

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**JACKSON COUNTY HUMAN SERVICES CLERICAL AND PARA-PROFESSIONAL
EMPLOYEES, LOCAL 2717-B, WCCME, AFSCME, AFL-CIO**

and

JACKSON COUNTY

Case 183

No. 67038

MA-13721

(Young Benefits Grievance)

Appearances:

Daniel R. Pfeifer, Staff Representative, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of Local 2717-B.

John J. Prentice, Attorney, Simandl & Murray, S.C., 20975 Swenson Drive, Suite 250, Waukesha, Wisconsin 53186, appearing on behalf of Jackson County.

ARBITRATION AWARD

Local No. 2717-B, Jackson County Human Services Clerical and Para-Professional Employees, hereinafter referred to as the Union, and Jackson County, hereinafter referred to as the County or the Employer, are parties to a Collective Bargaining Agreement (agreement, contract or CBA) which provides for final and binding arbitration of certain disputes, which agreement was in full force and effect at all times mentioned herein. On June 13, 2007 the Union filed a Request to Initiate Grievance Arbitration and asked the Wisconsin Employment Relations Commission to assign a staff arbitrator to hear and resolve the Union's grievance regarding the alleged failure of the County to pay the proper amount of holiday pay to Karleen Young (Grievant). The undersigned was appointed as the arbitrator. Hearing was held on the matter on January 31, 2008 in Black River Falls, Wisconsin, at which time the parties were given the opportunity to present evidence and arguments. The hearing was not transcribed. The parties filed initial post-hearing briefs by March 17, 2008. The Union chose not to file a reply brief and the County's reply brief was filed on June 19, 2008, at which time the record was closed. Based upon the evidence and the arguments of the parties, I issue the following Decision and Award.

ISSUES

The parties were able to stipulate to the issues to be decided by the Arbitrator as follows:

1. Did Jackson County violate the Collective Bargaining Agreement between the parties when it did not pay Karleen Young for full-time holidays when she was working full-time rather than part-time?
2. If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 8 - HOURS OF WORK

- SECTION 1.** The regular workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, 8:00 a.m. to 4:30 p.m.

. . .

ARTICLE 21 - MISCELLANEOUS PROVISIONS

. . .

SECTION 2 - Part-Time Employees.

. . .

3. The employee benefits of vacation, sick leave, holidays, insurance plans and seniority for part-time employees shall be earned in proportion of the amounts and times specified in the work agreement for full-time employees commensurate with the proportion of time regularly worked by the part-time employee (i.e. half-time employment = half-time benefits). . .

BACKGROUND

Karleen Young began her employment with Jackson County as a part-time employee in 1994. For a period of time between 1994 and 2006 (the record is unclear on the precise period) and 2006 she attained full-time status. In April, 2006, the County made cut-backs in employee hours due to downsizing. As a result of these cutbacks, the Grievant was reduced to part-time status working 30 hours per week.

In October, 2006, the County Board approved additional work hours for the purpose of continuing a project relating to electronic case filing. Todd Bowen, the head of the Department of Human Services, for which the Grievant worked, at first determined that he would use an LTE for this purpose. However, the Grievant volunteered to pick up the extra hours and her request was granted. She was not required to work the extra 10 hours each week, but rather had the option to do so. There were weeks during this period when she did not work the full 40 hours. The project was anticipated to run until May 15, 2007. The record reflects that this project was extended to June 18, 2007.

Because holiday pay is prorated on the basis of the number of hours an employee works in relation to the full-time work agreement, the Grievant's holiday pay was determined as a pro-rata based on her 30 hour per week normal schedule. In other words, she received a 25% reduction in the amount of holiday pay resulting in her holiday pay being based on a 6 hour day rather than an 8 hour (full-time) day. This formula had been used since she began employment in 1994 and was used during the period of time she worked full-time between 1994 and 2006. When she was granted the opportunity to take on the project work in 2006, the County continued prorating her holiday pay as it had done in the past, paying her on the basis of 6 hours even though she may have worked a full 40 hours during some weeks.

During the period of time she performed this project work, 7 holidays occurred for which she was paid on the basis of 6 hour days. The Grievant seeks 14 hours of pay as a make whole remedy.

