

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**AMERICAN NATIONAL RED CROSS
(BADGER-HAWKEYE REGION)**

and

CLARA BARTON BRIGADE, LOCAL 1205, AFSCME, AFL-CIO

Case 35
No. 58149
A-5809

(Collection Clerk Grievance)

Appearances:

Clark & Hill, PLC, by **Attorney Fred W. Batten**, 500 Woodward Avenue, Suite 3500, Detroit, Michigan 48226-3435, appearing on behalf of the Employer.

Mr. Laurence S. Rodenstein, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of the Union.

SUPPLEMENTAL ARBITRATION AWARD

I issued my initial arbitration Award in this matter on June 13, 2000, wherein I found that the Employer had violated the contract by assigning certain bargaining unit work to non-bargaining unit employees. I there retained my jurisdiction to “resolve any questions arising over application of this Award. . .”

Thereafter, the parties met to discuss application of my Award and the Employer on June 29, 2000, proposed a settlement agreement entitled “Scheduling Procedure In Light of Arbitrator Award in CS II Grievance Arbitration”, which was unacceptable to the Union, and which provided in pertinent part:

. . .

2. In accordance with Article _____, Section _____ of the Collective Bargaining Agreement, the Employer will post its preliminary schedule one month prior to scheduled mobiles. This posting will include CS-I's and CS-II's to the extent scheduled to perform charge or training responsibilities, and will identify vacant CS-I positions (if any). Bargaining unit employees will have one week within which to volunteer to fill open positions, in writing. To the extent that there are multiple volunteers for an open mobile, the Employer may select and assign the work among volunteering CS-I's to avoid or reduce the payment of overtime. Absent any benefit to the Employer, the Employer will assign the vacant shifts by seniority. Where there are no volunteers for a shift, the Employer may assign CS-II's.

The revised schedule will be posted two weeks prior to the scheduled work week.

Once an employee volunteers for a shift, the employee must accept any assignment; provided, however, if requested, the Employer may (but is not required to) relieve an employee of the assignment and assign a CS-II.

Nothing herein precludes the Employer from assigning any employee to any mobile or requires the Employer to change any mobile assignments to accommodate employee requests.

...

A supplemental hearing was held in Green Bay, Wisconsin, on September 7, 2000, to resolve the disputes between the parties surrounding application of my Award. Thereafter, the parties filed written submissions that were received by October 12, 2000.

The Union has asserted that the Employer must award backpay to affected employees because it is now able to provide sufficient information about how their hours were adversely affected by the Employer's actions, thereby clearing up the gap in the record noted on page 7 of my Award wherein I stated: "But trying to go back now in an attempt to recreate what should have been for all the CS I's is an impossible task, given the state of the record. . ." As I stated at the September 7, 2000 hearing, I reaffirm my earlier ruling that no backpay is warranted up to the time I issued my Award on June 13, 2000.

The Union also asks that I order the Employer to put the CS II's in the bargaining unit. As I ruled at the September 7, 2000 hearing, I cannot issue such an order because an arbitrator lacks the authority to so change the composition of a bargaining unit.

The Union also contends that the Employer must reestablish the number of FTE CS I's that existed in 1997 based upon my statement on page 7 of my Award that: "Section 11.13 is intended to at least preserve the number of hours that bargaining unit personnel performed in 1997." However, as I related at the September 7, 2000 hearing, this statement was never intended to refer to the number of FTE's that must be maintained. Instead, it was meant to refer to the number of hours that individual CS I's had in 1997. Hence, the Employer cannot assign CS II's to bargaining unit work if the hours of those employees are in any way reduced.

The Union also submits that any remedy ordered herein must cover the Employer's Madison, Wisconsin, facility. Again, as I stated at the September 7, 2000, hearing, such an expansive remedy covering the Madison facility is unwarranted because the instant dispute only covers the Green Bay facility and because the different facilities have their own unique practices. Hence, it is improper to issue a remedy covering a facility that up to now has not been part of this dispute and which may well have totally different practices.

As for the parties' subsequent written submissions, the Employer has stated that it has no objection to the Union's proposed paragraphs 1-4 which state:

...

The unit seniority principle will be applied to all scheduling selections described below:

- (1) The Employer shall schedule all full-time CSIs to achieve the 37.5 hour threshold, consistent with the terms of the contract; next
- (2) The Employer shall schedule all $\frac{3}{4}$ time CSIs to achieve approximately 28.25 hours; next
- (3) The Employer shall schedule all $\frac{1}{2}$ time CSIs to achieve approximately 18.75 hours; next
- (4) The Employer shall schedule all per diem employees for hours they are available to work, only after full-time and part-time CSIs have been scheduled pursuant to the above procedure; next

...

