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BEFORE THE ARBITRATOR

In the Matter of

THE STATE OF OHIO, DEPARTMENT OF HUMAN SERVICES, BUREAU OF CHILD SUPPORT,

and

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

GRIEVANTS: LESLIE SAYLOR, ET AL.
No. 16-00-910612-0035-02-12

DECISION AND AWARD

This arbitration results from a reorganization of the Bureau of Child Support in January of 1991 that caused the grievants who were working a flextime schedule to be assigned different hours of work. The reorganization involved four units of the Bureau of Child Support, the Performance Standard Unit, the Intrastate Unit, the Policy Unit and the Direct Services Unit. The Performance Standard Unit and the Travelling Unit were combined, thus causing a change in the schedules of the some of the grievants from four days of 10 hours to five days of 8 hours.

Grievant Pamela McAllister, is a Human Services Specialist 3, who approves counties' contracts with the federal government with respect to child support agencies. Although her duties were not changed, she was required to change her schedule from 7:00 to 4:00 to 7:30 to 4:00 (½ hour for lunch).[1]

Grievant Laura Faulconer was a policy developer in the Policy Unit. She worked four ten hour days per week with Friday off.

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[1]Although Ms. McAllister stated that the change affected her, the arbitrator does not fully understand how. However, as hereafter appears, the issue is not material.

After reorganization, her duties did not change, but she was put on an eight hour, five day work week. She testified that there were four policy workers all working ten hour days, and between them they scheduled their days off so there were always at least three policy workers on duty, and (because of the ten hour day) for extended times between 7:30 a.m. and 6:30 p.m. or 8:00 a.m. and 7:00 p.m. She believed that the four day 10 hour schedule made her unit more accessible to county child support agencies who frequently called for advice. Ms. Faulconer also testified that her duties did not change, but that as a result of the five day schedule she lost a part time job.

Kelly Crawford Hall, another grievant, who testified that she is a human services specialist who tries to locate absent parents, was changed from four ten hour days to five eight hour days. She testified that she perceived no advantage to the operation of BCS by changing her schedule.

There was further testimony of the Union that the Flex Time Policy Committee created by Section 24.11 of the collective bargaining agreement had not been meeting as a result of the Bureau's failing to schedule meetings.

The Deputy Director of the Child Support Division of the Department of Human Services, Susan Arnoczky, testified that the Bureau of Child Support is always under the scrutiny of the federal government since it receives substantial grants to fund the agency and that the Bureau continually failed on its performance audits by the federal government. She testified that the Bureau overseas

some 88 counties and the money for these counties flows through the Bureau of Child Support. Ms. Arnoczky also testified that there appeared to be no coordination with the counties and there were other problems. One of the problems was no full work force during the core work week because of the four day ten hour employees and that the tremendous amount of mail received was not being processed efficiently. She further testified that the priority for the reorganization was to achieve satisfactory federal audits and to improve consumer response. In order to accomplish these objectives and to give the counties more technical assistance, she realigned and consolidated teams to provide one team per county and reorganized office coverage to the core hours of the bureau operation. The five day work week resulted.

As a result of the foregoing, a retraining program of was instituted. During the training period of April 22 to May 10, 1991, all flextime, especially the four-day schedules, was suspended. On May 30, 1991, after the training program had been completed, the staff was notified of the permanent change of the flextime police to be effective June 6, 1991. Ms. Arnoczky further testified that during the reorganization period she met with the union steward and a staff representative of Local 1199.

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 int he 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.
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> 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

The Union contends that the change in schedule was wholly unreasonable. There was no claim that the employees were inefficient, and essentially none of their duties changed, only their hours of work.

It is also the Union's position that Article 1 of the Collective Bargaining Agreement states the agreement does not modify obligations set forth in R.C. 4117 and that the Bureau of Child Support violated its obligation under §4117 by unilaterally changing the schedule of hours of the grievants. It cites the decision of the SERB Hearing Officer's Proposed Order in State Employees Relations Board v. State of Ohio, Department of Mental Health, Fallsview Psychiatric Hospital as support for its position.

POSITION OF THE EMPLOYER

The state contends that it is within its management rights

reserved under the contract to determine the hours of operations and the schedule of employees in order to further the mission of the agency and its operation. It cites the previous awards of Arbitrators Curry and Silver so holding.

DISCUSSION

The Union recognizes that the position it urges in this case has been decided adversely to it in two previous arbitrations, one by Arbitrator Earl M. Curry, Jr. on November 7, 1989, before the S.E.R.B. Proposed Order in Fallsview (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 one by Arbitrator Howard D. Silver decided November 8, 1991, after the S.E.R.B. Proposed Order (State of Ohio and Ohio Health Care Employees Union, District 1199, Grievance Number 27-22-910118-102-02-11). It nevertheless urges this arbitrator to adopt the S.E.R.B. proposed order which would require collective bargaining prior to changing the scheduled hours of employment of any employee (conceding, I believe, however, that at impasse the Agency could implement its proposed changes in schedule).