THE PARTIES' POSITIONS

The Union

The Article 21 language does not differentiate on how the various benefits are to be paid. The County calculates vacation and sick leave differently than it calculates holidays and insurance. While it pays vacation and sick leave on actual hours worked per pay period, it pays holidays and insurance based on the number of hours approved for the position occupied by the employee. The former calculation appears to conform to the contractual language while the latter does not.

The County's argument that Grievant was not a full-time employee (and thus not entitled to the full-time pay) does not matter because it is the Union's position that holiday pay should be calculated on all hours worked. (It should be noted that the Grievant does not take the County's insurance so any reference to it is not relevant to this proceeding.)

Contrary to the County's arguments at hearing, the Union finds no reference to the appropriate calculations in Article 9 or Article 11, nor is this a past practice as the County claims.

It is not a past practice because the County's Finance Manager, Louise Johnson, testified that she "knew of no previous occurrence where a part-time employee of this bargaining unit was temporarily authorized to work full-time. Since there is no knowledge of this set of circumstances ever occurring previously, there can be no past practice."

The County's policy regarding these calculations is irrelevant. Article 4 defines a grievance as "any difference or dispute regarding the interpretation, application or enforcement of the terms of **this** agreement." (Union's emphasis) County policy cannot supercede the language of Article 21, Section 2.

Article 8, Section 2 (Arbitrator's note: The Union is actually referring to Article 8, Section 1) is clear and unambiguous. It says that the regular work week is 5 consecutive days of 8 hours each, Monday through Friday, 8:00 a.m. to 4:30 p.m. This is the full-time work week and if part-time holiday benefits are calculated on a weekly basis the calculation should be actual hours worked in that week divided by 40. If they are calculated by the month, it should be actual hours worked divided by 173.3 and if by the year, it should be calculated by actual hours worked divided by 2080 hours.

The County

At the time of the events which gave rise to this grievance, the Grievant was a part-time employee. Her testimony was that she was a part-time employee between October, 2006 and June 18, 2007 and she knew it. She testified that she volunteered for the additional hours and she knew that she was not using benefit time for much of her sick leave and vacation.

Todd Bowen testified that his intention was to use a limited term employee for the continuation of the project, but offered the hours to the Grievant first. The agreement was approved and it was clear to her that she was not required to work those hours but that she could work up to a total of 40 hours. She was not considered to be a full-time employee. She did not have to account for full-time hours during that period. She only had to account for her normal part-time work schedule. There were times when she worked less than 40 hours in a given week.

Holiday time is administered by the County according to classification for all County employees. Unlike vacation and sick leave it administers holiday pay pursuant to an employee's classification because it is too difficult to calculate holiday pay for part-time employee's at different benefit levels. Part-time employees may work more hours in given weeks but that does not change their status from part-time to full-time. Their classification is established by the County Board when the position is created or changed and a change in classification requires Board approval. Historically, the County has based vacation and sick leave on an accrual per pay period; i.e., true proration. Holidays and insurance benefits have been based on classification.

The equitable doctrine of *laches* bars this grievance. The Grievant should not be rewarded for waiting months to object to her holiday pay or to file a grievance. The County potentially incurred more liability in the interim and did not have the opportunity to negotiate a resolution to this issue during bargaining.

The County's Reply: (The Union chose not to file a reply.)

Article 8, Section 2 is ambiguous. (Arbitrator's note: The Arbitrator believes the County is actually referring to Article 8, Section 1, inasmuch as Article 8, Section 2 refers to 15 minute breaks during the shifts and is not an issue in this grievance.) Its reference to the following portion of the language, ". . .the proportion of time regularly worked by the part-time employee." renders it ambiguous and, presumably, in need of arbitral construction. Ms. Johnson testified that benefits under this section are in proportion to the time regularly worked by the employee, which is based upon their particular classification - 20 or 30 hours - or whatever is approved by the County Board. Vacation and sick leave are administered on a monthly accrual basis pursuant to the explicit terms of the CBA, *i.e.*, an employee accrues vacation and sick time based upon the hours the employee works each month. Holiday and insurance benefits, however, are based upon classification.

