

IN THE MATTER OF ARBITRATION

STATE OF WASHINGTON
DSHS

-and-

WASHINGTON FEDERATION
OF STATE EMPLOYEES

OPINION AND AWARD OF
Philip Kienast
August 22, 2007

Re: Lauterbach, etal grievance
(AAA 75-390-00363-06 LYMC)

APPEARANCES

For the Union:

Christopher J. Coker, Attorney-at-Law

For the Employer:

Laura L. Wulf, Assistant Attorney General

Reported by:

Dixie Cattell & Associates

OPINION

This proceeding is in accordance with the parties' Agreement. A hearing in this matter was held on May 25, 2007 and the record closed upon receipt by the Arbitrator of post hearing briefs on July 23, 2007. The parties stipulated the issue for decision was:

Did the Employer violate Article 6.3 of the Collective Bargaining Agreement by denying Burinsky and/or Lauterbach's request for a 4/10 compressed workweek in January 2006?

Pertinent Agreement Provisions

ARTICLE 6 – HOURS OF WORK

6.1 Definitions

H. Work Schedules

Workweeks and work shifts of different numbers of hours may be established by the employer in order to meet business and customer service needs, as long as the work schedules meet federal and state laws.

6.2 Overtime-Eligible Employees (Excluding Law Enforcement Employees)

A. Regular Work Schedules

The regular work schedule for overtime-eligible employees will not be more than forty (40) hours in a workweek, with starting and ending times as determined by the requirements of the position and the employer. The regular work schedule will normally include two (2) consecutive scheduled days off. The employer may adjust the regular work schedule with prior written notice to the employee.

B. Alternate Work Schedules

Workweeks and work shifts of different numbers of hours may be established for overtime-eligible employees by the Employer in order to meet business and customer service needs, as long as the alternate work schedules meet federal and state laws. The employer will consider employee's personal and family needs.

G. Employee-Requested Schedule Changes

Overtime-eligible employees' workweeks and work schedules may be changed at the employee's request and with the employer's approval, provided the Employer's business and customer service needs are met and no overtime expense is incurred.

Background

The two grievants in this matter were employees in the central service unit of the child support division of the Department of Social and Health Services. This unit was

reorganized in 2005 requiring the cross training of all employees so that each could do the work required on any given day. Under the prior system employees specialized in different functions, such as dealing with bounced child support checks.

As part of the reorganization all employees were placed on a Monday through Friday eight hour a day schedule. Prior to this change the grievances worked four ten hour days. In January 2006 the employer set guidelines for alternate work schedules which did not allow 4/10 workweeks.

The Employer contends the applicable language is subsection 6.3 G, wherein it states the Employer “may” grant employee requests for schedule changes. It argues that nothing in that language requires it to grant a request or to consider an employee’s personal or family needs. It argues the evidence disclosed the denial of the grievant’s requests for 4/10 workweeks was based on business and customer service needs.

The Union contends the grievant’s requests for 4/10 workweeks were denied by the Employer without due consideration of their personal and family needs and absent an overriding business necessity.

Analysis and Conclusion

Subsection 6.1 H clearly vests discretion for the determination of work schedules with the Employer “to meet business and customer service needs...” The record discloses the employer changed schedules in 2005 to effectuate a new organization of work. The key to this effort was that each employee be trained to perform all duties of the unit such that variations in work flow or customer service requirements could be met by assigning more employees to cover whatever business demands were encountered on any given day.

The Union presented no evidence this change was arbitrary or capricious on the part of the Employer. The Employer later determined that some alternate schedules were consistent with these changes such as the 9/80 schedule, but not the 4/10 schedule requested by the grievants. The Union did not show this exercise of managerial discretion was motivated by anything other than the employer’s determination of how it could best deal with the fluctuating daily work loads in the central service unit.

Absent a showing that the Employer exercised the scheduling discretion granted to it by the agreement in an arbitrary, capricious or discriminatory manner, the Arbitrator must deny the grievance. Although not required by subsection 6.3 G, the Employer did in

fact consider the employees' personal and family needs and offered some flexibility in their schedules to handle such matters. However, in the final analysis, the Employer has the right to put its operational requirements ahead of employees' personal and family needs when it sets work schedules or considers employee requests for alternate schedules.

AWARD

1. The Employer did not violate Article 6.3 by denying Burinsky and/or Lauterbach's requests for a 4/10 compressed workweek in January, 2006.

Philip Kienast smc

Philip Kienast
August 22, 2007

Bothell, Washington