

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SAWYER COUNTY PROFESSIONAL
EMPLOYEES, LOCAL 1213-D, AFSCME,
AFL-CIO

and

SAWYER COUNTY (SOCIAL WORKERS)

Case 122
No. 52993
MA-9187

Appearances:

Mr. James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1701 East Seventh Street, Superior, Wisconsin 54880, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 4330 Golf Terrace, Suite 205, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, by Ms. Kathryn J. Prenn, appearing on behalf of the County.

ARBITRATION AWARD

Sawyer County Professional Employees, Local 1213-D, AFSCME, AFL-CIO, hereafter the Union, and Sawyer County, hereafter the County or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the County, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. Hearing was held on November 20, 1995, in Hayward, Wisconsin. The hearing was not transcribed and the parties did not file written argument.

ISSUE:

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

The Union frames the issue as follows:

Did the Employer violate the terms of the collective bargaining agreement and past practice by unreasonably denying the grievant the use of flex time and causing him to use vacation time to attend classes related to his employment while having allowed other

employees in the bargaining unit to use flex time for other personal and professional reasons?

The County frames the issue as follows:

Did the County violate the collective bargaining agreement when it denied the grievant's request to be allowed to use flex time for purposes of attending classes when such attendance was not required by or directed by the County?

If so, what is the appropriate remedy?

The undersigned adopts the following statement of the issue:

Did the County violate the collective bargaining agreement or any binding past practice when it denied the Grievant's request for flex time?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE 1 - PURPOSE OF AGREEMENT

The Employer recognizes the Union as the exclusive collective bargaining representative for all regular full-time and regular part-time employees of Sawyer County, including Social Workers, but excluding all non-professional employees of the Department of Social Services, the non-professionals of the courthouse, the County Highway Department, and Law Enforcement personnel, also excluding all elected officials and all managerial, supervisory and confidential employees pursuant to certification by the Wisconsin Employment Relations Commission, or as modified by mutual agreement with respect to wages, hours and conditions of employment.

. . .

ARTICLE 5 - MANAGEMENT RIGHTS

The County possesses the sole right to operate the County and all

management rights repose in it, subject to the provisions of this contract and applicable laws. These rights include the following:

- A) To direct all operations of the County;
- B) To establish reasonable work rules;
- C) To hire, promote, schedule and assign employees to positions within the County in accordance with the terms of this Agreement;
- D) To maintain efficiency of County functions;
- E) To take whatever reasonable action is necessary to comply with state or federal law;
- F) To introduce new or improved methods or facilities or to change existing methods or facilities provided if such affects the wages, hours or working conditions of the employees, the Union will be notified in advance;
- G) To determine the kinds and amounts of services to be performed as pertains to County operations and the number and kinds of classification to perform such services;
- H) To determine the methods, means and personnel by which County operations are to be conducted;
- I) To take whatever reasonable action is necessary to carry out the functions of the County in situations of emergency;
- J) To suspend, demote, discharge or take other disciplinary action against the employees for just cause.

The reasonableness of County action taken pursuant to this Article is subject to the grievance procedure.

...

ARTICLE 10 - WORK DAY, WORK WEEK

Section 1: The normal work week shall consist of five (5) seven (7)

hour days, Monday through Friday, from 8:00 a.m. to 4:00 p.m. Work shifts shall include a one (1) hour lunch period. Those positions as of January 1, 1980, having a normal work week other than that above, shall continue to have the existing work

week. Changes in the above schedules can be made upon mutual agreement.

. . .

Section 4: At the discretion of the Employer, flex time may be granted as an alternative to compensatory time or overtime.

. . .

ARTICLE 16 - LEAVES OF ABSENCE

Section 1 - Unpaid Leave: In its reasonable discretion, the County may grant unpaid leave for medical or personal reasons.

NOTE: Also see the attached Side Letter of Agreement.

Section 2 - Benefits: No benefits as provided herein will accrue to employees while on an unpaid leave of absence: Holidays, vacation, sick leave, funeral leave and insurances. Such leaves, however, will not be deemed a break in the employee's continuous service.

Section 3: Both the County and the Union recognize the importance of attendance at workshops, seminars and conventions for all employees to stay abreast of developments in their professional field. Information on pending workshops, seminars, and conventions will be posted by each department.

With the prior approval of the Employer, the employee shall be reimbursed for transportation, meals, lodging, tuition and costs of required books and materials pursuant to the County reimbursement policy. It is not intended by this provision to require reimbursement for meetings attended in the course of performing the employee's normal duties. However, the County shall not deny such requests for arbitrary and/or capricious reasons.

. . .

SIDE LETTER OF AGREEMENT

This Agreement is entered into by and between Sawyer County ("County") and Local 1213-D, AFSCME, AFL-CIO (sic) ("Union").

As further classification of Article 16 (Leave of Absence) of the parties' collective bargaining agreement, the parties stipulate and agree to the following:

1. Requests for leave of absence for educational purposes shall not be denied unless the educational leave requested is not directly applicable to the requesting employee's current position, or
2. Unless the request demonstrably and adversely impacts the County's operation.

. . .

BACKGROUND:

On March 15, 1995, Dave Bauer, hereafter the Grievant, presented a written request to Deputy Director Patricia Acheson asking for permission to flex six hours of time weekly in order to attend classes at UMD for the purpose of obtaining a Masters Degree in Social Work. The County did not require the Grievant to obtain this degree.

