

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**THE ASSOCIATION OF MENTAL HEALTH SPECIALISTS**

and

**ROCK COUNTY**

Case 341  
No. 61197  
MA-11844

*(Posting)*

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Appearances:

**Mr. John S. Williamson, Jr.**, Attorney at Law, 103 West College Avenue, Suite 1203, Appleton, Wisconsin 54911, appeared on behalf of the Association.

**Mr. Thomas A. Schroeder**, Rock County Corporation Counsel, 51 South Main Street, Janesville, Wisconsin 53545, appeared on behalf of Rock County.

**SUPPLEMENTAL ARBITRATION AWARD**

On April 8, 2002, Rock County and the Association of Mental Health Specialists filed a request with the Wisconsin Employment Relations Commission seeking to have William C. Houlihan, a member of the Commission's staff, hear and decide a grievance pending between the parties. That grievance addressed the County's decision to reduce a Crisis Intervention position from .5 to .4 FTE. An award was issued on January 31, 2003 which denied the grievance with respect to the Union's claim that the Employer is not free to abolish a .5 position and re-create it at .4 FTE. The grievance was sustained with respect to that portion of the Union's claim that an employee who is normally scheduled to work at or above 85 hours per month is entitled to health insurance. I retained jurisdiction in order to resolve any dispute as to whether the incumbent in the position, Mr. Zbyszek Walczak, was entitled to health insurance premium payment.

The parties could not agree whether or not Mr. Walczak qualifies for health insurance under the terms of the collective bargaining agreement. A supplemental hearing was conducted on May 22, 2003 in Janesville, Wisconsin. A transcript was taken and distributed by May 20, 2003. Post-hearing briefs were submitted and exchanged by June 12, 2003.

**BACKGROUND AND FACTS**

In scheduling the work force, the County posts a calendar, or schedule of work. In that calendar, Mr. Walczak is scheduled to work two eight-hour shifts per week.

Employees desiring to schedule time off (i.e. vacation, compensatory time, floating holiday, medical time) make application to do so. The Employer posts the shift vacancies that would be created by granting the employee's requested time off. Employees who seek the available hours sign for it. There is a system in place to prioritize those requests. Mr. Walczak regularly seeks and secures additional hours of work under this system. Once the time-off requests have been authorized and the replacement employees identified, a finalized calendar is posted.

Additional work hours become available due to unforeseen absences, such as an employee calling in sick. Under that circumstance, the Employer, using the same sequence of preferences, calls bargaining unit employees to see who is available to work. Mr. Walczak secures additional work under these circumstances. Due to the last-minute nature of that work becoming available, it is not a part of the finalized, posted calendar.

The parties submitted evidence and testimony as to how many hours Mr. Walczak worked from June of 2002 through March of 2003. In its post-hearing brief, the Union recalculated the hours based upon the payroll records. The following is a summary of each side's tabulation of Walczak's hours:

***Zbyszek Walczak Hours***

<i>Month</i>	<i>Union (U #2)</i>	<i>Union (Brief)</i>	<i>County (Co #4)</i>
June, 2002	73.75	-----	79.25
July, 2002	112.5	102.25	70.51
August, 2002	127.75	120.75	149.13
September, 2002	109.75	104.25	107.75
October, 2002	112	96.75	82.50
November, 2002	72	72	63.25
December, 2002	131.75	131.75	64.25

January, 2003	95.5	91.5	159.00
February, 2003	-----	90.75	78.75
March, 2003	-----	101.25	77.25

Each set of numbers is drawn from payroll records, which were made a part of the record.

Cathy Hines, the President of Local 1258 of the American Federation of State, County and Municipal Employees, testified that in her bargaining unit, an employee who is less than .5 FTE receives health insurance in those months the employee picks up hours that put their total over the .5 threshold. That collective bargaining agreement provides as follows:

**ARTICLE XIII – INSURANCE**

13.01

...

For employees with a hire date prior to May 1, 2002, regularly-scheduled part-time employees shall be covered by said medical insurance with the County paying 100% of the premium, provided the employee is normally scheduled to work eight – five hours or more per month. The full insurance coverage for these part-time employees will be on the same terms, conditions and practices that were in effect as of December 31, 2001. For part-time employees with hire dates after May 1, 2002, the County shall pay a prorated share of the premium as follows:

...

**ISSUE**

The parties stipulated the issue as follows:

Is Mr. Walczak entitled to health insurance benefits under the collective bargaining agreement?

**RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE XII – VACATIONS**

12.01

...

- B. All regularly-scheduled part-time employees covered by the terms of this agreement shall be allowed paid vacation on a pro-rated amount based on actual hours paid.

...

**ARTICLE XIII – SICK LEAVE**

13.01

...

- B. Part-time employees. All regular part-time employees shall receive sick leave credit in a pro-rated amount based on their actual hours paid.

...

**ARTICLE XIV – BENEFITS IN LIEU OF WAGES**

...

- 14.02 Medical Insurance. A group comprehensive and major medical insurance plan shall be in force for all employees and their dependents should the employee enroll for such coverage. The County shall pay 100% of the premium for this plan as set forth in Appendix “B” (with changes effective January 1, 2003). Regularly-scheduled part-time employees shall be covered by said medical insurance and the premium paid by the County, provided the employee is normally scheduled to work eighty-five (85) hours or more per month.

...

14.03 Dental Insurance. A group dental insurance plan shall be made available by the County. The coverage and benefit level shall be as set forth in the attached dental schedule. Only employees working one-half (1/2) time or more shall be eligible to participate in said program.

...

14.09 Educational.

...

Part-time employees shall be entitled to this benefit on a pro-rated basis.

...