Given the parties' mutual agreement on this language, I adopt these paragraphs as provided for below.

The parties disagree over the Union's proposed paragraphs 5 and 6 (as amended), which state:

- (5) All additional hours shall be provided by reverse seniority on a rotating basis (starting from the bottom of the seniority list moving upwards and then eventually starting over from the bottom). (It is unclear whether the Union is still proposing its original language which reads: "This offer process shall be done in person or by phone. Any additional hours still available will be assigned by reverse seniority; next).
- (6) Premium hours (e.g., Saturdays, Holidays) will be provided by a sign-up procedure, consistent with past practice at the Madison and Green Bay locations. The above procedures will apply to CSIs at the Madison and Green Bay locations in both collections and apheresis. (The Union adds that "Premium hours are handled differently in Green Bay and Madison. The past practice in Green Bay is for Saturday hours by sign-up by seniority. Madison uses rotating teams and past practice for additional hours.")

The Employer objects to paragraph 5 on the grounds that it is "impractical to 'poll' the bargaining unit employees in person or by phone"; that posting a preliminary schedule a month in advance is adequate; and that there is no reason to assign extra hours to "unwilling" CS I's.

I agree with all of the Employer's objections. Hence, all that needs to be done is to post a schedule a month ahead of time – as proposed by the Employer – so that all mobile work is first made available to all CS I's on the basis of seniority. If there is any mobile work left over that CS I's do not want to sign up for and do not want to perform, that work then can be assigned to CS II's.

The Employer objects to paragraph 6 and any order covering the Madison, Wisconsin, facility because in its words, my Award "dealt with the Green Bay situation only. . ." and because "whatever remedy is being grafted should be so limited." I agree. Hence, my order below is limited to the Green Bay facility.

The Employer also objects to treating Saturday and other premium hours as a "distinct issue" because they may be covered by a past practice or its proposed June 29, 2000, settlement agreement related above. Since the record does not establish any remedial need for treating premium hours differently from any other hours, and since a past practice may cover this issue, there is no need to establish special procedures for such hours. Hence, whatever past practice that has existed at the Green Bay facility shall continue as long as it is not inconsistent with the terms of my Award and Supplemental Award.

The Union also argues that the Employer should be ordered to pay backpay from the time of my June 13, 2000, Award because of its supposed bad faith. There is no basis for awarding such a remedy, as the Employer has made a good faith attempt to comply with my Award by submitting its proposed settlement agreement set forth above.

Given the foregoing, I conclude that the Employer's method of scheduling mobile work is appropriate, provided that it complies with the contract. In this connection, Section 12.5 of the contract, entitled "Scheduling", states in pertinent part: "The priority for scheduling will be done by unit seniority within the FTE status of employees as follows: . . ." Since this clause indicates that all scheduling must be by seniority, the Employer is not free to assign mobile work to less senior employees merely "to avoid or reduce the payment of overtime" as suggested by the Employer. I therefore have modified the Employer's proposal to reflect this change.

In light of all of the above, I issue the following

SUPPLEMENTAL AWARD

1. The unit seniority principle will be applied to all scheduling selections:

- (a) The Employer shall schedule all full-time CSIs to achieve the 37.5 hour threshold, consistent with the terms of the contract; next
- (b) The Employer shall schedule all $\frac{3}{4}$ time CSIs to achieve approximately 28.25 hours; next
- (c) The Employer shall schedule all $\frac{1}{2}$ time CSIs to achieve approximately 18.75 hours; next
- (d) The Employer shall schedule all *per diem* employees for hours they are available to work, only after full-time and part-time CSIs have been scheduled pursuant to the above procedure; next

2. The Employer as soon as possible will post its preliminary schedule one month prior to scheduled mobiles. This posting will include CS-I's and CS-II's to the extent scheduled to perform charge or training responsibilities, and will identify vacant CS-I positions (if any). Bargaining unit employees will have one week within which to volunteer to fill open positions, in writing. To the extent that there are multiple volunteers for an open mobile,

the Employer will make such assignments based upon the contractual seniority principle set forth in Section 12.5 of the contract. Where there are no volunteers for a shift, the Employer may assign CSII's.

The revised schedule will be posted two weeks prior to the scheduled work week.

Once an employee volunteers for a shift, the employee must accept any assignment; provided, however, if requested, the Employer may (but is not required to) relieve an employee of the assignment and assign a CS-II.

Nothing herein precludes the Employer from assigning any employee to any mobile or requires the Employer to change any mobile assignments to accommodate employee requests.

Dated at Madison, Wisconsin this 24th day of October, 2000.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