The Grievant intended to flex his normal work schedule of 8:00 a.m. to 4:00 p.m., Monday through Friday, by working 8:00 a.m. to 6:00 p.m. Monday, Wednesday and Friday and by leaving at noon on Tuesday and Thursday. The Grievant's request for flex time was denied. Thereafter, the Grievant used vacation time to attend UMD during his normal work schedule, with the result that the Grievant was available for twenty-eight, rather than thirty-five hours of work per week.

A grievance was filed on the denial of the Grievant's flex time request. The grievance was denied at all steps of the grievance procedure, and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union:

Contrary to the argument of the County, this is not a leave of absence issue. Thus, the bargaining history on leaves of absence and the contract language on leaves of absence is irrelevant.

The Grievant requested flex time to attend classes which would permit the Grievant to obtain a Masters Degree in Social Work. This degree is related to the Grievant's work and would enhance the Grievant's value as an employe. The denial of the Grievant's flex time request sends an unfortunate message to employes who would enhance their professional value to the County.

If the County had accommodated the Grievant's request for flex time, the County would have received 35 hours of productive service. The Grievant would have been able to use his vacation time for its necessary purpose, relaxation.

Other employes have requested and received flex time, some for reasons which are not work related. The denial of the Grievant's request for flex time violates past practice.

Article 5, Management Rights, expressly recognizes that the reasonableness of County action is subject to the grievance procedure. The County acted unreasonably when it denied the Grievant's request for flex time and, thus, the County has violated Article 5.

The grievance should be sustained; the Grievant should be allowed to use flex time for the purpose of attending job-related classes; the County should cease and desist from unreasonable denials of use of flex time for attending legitimate job-related educational classes; and the County should restore vacation time which the Grievant has been forced to use due to the County's unreasonable denial of flex time to attend classes.

County

The denial of the Grievant's request for flex time did not involve the exercise of Article 5, Management Rights. Rather, the County applied the specific contract language found in Article 10, Sections 1 and 4, as well as the contractual leave of absence provisions.

Specific language takes precedent over any general management rights clause. Article 6, Section 6(c), prohibits the arbitrator from modifying, adding to, or deleting from the express terms of the contract.

The County did not require the Grievant to attend the classes for which he requested flex time. If the Grievant wishes to attend classes during normal work hours, then the Grievant is entitled to request an educational leave of absence under Article 16. It was the Grievant's choice

to use vacation to attend classes at UMD.

The 1995-96 contract negotiations were concluded after the Grievant's request for flex time had been denied. The issue of this denial, however, was not an issue at the bargaining table. The agreement was ratified without change in the relevant contract language. The Grievant is attempting to end run the bargaining process.

The County is not obligated to grant the Grievant's request for flex time. The grievance is frivolous and should be denied.

DISCUSSION:

Article 10, Work Day, Work Week, Section 4, is the only contract provision to specifically address flex time. This provision of the contract provides the County with discretion to permit an employe to flex time as an alternative to compensatory time or overtime. Since the Grievant is not seeking to use flex time as an alternative to compensatory time or overtime, this provision of the contract is not controlling.

Article 10, Work Day, Work Week, Section 1, defines the normal work week schedule and states that "Changes in the above schedules can be made upon mutual agreement". The Grievant's flex time request was a request to change his normal work week schedule. Under the language of Article 10, the Grievant does not have a contractual right to change his normal work week schedule unless the County agrees to the change.

The County denied the Grievant's flex time request because the County saw no benefit to having the Grievant work outside his normal work schedule; the County was concerned about setting a precedent for future requests; and the County was concerned that the Grievant's absence from work during normal work hours would add to the burden of fellow employes. It is not evident that the Grievant's union affiliation or union activity was a factor in the County's denial of the Grievant's request for flex time. 1/

1/ The Grievant believes that he has been discriminated against because one non-union employe was permitted to flex the normal work schedule to attend a Pharmacology class and another non-union employe was permitted to flex the normal work schedule to accommodate rehearsals for a community play. It is not discriminatory, per se, for the Employer to provide non-union employes with benefits which are not provided to union employes. Nor does the provision of a benefit to a non-union employe establish a past practice which is binding upon union employes.

In denying the Grievant's request for flex time, the County exercised its rights under Article 10. Article 10, unlike Article 5, does not provide the arbitrator with the right to review the reasonableness of the County's action. Nor does Article 10 otherwise restrict the County's right to agree, or to not agree, to the Grievant's request to change his normal work week schedule.

Absent such restrictions, the decision to deny, or to approve, the Grievant's request to change his normal work week schedule lies solely within the discretion of the County. Given the County's right to exercise discretion, the County's prior conduct in denying, or approving,

changes in a bargaining unit employe's normal work week schedule does not constitute a past practice which is binding upon the County. 2/

The denial of the Grievant's flex time request did not force the Grievant to use vacation time. Rather, the Grievant had the option to forego attendance at UMD and to work his normal work week schedule.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

1. The County did not violate the collective bargaining agreement or any binding past practice when it denied the Grievant's request for flex time.
2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 5th day of April, 1996.

2/ In point of fact, the County has never permitted a bargaining unit employe to flex the employe's normal work week schedule for the purpose of attending classes which are not required by the County. It is evident that one bargaining unit employe completed a Masters Degree program by using vacation, unpaid leave, and attending classes outside of her normal work week schedule.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator