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In the Matter of the
Arbitration Between

OCSEA, Local 11,
AFSCME, AFL-CIO

Union

and

Ohio Department of Mental
Health

Employer

G86-0433
Grievance No. ~~WB-75-86~~
(Robinson)

Hearing Date: June 1, 1988

Award Date: July 8, 1988

For the Union: Steven W. Lieber

For the Employer: Rodney Sampson

Present: In addition to Mr. Lieber (OCSEA) and Mr. Sampson (OCB),
the Grievant Robert Robinson (witness) and John Rauch, Labor
Relations Manager, ODMH (witness) were present.

Preliminary Matters:

The parties stipulated that the matter was properly before
the Arbitrator.

The parties agreed that the Arbitrator could tape the hearing
for the sole purpose of refreshing her memory and on condition
that the tapes would be destroyed on the date of the award. The
parties also agreed that the Arbitrator could submit the opinion
for publication.

The parties stipulated that "any similar grievances dealing with thirty-five (35) minute in between shift breaks shall be guided by this decision" (Joint Exhibit No. 3).

Proposed Issue(s):

Union:

Did the Employer violate the contract when it unilaterally instituted a 10 minute rest period between shifts, in place of a 35 minute rest period between shifts which had existed at Western Reserve Psychiatric Habilitation Center prior to July 1, 1986? If so, what shall the remedy be?

Employer:

Was the Mental Health Institution at Western Reserve proper, under the Contract, in scheduling a ten-minute between shift rest period for employees working two eight-hour shifts (or a double shift)? If not, what should the remedy be?

Relevant Contract Sections:

§ 13.04 - Rest Periods

Those agencies that presently have rest periods shall maintain the current practices in effect as of the effective date of this Agreement.

§ 13.07 - Overtime (in part)

Employees who accept overtime following their regular shift shall be granted a ten (10) minute rest period between the shift and the overtime or as soon as operationally possible.

§ 43.03 - Work Rules (in part)

Likewise, after the effective date of this Agreement, all past practices and precedents may not be considered as binding authority in any proceeding arising under this Agreement.

Stipulated Fact(s):

Both parties stipulated that "a 35 minute break between shifts was not permitted after July 1, 1986 at Western Reserve Psychiatric Habilitation Center but was permitted prior to July 1, 1986." (Joint Exhibit No. 3)

Facts:

On July 1, 1986, the new contract went into effect. On that day and all subsequent days, the Employer gave an employee who accepted a "double" shift (overtime) a 10 minute paid work break. On July 7, 1986, the Grievant filed a grievance over this practice. The Grievant asked that the 35 minute work break previously given persons who accepted a "double" shift be re-instated. The Grievant cited § 13.04 (see above) as requiring that the employer "maintain" that prior practice.

At the hearing, the Grievant, a TPW at WRPHC, testified that the 10 minute breaks referred to in § 13.07 were for persons who had not previously (before the contract) had breaks and that § 13.04 meant that all "old" breaks stayed the same. The

Grievant was present at negotiations on his days off and gave informal advice to the negotiators. He was not a designated negotiator, nor did he sit at the "main table". He said that he sat at the back of the room and could not hear everything said. The Grievant introduced no negotiation or bargaining notes to support his contentions. The Grievant was shown Union Exhibit No. 2. Union Exhibit No. 2 is a copy of Grievance D-68-86 which arose at the Dayton Mental Health Center. According to the Exhibit, on July 17, 1986, the employer at DMHC initiated 10 minute breaks for persons on "double" shift rather than 35 minute breaks which had been given prior to July 1, 1986 and which had continued to July 17, 1986. The settlement attached to the grievance indicated that at DMHC, the employer agreed to re-instate the 35 minute breaks for the "double" shift (overtime) situation. The Grievant testified that he had heard about the DMHC situation at a Union meeting but had not participated in the resolution of the issue.

John Raush, Labor Manager at ODMH for 8 years, testified for the Employer. Mr. Raush was the official representative of ODMH at the negotiation main table. He testified that \$ 13.04 was intended to apply only to breaks during regular work hours and that \$ 13.07 was intended to apply to breaks in overtime situations. Mr. Raush agreed that at WRPHC prior to July 1, 1986 a 35 minute break was mandated when an employee accepted a "double" shift (overtime).