This arbitrator disagrees and adopts the reasoning of Arbitrator Silver. Arbitrator Silver stated:

> The decision of the State Employment Relations Board addressed a claim of an unfair labor practice committed by the State of Ohio under Ohio Revised Code Sections 4117.11(A)(1) and (A)(5). The State Employment Relations Board determined that the change in scheduled working hours of the employee, having been effected without bargaining with the Union about this change, constituted a refusal to bargain in violation of the aforementioned statutory provisions. In contrast, the arbitral decision and award issued by Arbitrator Curry construed Section

22.11 within Article 22 of the contract between the parties in effect immediately prior to the contract presently in effect between the parties, the contract which is to be construed in this arbitration proceeding. Arbitrator Curry held that the language of Section 22.11, language which is identical to express language now found within Section 24.11 of Article 24 within the collective bargaining agreement now in effect between the parties, invests in Management the power to change the work hours of flexible schedule employees to meet the needs of the Employer's treatment programs. Arbitrator Curry ruled, in construing language identical to language within Section 24.11 within the contract before the arbitrator herein, that, "The Union's argument that flex time should not be changed without its consent is simply without merit. Nothing in the language of Article 22, Section 22.11, would lead one to this conclusion."

"Arbitrator Curry also held:

> Further, whether the Union, Grievant or Arbitrator believe that the new treatment program along with its required meetings is necessary, or even an improvement over the prior treatment program is irrelevant. That decision is clearly Management's to make. The arbitrator's only authority is to determine whether the State violated the parties' agreement in disciplining and removing the Grievant herein. He concludes that it did not.

In referring to the contradictory decisions of Arbitrator Curry and S.E.R.B., Arbitrator Silver held:

> While the above described contradictory decisions are based on identical facts, they are not based upon identical authority. It is noted that the decision of the State Employment Relations Board is governed by Ohio statutory provisions which address the obligations of parties within Ohio's system of collective bargaining. The decision of Arbitrator Curry was ruled exclusively by express language found within the contract between the parties. In this regard the arbitrator herein notes language contained within Section 7>07(E) of Article 7 contained within the contract between the parties herein.

Arbitrator Silver concluded

> The authority granted to this arbitrator to fashion a resolution of this matter arises exclusively from the

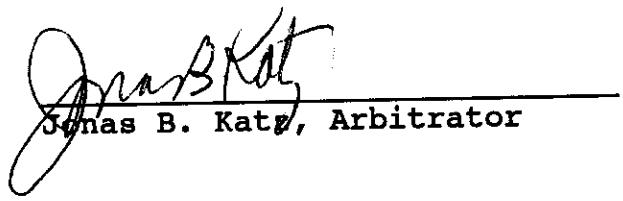
> language of the contract between the parties, and the limitation found within Section 7.07(E) of Article 7 of the collective bargaining agreement between the parties is controlling. Nothing within the contract between the parties directs the arbitrator to consider, in fashioning a resolution of this dispute, the provisions utilized by the State Employment Relations Board in coming to its determination. The arbitrator finds that his determination of this matter is to proceed within the confines of the express language of the contract between the parties and this conclusion therefore invests within the arbitration decision and award issued by Arbitrator Curry greater persuasive weight than may be accorded the contradictory determination of the State Employment Relations Board.

As Arbitrator Silver noted, this arbitrator is not bound by his decision or that of Arbitrator Curry. However, this arbitrator is in agreement with the reasoning of both Arbitrator Curry and Arbitrator Silver. Whatever obligation, if any, the S.E.R.B. decision imposes on State agencies is a matter for SERB to determine.

In the arbitrator's opinion, his authority is limited to the determination of whether or not the Bureau of Child Support in terminating the flex schedule exercised its management rights in an arbitrary or capricious manner. The evidence in the record demonstrates it did not. It made a decision based on what it perceived to be the shortcomings of the Bureau's operation and its need to improve. It decisions in this respect were therefore not unreasonable, arbitrary or capricious. Although the Union and its members believe that nothing beneficial was accomplished by the change in the flex schedule, as previously noted, that determination rests in the hands of the employer so long as it does not act in an arbitrary or capricious manner.

AWARD

For all of the foregoing reasons, the grievances are denied.



Jonas B. Katz, Arbitrator

Issued at Cincinnati, Ohio
June 1, 1992