BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
MENOMONIE CITY EMPLOYEES LOCAL 734, AFSCME, AFL-CIO	Case 79 No. 51342 MA-8576
and	
CITY OF MENOMONIE	

Appearances:
Mr. Steven Hartmann, Staff Representative, Wisconsin Council 40, on behalf of the Union.
Mr. Lowell Prange, City Administrator, and Skinner, Schofield and Higley, by Mr. Ken Schofield, on behalf of the City.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "City", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Menomonie, Wisconsin, on October 26, 1994. The hearing was not transcribed and both parties then presented oral argument in lieu of briefs. I there issued a bench decision, which this Award augments.

ISSUE

Since the parties were unable to jointly agree to the issue, I have framed it as follows:

> Did the City violate Article 7.01, Section A,2, of the contract when it refused to assign grievant Keith Webb to the Monday-Thursday summer schedule and, if so, what is the appropriate remedy?

DISCUSSION

Grievant Webb is classified as an Electrical Worker, a position he obtained in 1990 pursuant to a job posting. At that time, he was informed via a May 15, 1990, letter from the City Administrator:

. . .

> (5) This position normally works from 7:00 a.m. to 5:00 p.m. Tuesday through Friday on the summer schedule. During the winter, the schedule as stated in the contract will be followed.

. . .

The summer schedule referred to in the letter is reflected in Article 7.01, Section A.2, of the (present) contract which reads:

> 2. SUMMER SCHEDULE (April through November) Work Week: Employes will be scheduled to work four (4) consecutive days, Monday through Thursday, or Tuesday through Friday; four (4) ten (10) hour days totalling forty (40) hours per week. Work Day: 7:00 a.m. to 5:00 p.m., including a paid thirty (30) minute lunch period.
>
> a. NOTE: The designation of the individual work week assignment shall be made each year prior to the beginning of the summer schedule period work; i.e., shall not be altered except by mutual agreement of the parties. Pursuant to ARTICLE 5 of this AGREEMENT seniority rights may be exercised by the individual employees in the selection of the work week which they will work, i.e., Monday through Thursday or Tuesday through Friday. The CITY shall determine the number of employees and the classifications needed in the respective work weeks.

Thereafter, Webb for several months in 1990 worked the Monday-Thursday summer schedule rather than his normally assigned Tuesday-Friday schedule because the Sign Technician - whose summer schedule is Monday-Thursday - was absent from work during that period. The City Administrator thus informed Webb in a May 31, 1990, letter:

. . .

> "This position will work on a Monday-Thursday schedule until the return of the Sign Technician. As verbally agreed, upon his return to duty, you will revert to a Tuesday-Friday schedule as indicated in the original posting."

. . .

In 1991, Webb worked Tuesday-Friday from April-June until he went off on worker's compensation. In 1992, Webb missed work until July 21, 1994, after which he worked Tuesday-Friday during the summer schedule. In 1993, he worked Tuesday-Friday during the summer schedule.

But for the time that he temporarily filled in for the Sign Technician in 1990, then, Webb has always worked the Tuesday-Friday summer schedule.

Webb filed the instant grievance on March 28, 1994, and there claimed that the City was violating Article 7, Section 2A, of the contract by not letting him work Monday-Thursday under the summer schedule.

As I ruled at the hearing, there is no merit to the grievance because:

One, Webb was expressly informed when he became an Electrical Worker in

1990 that his summer schedule would be Tuesday-Friday.

Two, Webb was expressly told in 1990 that he would work the Monday-Thursday summer schedule only until the Sign Technician returned to work.

Three, there is no past practice or bargaining history supporting the grievance.

Four, there is nothing in the contract which gives Webb the right to insist on a Monday-Thursday summer schedule.

Five, the contract in Article 7, Section 2A, expressly gives the City the right to establish the summer schedule for each classification, which is exactly what the City has done here since 1990 by assigning Webb to the Tuesday-Friday schedule except for the several months that the Sign Technician was absent from work in 1990.

As a result of the foregoing, the grievance has no contractual basis.

Nevertheless, the Union argues that the City should have accommodated Webb's desire for a different schedule in 1994 because it has accommodated the Sign Technician in the past and because the City has not established that it needs Webb to work Tuesday-Friday. The problem with this claim is that employers often can things that they are not absolutely required to do. That, after all, is what management direction is all about, and that is a matter expressly reserved to the City under Section 7.01 2,A, of the contract which states that the City retains the right to "determine the number of employes and the classifications needed in the respective work weeks."

The mere fact that such discretion has been exercised one may in the past, then, does not automatically mean that it must be exercised the same may for all other employes who want to change the hours of their employment. That is why the City is not required to alter Webb's Tuesday-Friday summer schedule since that is the schedule established for his position.

In light of the above, it therefore is my

AWARD

That the City did not violate Article 7.01, Section A,2, of the contract when it failed to assign grievant Keith Webb to the Monday-Thursday summer schedule; the grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 8th day of November, 1994.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

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