BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LOCAL 2425, AFSCME, AFL-CIO	Case 11 No. 47666 A-4943
and	
SPOONER COMMUNITY MEMORIAL HOSPITAL	

Appearances:

Mr. Guido Cecchini, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 470 Garfield Avenue, Eau Claire, Wisconsin 54701, for the Union.

Weld, Riley, Prenn & Ricci, S.C., 715 Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54702, by Mr. Stephen L. Weld, for the Hospital.

ARBITRATION AWARD

Local 2425, AFSCME, AFL-CIO (the Union), and the Spooner Community Memorial Hospital (the Hospital), are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Spooner, Wisconsin on September 1, 1992. No transcript was taken. The parties filed briefs, the last of which was received December 1, 1992.

ISSUES

The parties were unable to stipulate to a statement of the issue.

The Union stated the issue as:

> Did the Employer violate Section 9.01 of the Collective Bargaining Agreement by not paying Grievant double time for working Memorial Day, May 25, 1992?

The Hospital stated the issue as:

> Did the Employer violate the Collective Bargaining Agreement by scheduling Grievant to work 72 hours, and paying her for 80 hours during the payroll period which included Memorial Day, 1992?

The arbitrator states the issue as follows:

> Did the Hospital violate the collective bargaining agreement by scheduling Grievant Barbara Hills to work only 72 hours during the two-week pay period in which she worked on Memorial Day, 1992? If so, what is the appropriate remedy?

BACKGROUND

The employer operates a hospital and skilled nursing facility. Barbara Hills has worked for the employer as a housekeeping aide for 18 years. At the time of the grievance she was a full-time employe.

Sometime prior to May 12, 1992, Housekeeping Supervisor Ron Stellrecht posted the schedule for the period May 18 through May 31. Grievant was assigned to work on Memorial Day, May 25 and to have Thursday, May 28 off for a total of nine work days during the pay period. Grievant requested that she not be given May 28 off, and that she work ten days during the pay period and receive the holiday pay for the time she worked on Memorial Day. Her request was denied and the schedule remained unchanged. She subsequently grieved the lost opportunity to work the eight hours and the grievance, which remained unresolved throughout the grievance procedure, is the subject of this arbitration award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE 2 - MANAGEMENT RIGHTS CLAUSE

> Section 2.01: The Employer shall have the exclusive power, right and privilege to exercise all normal functions, policies, and affairs with reference to the management and operation of the hospital and nursing home which are not specifically denied by this contract or forbidden by law. The non-exercise of such function or functions shall not constitute a waiver of any power, right, or privilege to exercise the same. The Employer shall not act unreasonably in the exercise of any such rights.
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> . . .
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> Except as expressly modified by other provisions of the contract, the Employer possesses the sole right to operate the Hospital and Nursing Home and all management rights repose in it. These rights include, but are not limited to, the following:
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> A) To direct all operations of the Hospital and Nursing Home;
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> B) To hire, promote, transfer, schedule and assign employees in positions within the Hospital and Nursing Home;

. . .

E) To maintain efficiency of Hospital and Nursing Home operations;

. . .

I) To determine the kinds and amounts of services to be performed as pertains to Hospital and Nursing Home operations; and the number and kind of classifications to perform such services;

J) To determine the methods, means and personnel by which Hospital and Nursing Home operations are to be conducted;

. . .

ARTICLE 3 - CLASSIFICATION OF EMPLOYEES

Section 3.01: Full-time Employee. A full-time employee is considered to be one who is regularly scheduled to work eighty (80) hours in any fourteen (14) day period. Said employee is expected to fulfill the requirements of a full-time position unless justifiable reasons are given for their inability to do so during any particular pay period. Full-time employees will receive full fringe benefits allowed under this Agreement, subject to any restrictions otherwise contained in this contract.

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ARTICLE 4 - WORKDAY AND PAY PERIODS

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Section 4.02: The work period for full-time employees shall consist of eighty (80) hours in every fourteen (14) day pay period.

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ARTICLE 9 - HOLIDAYS

Section 9.01: All regular full-time employees shall be granted holiday pay equal to eight (8) hours at their regular straight time rate of pay for the following days: New Year's Day, Memorial day (sic), Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In addition, each regular full-time employee shall be entitled to holiday pay on his/her birthday. Additionally, such employee shall receive two (2) floating holidays. Employees who do not work on such holidays shall receive eight (8) hours pay at their regular straight time rate. Any employees working on any such holidays shall be paid, in addition to his/her regular straight time rate of pay for the hours worked, eight (8) hours of straight time pay as holiday pay, or

shall be given, at the employee's option, eight (8) hours of compensatory straight time off, said option to be exercised within fourteen (14) days of the holiday.

. . .

POSITIONS OF THE PARTIES

The Union

The Union asserts Section 9.01 of the collective bargaining agreement clearly gives Grievant the option of receiving double time for working on the holiday instead of time off with pay. It further asserts that she has exercised that option in the past.

In its reply brief, the Union argues that the Hospital's right to schedule employes pursuant to the Management Rights clause, a general provision must be subordinated to Sections 3.01, which provides that full-time employes work 80 hours in a 14 day period and Section 9.01 which provides for holiday pay. The Union disputes that any practice exists that has been accepted by the Union that would give the employer the right to impose a day off on an employe who works on a holiday.

