#1991

VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE STATE OF OHIO, OHIO DEPARTMENT OF MENTAL HEALTH

- AND -

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME

GRIEVANT: Ella Tullius

GRIEVANCE NO.: 23-04-(06-08-21)-0031-01-09

ARBITRATOR'S OPINION AND AWARD
ARBITRATOR: DAVID M. PINCUS
SEPTEMBER 29, 2008

Appearances

For the Employer

Michael Duco	Deputy Director, Office of Collective Bargaining
Georgia Brokow	Labor Relations Administrator
Aimee Hage	Second Chair
Kristen Rankin	Advocate

For the Union

Ella Tullius	Grievant
Bob Goheen	Witness
Tim Watson	Chapter President
Michael Gee	Observer
John Porter	Second Chair
Patty Rich	Advocate

INTRODUCTION

This is a proceeding under Sections 25.03 and 25.05 entitled Arbitration Procedures and Arbitration/Mediation Panel between the State of Ohio, Ohio Department of Mental Health, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, Local 11, AFSCME, hereinafter referred to as the Union, for the period March 1, 2006 to February 28, 2009 (Joint Exhibit 1).

At the arbitration hearing, the parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and to cross-examine witnesses. At the conclusion of the arbitration hearing, the parties were asked by the Arbitrator if they planned to submit post-hearing written closings. The parties did not select this option and closed the hearing with verbal closings.

JOINT ISSUE

Under the 2006-2009 Collective Bargaining Agreement between OCSEA and the State of Ohio, what should the formula be to calculate part-time pay for a holiday?

JOINT STIPULATIONS

1. The grievance is properly before the arbitrator.
2. The contract language concerning part-time employees was modified in the 2006 negotiations.

3. It was a management proposal which proposed to change how part-time employees were to be paid for a holiday.
4. Prior to March 1, 2006 there were varied practices in different agencies about how part-time employees were paid holiday pay.
5. This grievance arose under the 2006-2009 contract between OCSEA and the State of Ohio.

PERTINENT CONTRACT PROVISIONS

ARTICLE 26 - HOLIDAYS

XXX

26.02 - Holiday Pay

xxx

> Part-time employees shall receive holiday pay on a pro-rated basis, based upon the daily average of actual hours worked excluding overtime, in the previous quarter. The quarters shall be January 1, April 1, July 1, and October 1.
> (Joint Exhibit 11, Pg. 96)

CASE HISTORY

Section 26.02 was newly negotiated contract language in the 2006-2009 collective bargaining agreement (Joint Exhibit 1). The disputed language was proposed by the Employer and accepted by the Union. The parties recognized the existing arrangement had to be modified because varying inconsistent methodologies were employed by different agencies. Part-time employees were paid differently for holiday pay. Some agencies paid part-time employees and

automatic eight (8) hours; a payment amount equivalent to holiday pay realized by full-time employees. Other agencies paid part-time employees the hours they would have normally worked. Still other agencies employed a formula which averaged the number of hours normally worked by a part-time employee.

The Grievant, Ella Tullius, was employed as a part-time Therapeutic Program Worker at the Washington County CSN program. On August 15, 2006, a grievance was filed on the Grievant's behalf which challenged the holiday pay she received for July 4, 2006 (Joint Exhibit 2, Pg. 2). The Grievant received 5.8 hours of holiday pay for the Independence Day holiday. The Grievant believed she was entitled to 9.7 hours of holiday pay.

The parties were unable to resolve the disputed matter during subsequent stages of the grievance procedure. Substantive and procedural arbitrability issues were not raised by the parties. As such, the grievance is properly before the Arbitrator.

THE MERITS OF THE CASE

The Union's Position

The Union opined that the Employer violated Section 26.02 It utilized a wrong formula in computing the Grievant's holiday pay for July 4, 2006. It should be noted this incident reflected the first time holiday pay for part-time employees was calculated by the payroll system.

Application of Section 26.02 to the disputed circumstance should have led to a holiday payment of 9.7 hours rather than 5.79 hours computed by the Employer. The Union's calculation emphasized a number of elements. It used the actual hours worked by the Grievant from April 1, 2006 thru June 30, 2006 divided by the number of days she worked. Unlike the Employer's approach, the suggested calculation did not employ the payroll method of calculating hours based on seven pay periods in a quarter and ten days in a pay period. The calculation utilized by the Employer, therefore, adversely impacted her holiday hour average.

