**OCB AWARD NUMBER: 2711**

SUBJECT: Arb Summary # 2711

TO: All Advocates

FROM: Tom Dunn

OCB GRIEVANCE NUMBER: BWC-2021-03003-11
DEPARTMENT: Ohio Bureau of Workers’ Compensation

UNION: SEIU District 1199

ARBITRATOR: Thomas J. Nowel

GRIEVANTS NAMES: Ann Halpin, Class Action

MANAGEMENT ADVOCATE: Krista Downs

UNION ADVOCATE: Joshua D. Norris

OCB REPRESENTATIVE: Victor Dandridge

ARBITRATION DATE: October 12, 2022

DECISION DATE: January 4, 2023

DECISION: DENIED

CONTRACT SECTIONS 1.03, 7.06, 24.07

OCB/BNA RESEARCH CODES:

KEYWORD SEARCH TERMS: Meal Period, Lunch

**HOLDING:** The Employer did not violate the terms of the CBA. Grievance is denied.

**Facts:** Employees were required to work from home when a state of emergency was declared by the Ohio Governor due to the COVID 19 pandemic beginning in March 2020. During the state of emergency and while assigned to work from home, bargaining unit employees were not required to include a lunch or meal break during the work day. On August 27, 2021, the Employer notified bargaining unit employees, by email, that they would be required to schedule a lunch/meal break during the work day. Employees had the option of requesting either a 30 minute or 60-minute unpaid break. Implementation of the requirement to take a lunch break was effective on September 7, 2021. Many staff were to continue working from home or in a hybrid capacity, home, and office, although the plan was to eventually return to office duty.

**The Union argued:**

Arbitrability: The Employer advised bargaining unit members that they would be required to schedule a lunch period via email on August 27, 2021. This directive and change in policy were scheduled to begin on September 7, 2021. The grievance was filed on September 17, 2021, ten days after the implementation of the revised policy. The collective bargaining agreement requires that grievances be filed no later than 20 days following the event and potential violation. Clearly, the grievance was filed in a timely manner.

Merits: Union contends that during the time of telework, employees were not required to include a lunch period during their work schedules. They then were requiring the lunch “against their will.” This was a change of the interpretation of the contract. The Union states that the granting of an unpaid lunch period is a negotiated benefit. The Employer is attempting to convert it to a management right and a scheduling tool. The Union states that the Employer’s reliance on the Management Rights provision of the Agreement cannot be sustained as the right to an unpaid lunch is a negotiated benefit. Language says granted. The Employer therefore has no right to make the taking of a lunch period mandatory. If it is requested by an employee, it cannot be denied. But the Employer has no contractual right to impose an unpaid lunch.

**The Employer argued:**

Arbitrability: Employer challenged the grievance on the basis that the Union was aware of the policy requiring the scheduling of a lunch break based on the issuance of said policies going back to 2015, and more recently when the Employer notified employees, on August 27, 2021, that breaks would again be required. The collective bargaining agreement requires the filing of a grievance no later than 20 days following an Employer action or knowledge of such.

Merits: Staff were permitted to work through their lunch while working from home. In August 2020, a schedule canvas was conducted which included either a 30 minute or 60-minute lunch period. This was in accordance with BWC policies. The BWC Flex Time policy states that lunch periods must be scheduled unless a schedule deviation is approved by management. This policy has been in effect since 2015. Other policies confirm that employees are expected to take an unpaid lunch period of 30 or 60 minutes. The Union has been provided copies of the policies over the years and is welcome to make comment. The Employer states that Article 5 of the collective bargaining agreement allows BWC management to determine starting and quitting time and the number of hours to be worked. Article 1 of the CBA provides management with the right to modify or discontinue policies at its sole discretion. HR Memo 4.23 states that management may determine the time and duration of the lunch period. Language in HR Memo 4.07 is taken directly from Section 24.07 of the CBA. “Full time employees scheduled to work more than four (4) hours in a day are entitled to an unpaid lunch period of not less than 30 or not more than 60 minutes.” These policies were not modified or changed during the time employees worked at home due to the pandemic. Working through lunch may only occur with approval from a manager.

**The Arbitrator found:**

Arbitrability: Arbitrator found the implementation of the modified work schedules, which now included an unpaid lunch period, occurred on September 7, 2021. The Union grieved ten days following implementation. The CBA requires the filing of grievances no later than 20 days following occurrence of the incident giving rise to the dispute. The grievance in this matter, BWC-2021-03003-11, was timely filed and is therefore arbitrable.

Merits: Employees were required, by order of the Governor, to work from home. It made sense, therefore,

to forego the need for the unpaid lunch periods. They were not necessary. For the word granted, what was the intent of the parties when this language was negotiated? Section 24.07 includes language regarding the scheduling of lunch periods during the middle of the work shift or at the earliest time if not possible during the middle of the shift. The provision also states that employees who are required to remain in a duty status by the Agency, with no scheduled lunch, will receive compensation for the hours worked including overtime if applicable. The inference here is management discretion. The Union is correct in its assertion that provisions of the collective bargaining agreement clearly take precedence over and supersede Employer issued policies. The arbitrator has attempted to determine the intent of the parties regarding the interpretation of the opening lines of Section 24.07. There is insufficient evidence by way of bargaining history or practice, prior to the work at home order, to support the Union’s position and remedy requested. There is no evidence of a violation of Section 24.07. Therefore, the grievance was **DENIED.**