BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE LABOR ASSOCIATION OF WISCONSIN, INC.

and

VILLAGE OF EAST TROY

Case 48
No. 59578
MA-11341

Appearances:

Mr. Kevin Naylor, Labor Consultant, The Labor Association of Wisconsin, 2835 N. Mayfair Rd., Wauwatosa, WI 53222, appearing on behalf of the Union.

Ms. Linda Gray, Attorney at Law, Gray, Hudec & Oleniczak, L.L.P., 2847C Buell Drive, P.O. Box 287, East Troy, WI 53120, appearing on behalf of the Village.

ARBITRATION AWARD

The Union and the Village named above are parties to a 1998-2000 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to hear and resolve the grievance of Carol Coombe. The undersigned was appointed and held a hearing on August 8, 2001, in East Troy, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties filed briefs by October 8, 2001.

ISSUE

The parties ask:

> Did the Village violate the terms of the collective bargaining agreement, as well as a well established past practice dating back to July 27, 1994, when it required the Grievant to work four days per week? If so, what is the appropriate remedy?

BACKGROUND

The Grievant is Carol Coombe, who started working part-time as an Account Clerk in the Village in 1994. On July 27, 1994, the former Village Administrator, Sharon Crowe, sent the Grievant a letter, which stated in part:

> This letter will confirm the Village of East Troy's offer of part-time employment and your acceptance of the position of Account Clerk.
>
> It is understood that you will be available on Tuesdays, Wednesdays and Thursdays. Initially, the Village anticipates that you will work approximately 24 hours a week. However, once you have been trained and become accustomed to the position, the hours may vary between sixteen hours a week and 24 hours a week. Working hours are 8:00 a.m. to 4:30 p.m. There is a fifteen minute break each morning and a ½ hour break for lunch.

The Grievant worked the hours noted above without a change, except for a couple of months when she worked for another department. On December 26, 2000, the current Village Administrator, Kenneth Witt, notified her that as of January 15, 2001, her working hours would be changed from 8:00 a.m. to 1:00 p.m., four days a week. She was offered the option to work either Monday through Thursday or Tuesday through Friday. The Grievant chose Monday through Thursday. When the Grievant learned of the change in hours, she filed a grievance.

Witt is the Grievant's supervisor and decided to change the Grievant's hours. Witt made the change for various business reasons – starting when a Deputy Clerk/Treasurer was hired and job duties were reassigned in August of 1999. The Grievant was given some additional duties to help at the DPW, and some of her office duties at the Village Hall were reassigned to other people in the office. When the DPW backlog was caught up, the workload for the Grievant was reduced, which accounted for the reduction in her hours from 24 to 20. Witt testified that the reason for changing days to cover four days and changing the starting and quitting time was to have better coverage in the office through lunch periods. Witt tried to discuss the change with the Grievant, but she refused to discuss it with him.

THE PARTIES' POSITIONS

The Union

The Union argues that the Village has a contractual obligation to discuss changes in operations which affect the work schedules of employees, and it does not have an unfettered management right to schedule employees as it alone sees fit. The Grievant and the Village had a written agreement establishing the Grievant's work week and number of hours, which clearly states that the Grievant will be available to work on Tuesdays, Wednesdays and Thursdays,

and that her hours may vary between 16 and 24 hours a week. However, when the Village changed her hours, she is now required to work an additional day per week while receiving four hours less work.

The Union cites Article 28, Change in Operation, and states that the contract clearly requires the Village to meet with the Union before making changes in operations which may cause a hardship for full or part-time employees. The Union complains that the decision to unilaterally change the Grievant's hours was made while the parties were in the process of negotiating the terms and conditions of a new labor agreement.

The change in the Grievant's workweek violates a written agreement, the Union asserts. The Grievant was hired with the express understanding of the hours and days of work. Now the Village finds those terms no longer binding. However, the Village relied on that very document to justify the reduction in hours in response to the EEOC. Thus, the Village honors the conditions on one hand in that written agreement, but not on the other hand.

Finally, the Union submits that the change in the workweek violates a long standing past practice of more than six years. The past practice has even been codified by a signed written agreement.

The Village

The Village asserts that the management rights provisions of the collective bargaining agreement are clear and unambiguous and must be given their plain meaning. The Arbitrator's decision must draw its essence from the collective bargaining agreement, and the Arbitrator must look to the plain meaning of the words used in that agreement when interpreting it. Under Article 3, the Village has the specific right to determine the starting and quitting times, the number of hours to be worked, and to establish work schedules. The Village had previously changed the Grievant's starting and quitting time. The change that took place on January 15, 2001, was in order to cover telephones and the window in the Village Hall and to provide service to residents paying bills or to answer questions.