The Union admitted the newly negotiated language was agreed to as a way to consistently calculate holiday pay for part-time employees. Prior to the negotiated outcome, agencies were calculating holiday pay using a variety of methodologies. Certain agencies paid part-time employees an automatic eight hours, others paid part-time employees the hours they "normally" worked, while some agencies averaged the hours worked as a calculation methodology. These approaches led to inconsistent results when viewed across agency outcomes. Also, not all employees work ten days in a pay period which further skews the results.

Even though consistent application was one desired outcome, another outcome was of paramount importance. The newly established calculation was

not meant to harm bargaining unit members. Part-time holiday calculations would not yield results that reduced the benefit levels previously realized by bargaining unit members.

The Employer drafted the language eventually incorporated as Section 26.02. Since Section 26.02 is ambiguous, it should be interpreted against the drafter.

The Employer's Position

The Employer maintained the calculation employed did not violate Section 26.02. The formulae used to compute the holiday pay is consistent with the contract language which is clear and unambiguous. In this instance, the Union failed to meet its burden in support of the proposed calculation methodology.

Arguing in the alternative, if the contract language is ambiguous, bargaining history and the parties' intent support the Employer's interpretation. Mike Duco, Deputy Director for the Office of Collective Bargaining, testified the Employer intended to standardize the calculation across all the agencies. The Union was notified that some employees would receive increased holiday pay while others would receive less when compared with prior benefit outcomes.

Georgia Brook provided additional bargaining history regarding the disputed matter. She participated in a subcommittee during bargaining whose focus was Article 26 disputes. She testified, regarding Section 26.02

discussions, there were several clear and unambiguous principles communicated to the Union and understood by the parties. First, part-time employees were to receive prorated holiday pay based on the average number of hours worked over the previous quarter. Second, the hours worked over the previous quarter had to be standardized. Otherwise, employees working the same number of hours would not necessarily receive the same amount of holiday pay. Third, the parties never intended that part-time employees working less than forty hours should receive a holiday benefit greater than full-time employees.

THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony adduced at the hearing, a complete and impartial review of the record including pertinent contract provisions, it is this Arbitrator's opinion that the Employer did not violate Section 26.02 when it implemented and applied a formula for calculating part-time employees holiday pay. The calculation in question applies requirements contained in Section 26.02, and understandings developed during negotiations and agreed to by the Union.

Section 26.02 contains language which is clear and unambiguous because certain requirements are identified for calculation purposes. The specific calculation formula, however, is not articulated. This allows the employer a great deal of latitude as long as contractual requirements are met.

Otherwise, the Union would have negotiated additional limitations restricting the Employer's management rights.

Within this context, the Arbitrator determines the formula utilized for calculation purposes contains Section 26.02 requirements. Holiday pay is pro-rated and based on the daily average of actual hours worked. As such, Section 26.02 was not violated in this instance.

The Arbitrator would be remiss if other aspects of the disputed matter were not addressed. The Union maintained the parties did not intend to have any workers harmed as a consequence of the new formula. This alleged intention seems a bit unattainable under the circumstances. The parties admitted the primary goal surrounding this provision was to standardize outcomes across and within agencies. Maintaining holiday pay outcomes within this circumstance are highly unlikely since the parties agreed to a standardized methodology where various methodologies were employed in the past. Nothing in the record, moreover, rebuts testimony provided by Duco and Brokaw about discussion during negotiations. They testified the Union was notified that application of a new formula would result in varying outcomes. Some employees would have holiday pay increases or decreases from pre-negotiated outcomes.

Application of the Union's formula is further minimized because it may lead to a nonsensical result. Per the Union's approach, a full-time senior employee might attain less holiday pay than a less senior part-time employee.

This possible outcome was never intended by the parties. As such, the Union's argument is severely damaged, and support of the proposed formula is in direct conflict with the parties intention.

AWARD

The grievance is denied. The Employer's calculation method and resultant outcomes are consistent with the contract language contained in Section 26.03.

9/29/08

September 29, 2008
Chagrin Falls, Ohio

Dr. David M. Pincus
Arbitrator