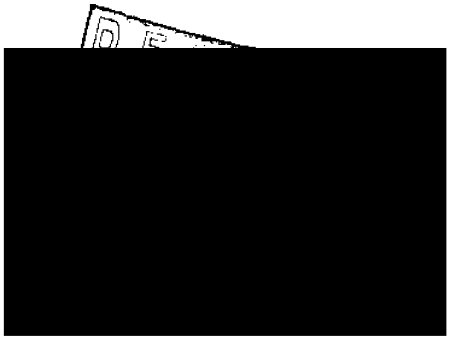
IN THE MATTER OF THE VOLUNTARY ARBITRATION BETWEEN



UNIVERSITY, Employer,

-and-

CLERICAL-TECHNICAL UNION OF UNIVERSITY,

.

CASE: GLAZER #8

ARBITRATION OPINION AND AWARD

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APPEARANCES

Contract Administrator
Union

Associate Director
Employee Relations

ISSUE

WAS THE REDUCTION IN HOURS IN THIS MATTER
A VIOLATION OF THE CONTRACT, AND IF SO,
WHAT SHOULD BE THE REMEDY?

The Union filed the following grievance on July 20, 2004:

Grievant Name: Clerical-Technical Union of UNIVERSITY

Employee Signature: /s/

Department: Student Affairs/Asst. Provost

Classification: CTU bargaining unit

Designated Representative Signature: /s/ Date: 7/20/2004

STATEMENT OF GRIEVANCE: (set forth the facts, dates, and provisions of the Agreement that are alleged to have been violated and the remedy desired).

Effective 7/1/04 the Undergraduate University Division portion of the Student Affairs Department/Structural Unit was subjected to reductions in hours to 90%. The hours reductions exempted non UUD Student Affairs employees and Flex appointment employees contrary to the Labor Agreement. The reduction was made across the board rather than by seniority as provided for by the Labor Agreement. Articles of the Agreement violated include but are not limited to 7 and 17.

Remedy: Rescind the action. Make the adversely affected employees whole.

The grievance was answered on September 20, 2004 as follows: Disposition by Office

of Employee Relations

A hearing regarding the instant matter was held on September 13, 2004. The union alleges that the Employer violated the Agreement by not applying the total hours reduction to one employee rather than having several employees reduced to 90%.

The Employer responds that the Agreement is silent on the issue of how hours are reduced. Further that the Agreement language cited by the Union was never intended to apply to any situation other than from full time to part time employment.

Grievance denied.

The Union cites Article 7, paragraph V as prohibiting the University's action in reducing the hours of more senior employees. Paragraph V states:

ARTICLE 7

WORKING HOURS

V Reduction in Hours

In the event for the need for reduction in hours in a department, the department shall honor the principle of seniority in determining which employee(s) within the affected classification(s) will be subject to the hours reduction, provided the employee(s) can perform the work.

The Union also cites paragraph V of Article 17 as follows:

ARTICLE 17

FILLING VACANT POSITIONS

V Conditions for Bypassing the Procedure

G. Employees whose positions are changed from full-time to part-time. In the event of the need for reduction in hours in a department, the department shall honor the principle of seniority in determining which employee(s) within the affected classification(s) will be subject to the hours reduction, provided the employee(s) can perform the work.

An arbitration hearing was held on February 17, 2005. Testifying for the Union were: N. TREE, Union Representative for District 5 and D. PEAR, President, CTU. Testifying for the Employer was J. TOPP, Associate Director, Employee Relations. After a comprehensive presentation, the parties closed orally.

BACKGROUND

The Union doesn't dispute the need to reduce hours in the Undergraduate University Division in 2004. However, it maintains that in July of 2004, reductions in hours should have been performed by seniority in the Undergraduate University Division. The Union contends that two secretaries were improperly reduced from 40 hours to 36 hors or 90% status, while less senior employees were not similarly reduced. The Union also protests that flexible employees were exempted from any reduction. Flexible appointments are set forth in Article 33. Paragraph I states:

ARTICLE 33

FLEXIBLE APPOINTMENTS

> A flexible appointment involves full-time active employment for 9, 10, or 11 months per year with a prescheduled unpaid leave of absence with some benefits equivalent to full-time appointments, subject to the conditions set forth hereinafter.

N. TREE testified that two secretaries had their hours reduced by 10% to 36 hours per week. They were D. BOAT and M. SAIL. BOAT ranked second in seniority and SAIL ranked sixth. There were eight Secretary IIs within the unit. The other secretaries did not have their hours reduced.

For a remedy, the Union asks that BOAT and SAIL be made whole and returned to 100% hourly employment. The Union also asks that the least senior employee have her hours reduced by 20%, as opposed to a reduction being across the board.