Mr. Raush stated he was personally involved in settling the Dayton grievance. He stated that at DMHC the employer had

inadvertaintly given the 35 minute breaks after July 1, 1986 when, according to § 43.03, such practices were to be discontinued. Raush said that since the practice was continued under the new contract past the 1st of July, the employer had to settle and allow the 35 minute breaks.

Discussion:

Section 43.03 **standing alone** would, by its words, clearly eliminate the previous practice of thirty-five (35) minute breaks for those employees who agreed to work a "double" shift (overtime). Section 43.03 specifically excludes "past practices and precedents" as "binding authority". However, § 13.04 **by itself** would apparently maintain the thirty-five (35) minute periods. "Those agencies that presently have rest period shall maintain the current practices in effect as of the effective date of this Agreement." Since the 35 minute breaks were in effect up to July 1, 1986, § 13.04 would **on its face** "maintain" them. However, § 13.07 on Overtime **directly contradicts** § 13.04. Section 13.07 provides that "[e]mployees who accept overtime following their regular shift shall be granted a ten (10) minute rest period . . ."

The task of the Arbitrator is to interpret the Contract. Under § 25.03, the Arbitrator has no power to add to, subtract from, or modify any of the terms of the Agreement nor can the Arbitrator impose on either party a limitation or obligation not

specifically required by the expressed language of the Agreement. In this Grievance, the words of the various sections read **independently** are clear; but when read **together** inconsistency and ambiguity appear.

The basic goal of an Arbitrator when interpreting a contract is to provide an interpretation which gives expression to the mutual intent of the parties. When the words are ambiguous, the Arbitrator can consult evidence of mutual intent as manifested during negotiations. The testimony by the Grievant as to "intent" was not persuasive; the relationship of the Grievant to the negotiations was remote. The testimony of Mr. Raush, which was uncontradicted, was more persuasive because of his position during the negotiations. However, his testimony was not supported by any negotiation notes or other corroborating evidence.

The bottom line is that both meanings subscribed to by the Parties are plausible. The Union's position is that § 13.04 mandates that all breaks (during regular hours and overtime) be maintained as prior to the Contract. The Union claims that § 13.07 is added to give breaks to groups who previously did not have breaks and hence were not covered by § 13.04.

The Employer claims that § 13.04 applies to breaks during regular shifts and that § 13.07 applies to breaks for persons on "double" shift.

Over time, rules for the construction of contracts have come to be generally accepted. While an arbitrator is not required to rigidly adhere to these rules of construction, they are often

used. In a situation such as this Grievance presents where the words are contradictory and the evidence of intent cloudy at best, the rules of construction provide a fair and objective method of interpretation.

First, the interpreter must construe the Contract as a whole. Thus, §§ 13.04, 13.07, and 43.03 must be considered together. Secondly, whenever possible apparently contradictory sections should be read in a manner so as to make them consistent. Third, the words chosen by the parties must be given meaning and cannot be ignored. Fourth, specific words are to take precedence over general words.

Using these rules of construction, the Arbitrator finds that § 13.07 applies to breaks during overtime periods while § 13.04 applies to breaks during the regular work hours. Section 13.07 is a highly specific and detailed section. Such carefully chosen words must take precedence over the broader words of § 13.04 and cannot be ignored. Moreover, § 13.07 is specifically found within the section named Overtime; § 13.04 is found among other sections dealing with regular time. This construction eliminates the contradiction and allows the contract to be interpreted as a consistent whole.

The Arbitrator finds that the settlement at DMHC had sufficiently different facts as to cast little light on this grievance and that the testimony of Mr. Raush on the purpose of the DMHC settlement was persuasive.

People craft contracts with the best of intentions only to

have imperfections revealed upon application. The task of the labor arbitrator is to give a fair and reasonable interpretation on those occasions when the imperfections become manifest. The task of negotiators on both sides is to craft a more perfect document at the next bargaining session.

Decision:

Grievance denied.

July 8, 1988
Date

Rhonda R. Rivera
Arbitrator