## **ARTICLE XV – HOURS OF WORK, CLASSIFICATION, PREMIUM PAY**

15.01

...

F. Method of Calculating Actual Hours Worked.

2. Part-Time Employees – All hours that part-time employees work, whether or not they receive premium pay for such work, shall be included as actual hours worked in determining the pro rata benefits.

### **POSITIONS OF THE PARTIES**

It is the County's position that Walczak is not entitled to paid health insurance because he is not normally scheduled to work 85 hours or more per month. Walczak's normal schedule consists of two (2) eight (8) hour shifts per week. The norm for Mr. Walczak is either 56 or 64 hours per month. Any variation from that norm is not scheduled by the County, but rather volunteered for by Mr. Walczak.

The Union misuses the word "schedule" in its argument. The County schedules Mr. Walczak as a .4 FTE. His volunteering causes an adjustment to this schedule. It is the schedule change that justified health insurance benefits according to the Union.

Pointing to its summary of Walczak's hours worked, the County notes that he worked 85 hours in only three of the 10 months cited. Three of 10 months is not normally.

The County contends that had the parties intended Section 14.02 to have the meaning proffered by the Union, it could easily have done so. The County points to various other provisions of the agreement that predicate pro rated benefits based upon actual hours paid or worked. Here, the parties conditioned paid health insurance benefits on an employee being "normally scheduled to work 85 hours or more per month", not on working 85 hours or more per month. Had the County and Union meant the trigger to be actual hours paid, it would have stated that in the Agreement as they did for determining other benefits.

The County contends that its agreement with AFSCME Local 1258 substantiates its position that Walczak is not entitled to paid health insurance benefits. The County contends that its agreement with Local 1258 predicate the payment of benefits upon total paid hours. That is not the agreement between these parties.

The Union points to its summary of the hours Mr. Walczak worked and concludes that he worked more than 85 hours every month from July, 2002 to March, 2003 with one exception. The Union contends that he worked an average of 98.88 hours per month. The Union contends that this workload satisfies the normally-scheduled standard.

The Union contends that Walczak is entitled to health insurance benefits for each month, following a month he works 85 or more hours, because the contract refers to the number of hours an employee works, rather than his or her FTE. Walczak is entitled to health insurance benefits because each hour worked confers the same benefit on the County, because the interpretation and application of the proviso is consistent with the interpretation and application of identical language in the AFSCME 1258 contract, because hours worked determine entitlements to other benefits in the Association's contract, and because a decision to base benefits on FTE rather than hours worked would breed distrust, as well as create a financial incentive for the County to reduce FTE's below .5 to avoid paying benefits.

### DISCUSSION

The contract confers full health insurance benefits for those who are "normally scheduled to work eighty-five (85) hours or more per month." This is not a pro rata benefit. I agree with the County that the standard is not hours worked, rather, those normally scheduled. There are numerous other provisions in this agreement, cited above, that predicate benefits on the number of hours actually worked. Those provisions stand in contrast to Article 14.02. I agree with the contention that had these parties intended to predicate the medical insurance provision on actual hours worked, they could easily have done so.

This system counts hours scheduled per month. That includes days scheduled, but not actually worked, i.e. sick days. A sick day represents pay for a day not worked. Inherent in the concept is that the employee was scheduled to work, but unable to do so, due to illness. Such a day is one where the employee is “scheduled to work”. Similarly, vacation, holiday, and compensatory time off dates are dates where the employee is paid, though he or she does not perform work. Absent the contractual treatment of these days as paid days, an employee would be required to work to be paid.

The County would limit scheduled days to those found on its initial posted schedule. That ignores the fact that there are two calendars, an initial and a final. The County argument would be more persuasive if it were uncommon to produce a second, and final, calendar. That is not the case here. The normal process is to put hours created by anticipated leave up for bid. It is a formal process, followed monthly, and reflected in a formal County Policy and Procedure Manual to fill those hours. The final calendar is the actual schedule of work. It reflects the reality of who is scheduled and who works. I regard the final calendar as the best measure of when “the employee is normally scheduled to work”.

The County argues that the schedule of work is modified only because Walczak volunteers for extra work. While that is true, he is still scheduled to work the hours set forth in the final calendar.

That leaves for consideration emergency days. Emergency days represent opportunities to work which arise at the last minute. For instance, if an employee calls in sick, other employees are offered the opportunity to work. Those hours are not scheduled due to the way they arise. As such, I do not regard them as “normally scheduled” hours.

Both parties point to the AFSCME language, and the testimony of Ms. Hines in support of their respective positions. I agree with the Union’s contention that the language applicable to grandfathered employees is the same as the language found in this agreement. However, the AFSCME agreement has an additional sentence tying its administration to a historic practice, which does not exist in this bargaining unit. The County points to the fact that the AFSCME local has transitioned to a different system. While true, that offers no interpretive assistance in this proceeding. What is noteworthy about Ms. Hines’ testimony is that health insurance and premium payment for a grandfathered employee is predicated on a monthly system.

My review of the payroll time sheets (Joint Exhibit #7) produces numbers similar to those claimed by the Union. There is a portion of June, 2002 missing from the data. Walczak worked less than 85 hours in November of 2002. My totals for all other months (which do not include those hours identified as Emergency Service Pay) exceed 85.

Walczak was scheduled to work 85 or more hours in 8 of the 9 months for which complete data was submitted. That constitutes the norm.

**REMEDY**

The County is directed to offer Mr. Walczak health insurance. If he accepts, he is entitled to employer-paid health insurance for those months following a month in which his scheduled hours, as defined above, exceed 85.

Dated at Madison, Wisconsin, this 25th day of September, 2003.

William C. Houlihan /s/

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William C. Houlihan, Arbitrator