The University argues that flexible employees were exempted from a reduction in hours from 40 to 36. It is further argued that the University can reduce employees to 90% or 36 hours, because the employees remain as full-time employees.

The University additionally cites Arbitrator Coles' 1983 decision in Grievance 4-MR-3. The University says that the arbitrator determined that a change from a full-time to part-time status is not a layoff.

The University notes that in the 1997 contract, Article 7(V) in Reduction in Hours was added to the contract. It is maintained that when an employee moves from 40 to 35 hours or to 90%, she is not on a layoff. The University asserts that since paragraph Von Reduction in Hours was added to the contract in 1997, numerous employees have been reduced to 90% without regard to seniority and without a grievance from the Union. Therefore, the University maintains that the practice of the parties had been not to apply paragraph V to a reduction between36 and 40 hours.

Mr. TOPP noted that during the 1997 negotiations, the Union sought to have paragraph V on Reduction in Hours based upon grade level. This was not achieved and instead the current language based upon classification was adopted. Mr. TOPP additionally testified that in 1997 the flexible appointment language was entered into the contract.

The University has kept records of reductions from 100% down to 90%, that have occurred back to April of 1997. It is maintained that M. MILLON, in Audiology, was reduced to 96% in May of 2004. The University further points out that there were seven employees with less seniority than MILLON, yet none of them were reduced to 96%.

The University also cites J. VANN, who was reduced to 90% in Forestry. It is contended that there were 10 people with less seniority than VANN.

It is noted that a Ms. KNEE, a Tech I, had been reduced to 90% in May of 2004 and there were 14 Tech Is with less seniority than her. Also, an A. Review was reduced to 90% in Medicine, while there were 11 employees less senior than she.

The University also cites cases involving employees, F, N, P, D, O, S, St, G, Gi, R, Cz, B, Re, Ba, Vak, Brn, Bal, Lit, Han, Hez, Car and Grey. In each of these cases, dating from 2002, there were less senior employees who were not reduced. Also, no grievances followed the University's action.

Mr. TOPP testified that no flexible appointment employee has ever had her hours reduced. He notes that Article 7 lists flexible employees as having full-time status. Also, Article 2, paragraph VII states:

ARTICLE 2

DEFINITION OF TERMS

VII. HOURS OF EMPLOYMENT STATUS

A. Full-Time Employee - an employee who regularly works from 36 to 40 hours per week.

B. Three-Quarter-Time Employee - an employee who regularly works 26 hours per week but less than 36 hours per week.

C. Half-Time Employee - an employee who regularly works 20 hours but less than 26 hours per week.

D. Flexible Employee - Full time active employment for 9, 10, or I 1 months per

year with a prescheduled unpaid leave of absence with some benefits during the flex leave.

Mr. TOPP agrees that employees can voluntarily accept a reduced work week. He further agrees that the University's data doesn't show if the reductions were voluntary or involuntary.

D. PEAR, the Union president, testified that a lot of her members want flexible time because of child care issues and others want reduced hours for similar reasons. Ms. PEAR is unaware of any flexible employee working less than 40 hours per week.

A flexible employee who works at least nine months receives full health and dental benefits. Paragraph XVI of Article 33 states:

ARTICLE 33

FLEXIBLE APPOINTMENTS

XVI. The flexible appointee's benefit eligibility during active employment status and unpaid flexible leave shall be as follows:

A. The employee will receive the full University contribution toward health and dental plans.

B. The employee will receive long-term disability and expanded life coverage, subject to all current eligibility requirements. (Employees otherwise eligible for long-term disability continue their eligibility during periods of flex-leave as well as during periods of scheduled active employment. However, long-term disability benefit payments do not begin during the flex-leave. The employee's base salary for the period of active employment prior to the flex-leave will be used to determine long-term disability benefits.)

C. The employee may maintain optional group life and optional accident coverage. Prior to a flex-leave, advance deductions for applicable employee contributions for health, life and accident coverage arc automatically taken to cover the flex period. In the event that insufficient notice of flex-leave is received, the Benefits Office will bill the employee for these amounts.

D. Educational assistance is available, subject to all other eligibility requirements.

E. Personal leave days will be credited as provided in Article II , Section IV.

F. Full service credit is given toward retirement, benefit eligibility waiting periods and vacation service months.

G. Paid leave accruals are proportional. Flex employees accrue leave as full-time employees during periods of active full-time employment. During a flex-leave, paid leave will not accrue and may not be utilized.

During active full-time service, the employee received the University's contribution to TIAA-CREF, Fidelity or Vanguard, based on her/his regular wages. No University contributions are made while the employee is on a flex-leave with benefits.