The Grievant's benefits were administered based upon her classification as a part-time employee. She understood that she only had to account for her regular 30 hour part-time position and that when she worked less than 40 hours in any given week she was not required to use accumulated benefits to make up a full-time schedule.

The County does not raise a procedural issue regarding the lengthy time it took the Union to file this grievance because arguably it was a continuing violation from the last occurrence on Memorial Day, 2007. However, the equitable doctrine of *laches* bars this grievance. It is consistent with the arbitral practice of requiring grievances to be filed within a reasonable period of time to avoid prejudice to the other party. The Union knew that the Grievant was working full-time temporarily and failed to object.

The County wonders how one would calculate holiday pay for part-time employees who temporarily work 40 hours in any given week. The Union does not address this issue but the ramifications to the County, if this grievance is upheld, are significant. If the Arbitrator were to uphold the grievance the Union could claim full-time benefits for any week the part-time employee worked 40 hours. This was not the intent of the CBA under Article 21, Section 2.

The language of the CBA should be harmonized when possible with all County policies including the policy of calculating benefits for part-time employees.

DISCUSSION

This grievance is based on the Union's premise that Article 21, Section 2, subparagraph 3 means that the County is required to pay benefits to its employees based on a calculation relative to actual hours worked. So, argues the Union, when an employee works 40 hours in a given week, the County is required to pay benefits based on the 40 hours actually worked, and when an employee works 30 hours in a given week, her benefits should be paid based on the actual hours worked, or 30 hours. In that case her benefits would be reduced by 25%. The Union's premise is wrong. The contractual provision contained in Article 21, Section 2, subparagraph 3, clearly

provides that benefits for part-time employees are “earned in proportion of the amounts and times specified in the work agreement for full-time employees commensurate with the proportion of time *regularly worked* by the part-time employee (i.e. half time employment = half time benefits.” (Emphasis added) What it does not provide for is that benefits are to be earned on the basis of *actual hours worked*.

In the instant case, the Grievant’s *regular hours* were 30 hours per week. The record is clear on several key points: first, she was a part-time employee working 30 hours per week, and had been since April of 2006; second, she was aware of her status as a part-time employee at all times herein; third, the additional work she volunteered to take on did not elevate her to full-time status; fourth, she knew that she was able to take the additional hours, or leave them, at her discretion; and, fifth, she was not required to account for her time beyond her *regular hours* of 30 hours per week and she understood this to be the case. Because she was a part-time employee and regularly worked 30 hours per week, and because the additional hours she was allowed to work for a brief time did not elevate her to full-time employment status, her benefits for holiday pay were paid pursuant to the clear language of Article 21, Section 2, subparagraph 3 at the prorated rate of 25% less than a full-time (40 hour per week) employee, or 6 hours per holiday.

I need not consider past practice in this matter because I am not faced with ambiguous contract language and, thus, do not require evidence of past practice to aid me in its interpretation. Article 21, Section 2, subparagraph 3 is clear and so is Article 8, Section 1.

The Union argues that because the County calculates the payment of vacation and sick leave differently than it calculates holiday and insurance benefits, the undersigned should force the County to re-calculate the holiday pay in the same manner as it calculates vacation and sick leave. The Grievant’s holiday pay benefit was calculated according to the clear mandate of the contract. The question of whether the County’s vacation and sick leave calculation violates the contract is not an issue before the undersigned. In any event, it appears that the manner in which the County calculates vacation and sick leave may actually benefit the bargaining unit’s membership. If the Union wants to grieve that issue at some time in the future though, the undersigned or another arbitrator will address it.

In light of the above, the Arbitrator need not address the County’s argument that the equitable doctrine of *laches* applies to bar the grievance.

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

AWARD

1. Jackson County did not violate the Collective Bargaining Agreement between the parties when it did not pay Karleen Young for full-time holidays when she was working full-time rather than part-time.

2. The grievance is dismissed in its entirety.

Dated at Wausau, Wisconsin, this 3rd day of September, 2008.

Steve Morrison /s/

Steve Morrison, Arbitrator