The Village notes that it gave the Grievant at least 12 days notice of the change. And the Union does not deny the Village's right to modify work schedules but argues that the Grievant could not be required to work four days per week based on an alleged past practice.

The Village submits that the use of past practice to interpret the agreement is inapplicable where the collective bargaining agreement addresses the subject matter of the grievance. Past practice may be used in the absence of written contractual language. However, in this case, the contract addresses the issue and gives the Village the right to control and direct its workforce. There is no need to go beyond the bargaining agreement to determine whether a binding past practice has been established. The Village never accepted nor agreed that the Grievant's work schedule would not be changed.

The Union relies on a 1994 letter from the former Village Administrator to establish an agreement to permanently fix the Grievant's work schedule. The labor contract acknowledges that there are no other written or oral agreements between the parties, and that matters not covered by the collective bargaining agreement are reserved to the Village. The collective bargaining agreement was entered into as of January 1, 1998, long after the Grievant became employed by the Village in 1994. The Grievant should have been aware of the terms and conditions negotiated by the Union on her behalf. Accordingly, the Village concludes, it has the right to change her work schedule.

DISCUSSION

The 1994 hiring letter from the former Village Administrator does not rise to the level of a written agreement between the parties and cannot serve to circumvent the terms of a collective bargaining agreement. The hiring letter is nothing more than just that – a letter given to a prospective employee at the time she was being hired. It is not a written agreement between the parties, and cannot supersede the collective bargaining agreement.

The Village is correct in stating that Article 3, Management Rights, clearly gives the Village the right to change starting and quitting times, the number of hours to be worked, and to establish work schedules. The specific language in Article 3 is:

> 10. Determine lunch, rest periods and cleanup times; the starting and quitting times and the number of hours to be worked.
>
> 11. To establish work schedules.

The Management rights cited above are clear and unambiguous, and the Arbitrator does not need to resort to any past practice to interpret such clear language. While past practices may be used to help interpret ambiguous language or to fill in gaps where no language covers an issue, arbitrators do not need to look at past practices where the language is clear and unambiguous, such as in this case. Moreover, clear contract language takes precedent over any past practice that is contrary to the language.

The Village could change the Grievant's work schedule from three days a week to four days a week as well as change her starting and quitting times and reduce the number of hours. If the Union wants established work schedules in the contract, it must bargain for such specific language.

However, it is also true that the collective bargaining agreement must be read as a whole, and Article 28 states:

> Before the employer introduces major changes in operations which affects the employment schedule for regular full-time and part-time employees, the

> Employer shall meet and review such change with the Union in an effort to minimize the possible hardship involved for all parties.

While the contract allows the Employer to change hours and schedules, Article 28 puts a limitation on the Village – simply to meet with the Union before it does so. Article 28 must be given some meaning, and if it did not apply in this case, it would never apply. Clearly, the change from three days to four days with different quitting times and different number of hours was a major change in operations that affected the employment schedule of a part-time employee. Therefore, the Employer was obligated to meet and review the change before imposing it. It is a minimal requirement – the Employer does not have to agree to the *status quo* and still retains the right to change hours and work schedules, so long as it fulfills its obligation to meet first with the Union. While the Village Administrator offered to meet with the Grievant, there is no evidence that the Employer met and reviewed the change with the Union.

Accordingly, while the Village had the right to change the Grievant's hours and work schedule under Article 3 of the collective bargaining agreement, it violated Article 28 of that agreement by failing to meet and review the change with the Union before it implemented the change.

AWARD

> The grievance is denied in part and granted in part.
>
> The Village had the right under Article 3 of the collective bargaining agreement to change the starting and quitting times, the number of hours worked, and the number of days worked by the Grievant. The Village violated Article 28 of the collective bargaining agreement by not meeting and reviewing the change in the Grievant's work schedule and hours before implementing such change. As a remedy, the Village is ordered to restore the Grievant's hours to those worked before January 15, 2001, until such time as it meets and reviews the change of work schedule and hours with the Union. The Union is to make itself available at a reasonable time for such a meeting and review. The Arbitrator will retain jurisdiction until February 15, 2002, in order to resolve any disputes over the scope and the application of the remedy ordered.

Dated at Elkhorn, Wisconsin, this 5th day of December, 2001.

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

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