are entitled to reimbursement for fifty percent (50%) of the monthly internet service charge, not to exceed $40 for any month while teleworking between March and the end of August 2020. It is denied to the extent that the Union seeks to have Employer’s unilateral changes to the Teleworking Policy considered a subject of mandatory bargaining and void unless bargained with the Union.

**Facts:** The Governor of the State of Ohio issued an Executive Order on March 9, 2020 to protect the well-being of Ohio citizens. The Governor issued a stay-at-home Order for all non-essential workers. In compliance with that Order, the State of Ohio Bureau of Workers Compensation required all employees, which included members of the SEIU Bargaining Unit, to work remotely from home starting in March of 2020. At the time BWC employees were ordered to work from home, the Employer had in place a Teleworking Policy, HR 4.30 (Teleworking Policy). The Teleworking Policy indicated that it was applicable to “all BWC employees in classifications in which the majority of the work performed is considered field work (e.g., Industrial Safety Consultant Specialists, Ergonomists, Industrial Safety Hygienists, Fraud Investigators, etc.).” Under Appendix E of the CBA, “a field worker” is defined as “an 1199 employee who on a regular, routine, and predictable basis works eighty percent (80%) or more hours on average in a travel status. When the pandemic hit, Grievants were required to work from home. The Employer required each SEIU 1199 employee to sign a Teleworking Agreement and by signing the Agreement, each acknowledged that he/she read the Teleworking Policy and agreed to comply with the provisions outlined in the Teleworking Policy. On September 1, 2020, the Employer issued a revised Teleworking Policy (HR - 4.30). Several changes appeared in the revised Teleworking Policy. First, the applicability of the Policy not only applied to BWC employees in classifications considered field work, but also to “any other employee who has been authorized to perform their assigned job responsibilities at an alternative work location or remote workplace.” Secondly, the language reimbursing the teleworking employees for broadband costs was eliminated.

**The Union argued:** The union alleges that the Employer refused to reimburse bargaining-unit members for fifty percent (50%) of the monthly internet service charge, not to exceed $40.00, for the period March 2020 – September 2020, as provided in Employee Handbook Policy HR-4.30 (Teleworking Policy). Further, the Union argues that the Employer unilaterally changed the Policy in September 2020 by removing the stipend from Policy HR-4.30 without bargaining to do so with the Union in violation of the Collective Bargaining Agreement and Ohio Revised Code 4117. The Union argues that the Grievance was timely in that it was filed within 20 days of the time the Grievants became aware that the Employer did not intend to pay them as prescribed by the Teleworking Policy.

**The Employer argued:** The Employer argues that the Grievance was untimely filed and is meritless. The CBA provides that grievances must be filed within 20 days of the date on which the grievant(s) knew or reasonably could have known of the event giving rise to the Class Grievances. A total of eleven pay periods passed before the Union filed the Grievance and the Grievance is untimely. On the merits, the Teleworking Policy only applies to “Field Agents,” who routinely work 80% of their time away from the office. None of the Grievants were “Field Agents” and were not entitled to the telework internet stipend. The Employer did not violate any provisions of the CBA in implementing its Teleworking Policy because (1) the Employer has the right under its management authority to implement reasonable policies, which is the case with the Teleworking Policy; (2) the Teleworking Agreement forms signed by the Grievants were used to track the equipment and to inform the employees of their responsibility of taking care of the equipment provided to them, not to otherwise outline any responsibilities or confer benefits; and (3) the Employer had the right to unilaterally change the terms of a Policy.

**The Arbitrator found:**

On timeliness: The Arbitrator recognized the Employer’s argument that the Grievants, or any one of them, should have noticed there was no additional stipend in their paycheck after the first month of teleworking, but since the Policy did not state when the payment would be made, and taking into consideration the upheaval in the work environment due to the pandemic, the benefit of the doubt needs to be given to the Employee. Additionally, the Arbitrator considered the fact that the Employer did not raise the issue of timeliness at the first instance.

On the merits: The Arbitrator agreed with the Employer that the intent of the Teleworking Policy may have only been to address employees classified as Field Workers, but the specific language contained in the Policy regarding eligible employees, and the application of the Policy during the pandemic, must be weighed in favor of the Grievants. Here the Grievants’ supervisor ordered them to telework, and it can be concluded that they were deemed suitable for teleworking under the specific language of the Teleworking Policy. Once considered an eligible employee under the Policy and accepted as a teleworker for a specified period of time, the terms and conditions set forth in HR – 4.30 applied, particularly after a Teleworking Agreement was signed by both the Employee and the Employer.

The Union’s argument that the Employer cannot change its Teleworking Policy without negotiating those changes with it is not persuasive. First, the CBA gives the Employer the right to modify rules at its sole discretion under Article 1. Adding reimbursement of costs for internet access, or eliminating them, under a Teleworking Policy are not subjects of mandatory bargaining under the CBA or the ORC.

In conclusion, the Grievants are entitled to reimbursement for fifty percent (50%) of the monthly internet service charge, not to exceed $40 for any month while teleworking between March and the end of August 2020. With the permissible change in the Teleworking Policy after September 1, 2020, they are not entitled to reimbursement.

**GRANTED in part, DENIED in part.**