The Hospital

The Hospital insists no violation occurred because it properly exercised its right to schedule work. Under the Hospital's theory of the case, the Hospital did in fact pay Grievant double time for working the holiday, as required by contract, at the same time that it exercised its management right to schedule Grievant for only 72 hours of work during the relevant pay period. The hospital acknowledges the contractual reference to 80-hour work weeks but asserts there is no guarantee to an eighty-hour work week which would be required to support the Union's position. The Hospital cites other arbitrators' interpretations of contracts other than the one at issue here for the proposition that holiday pay is not extra pay but a provision to prevent any loss of earnings that might result from not working on a holiday. It also cites arbitrators who found that a guaranteed work week refers to hours paid, not hours worked.

Additionally, the Hospital asserts its position is supported by the history of modifying schedules for pay periods which contain holidays so that employes only work 72 hours for a total of 80 hours of pay.

In its reply brief, the Hospital points out that Section 3.01 merely defines a full-time employe, but does not guarantee 80 hours of work. In addition, it reiterates that Grievant received 80 hours of pay which has been found by arbitrators to fulfill a requirement to work employes 80 hours. Finally, it underlines its position that the holiday provision has been administered in the past in the same manner as it was when Grievant worked on Memorial Day, 1992.

ADDITIONAL FACTS AND DISCUSSION

The Merits

This is the grievance of an employe who, pursuant to the schedule created by her supervisor, worked on a holiday, was scheduled to work only 72 hours during the relevant pay period, and was denied her request to work a full 80 hours during the pay period. Had she been granted her request, the double time pay for the holiday work she performed would have brought her total to 88 hours

of pay; instead she received 80 hours of pay.

The hospital frames the issue in terms of its right to schedule. It does not question Grievant's right to receive double time pay for the holiday on which she worked, but argues that it was within its rights to reduce her schedule during the relevant pay period from 80 to 72 hours. That reduction effectively nullified the double time pay for the holiday by yielding her pay for only 80 hours. By virtue of the schedule change, her pay was the same as if she were one of those employes who did not work the holiday but received eight hours of pay as holiday pay.

The Hospital bases its argument on its right to schedule employes which it derives from ARTICLE 2 - MANAGEMENT RIGHTS CLAUSE. That provision, however, grants the Hospital general authority, and as a general contract provision, it must be governed by a more specific contract provision. That is, the Hospital's general right to schedule employes cannot be used to negate the employes' specific entitlement to double time pay for working on a holiday found in ARTICLE 9 - HOLIDAYS.

The Hospital argues that its right to schedule cannot be limited by the reference to 80 hours in a pay period contained in Article 4, because that article does not provide a guaranteed work week. Indeed, this Award's finding for the Union does not address the question of a guaranteed work week. As stated above, the holiday provision is sufficient unto itself to prevent the Hospital from manipulating the schedule to avoid the effect of the double time pay for working on the holiday.

This conclusion is reached notwithstanding the argument the Hospital presented about the scheduling practices for pay periods including a holiday. The Union did not contest the testimony that the Hospital commonly schedules employes who do not work the holiday for only 72 hours during the two-week pay period, and those employes receive their holiday benefit by receiving 80 hours of pay for that period. For those employes, the holiday benefit is time off with pay. That evidence, however, it not relevant to the case at hand, for employes who do not work the holiday are obviously distinguishable from those who do work the holiday. That fact is underscored by Section 9.01 which addresses employes who work the holiday separately from those who do not work the holiday.

The relevant scheduling history involves the treatment of employes who do work on the holiday. Grievant testified, without contradiction, that at some times in the past she has worked 80 hours in the holiday pay period, and received 88 hours pay and at some times she worked 72 hours and received 80 hours' pay. This evidence indicates a mixed practice in this area. Although the employes have on occasion accepted the assignment of a 72-hour pay period when they worked on a holiday, the varied manner of administering holiday work cannot give rise to the conclusion that the Union has acquiesced to a contract modification. The Union has not waived its entitlement to the double time holiday pay without reduction in the 80-hour pay period when the employe requests such scheduling.

The Remedy

The undersigned rejects the Hospital's argument that there should be no backpay award in this case because no wages were lost. Although Grievant was compensated for all time worked, the Hospital's contract violation caused her to lose the opportunity to work the additional eight hours and receive the appropriate wages. This award orders the Hospital to make Grievant whole by paying her the wages and related benefits for the eight hours she requested and was entitled to work upon request.

The Union's claim for reimbursement for the $25 arbitration filing fee must be rejected. The undersigned finds no contractual basis for the imposition of such a cost upon the Hospital.

In light of the record and the above discussion, the Arbitrator issues the following

AWARD

1. The Hospital violated the collective bargaining agreement by scheduling Grievant Barbara Hills to work only 72 hours during the two-week pay period in which she worked on Memorial Day, 1992.

2. The Hospital is ordered to pay Grievant for the wages and related benefits she would have earned if her request to work the disputed eight hours had been granted.

Dated at Madison, Wisconsin this 25th day of February, 1993.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator

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