All salary-related benefits (paid leave, employee paid life, TIAA-CREF (or Fidelity or Vanguard) contributions, long-term disability, expanded life insurance, extended disability and longevity) are based on the employee's annual base wages.

An employee who works less than 36 hours or 90% must obtain health benefits on her own.

POSITION OF THE UNION

Article 7, paragraph V is cited for the proposition that seniority determines a reduction in the hours of work. The Union maintains that the Employer violated the contract by not applying seniority in this case.

POSITION OF THE UNIVERSITY

It is asserted that flexible appointments are distinct from other appointments, and that their hours cannot be reduced, since a reduction in work would place them below the 9, 10 or 11 month appointments required by the contract. Further, since the University is paying for benefits for flexible employees, it is argued that it would not make sense to allow flexible employees to work even fewer hours while still receiving benefits.

The University also asserts that the union on was unable to achieve its contract proposal in 1997, and that it should not receive an additional benefit in this arbitration. The University emphasizes that an employee working at 90% of her hours is a full-time employee, and that therefore employees who are reduced to between 36 and 40 hours continue to be full-time employees.

The Employer emphasizes that there hasn't been a grievance since 1997 when the Employer reduced a more senior employee to 90% or greater hours. The practice of the parties is said to support the Employer's position.

DISCUSSION

Paragraph V on Reduction in Hours, does set forth the principle of seniority as controlling a reduction of hours in a department. The two Grievants at issue did have their hours reduced 10%, even through they had more seniority than other secretaries in their department who did not have their hours reduced.

The University argues, however, that paragraph V is inappropriate to the facts of this case

because flexible employees are exempted from having their hours reduced. Further, it is maintained that there is a past practice of not utilizing seniority for a reduction of hours between 36 and 40, because an employee continues to retain full-time status.

I will consider the flexible time argument first. Article 2, paragraph VII establishes the hours of employment for various categories of employees. Importantly, a flexible employee is considered separate and apart from other employees. Paragraph VII states:

VII. I IOURS OF EMPLOYMENT STATUS

A, Full-Time Employee - an employee who regularly works from 36 to 40 hours per week.

B. Three-Quarter-Time Employee - an employee who regularly works 26 hours per week but less than 36 hours per week.

C. Half-Time Employee - an employee who regularly works 20 hours but less than 26 hours per week.

D. Flexible Employee - Full time active employment for 9,10, or 11 months per year with a prescheduled unpaid leave of absence with some benefits during the flex leave.

Full-time employees are described by the contract as working 36 to 40 hours per week. In contrast, flexible employees are described as engaging in "full-time active employment". It is not specified whether flexible employees work 36 to 40 hours per week, as it is for other full-time employees. Instead, flexible employees are simply described as "full-time active", a status that isn't specifically defined in the contract.

Therefore, the phrase "full-time active" is ambiguous. It could mean 36 to 40 hours, 40 hours only, or something else. When the contract is ambiguous, the past practice of the parties can be used to determine their intent.

The evidence reveals that flexible employees have never had their hours reduced below 40, even when more senior employees had been reduced up to 10% or to 36 hours. Flexible employees have been in the contract since 1997, the same length of time as the reduction in hours language. There hasn't been a prior grievance protesting the lack of reduction in hours for flexible employees.

Therefore, the practice over a number of years has been to exclude flexible employees from the reduction in hours language of the contract. The past practice of the parties explains the "full-time active employment" language of Article 2, paragraph VII(D) to means that flexible employees work 40 hours and do not have to be reduced to between 36 and 40 hours, even when other more senior full-time employees have their hours reduced.

The next issue is whether more senior full-time employees can have their hours reduced to between 36 and 40, when less senior employees do not receive that reduction pursuant to paragraph V. In effect, the University is arguing that because full-time employees work between 36 and 40 hours, there is only a reduction from full-time employment status if the hours drop below 36, at which time the reduction in hours language takes effect.

Again, the past practice of the parties becomes important to determine their intent. The reduction in hours language entered the contract in 1997. The Employer identifies approximately 25 cases where more senior employees had their hours reduced down to 36 hours, while less senior employees retained their 40 hours. There have not been grievances protesting these cases. This would seem to establish a rather clear past practice that is consistent with the Employer's interpretation.

The Union argues, however, that employees sometime volunteer to accept reduced hours. Nevertheless, it has not been established in the numerous cases cited by the Employer, that senior employees voluntarily accept a reduction in hours, and it cannot be speculated that they did.

A clarification of the contract would be beneficial going forward from 2007 on the issue presented by this case. However, based upon the unequivocal past practice of the parties, a contract violation has not been established.

AWARD

For the foregoing reasons, the grievance is denied.

March 30, 2005