

## **Arbitration Award Summary**

### **08-G--00728 – Relief Workers’ Minimum Staffing 08-G—00775 – Standby Pay Claim**

#### **Case Outline:**

This grievance falls under the Collective Agreement expiring March 31, 2009.

The grievances followed the Employer’s implementation of minimum shift requirements on relief employees who work in correctional facilities under the Department of Justice. A letter was sent to existing relief employees (March 2008) outlining the Employer’s expectation that they be available for a minimum of six shifts per month as well as at least three statutory holidays per year. New letters of offer also outlined the requirement and gave notice that failure to meet the requirement might meet with possible termination.

While arguing that a minimum shift requirement imposed on relief employees who have no specific hours under the collective agreement, a grievance was also filed on Standby Pay in order that employees who were still affected by the imposed shift availability minimum would be compensated for their availability under Article 29 Standby Pay.

#### **Employer’s Argument:**

The Employer asserted that there was nothing in Appendix A1, Relief Employees that limited its “ability to seek a level of suitable availability for shifts as offered where thought to be significant.” Citing Article 5.03 and Article 7.01, the Employer argued that it was allowed to place certain expectations within the offer letters at time of hire as well as outlining directions in letters to new or existing employees. It also saw no conflict under the definition language of Article 2.01(m)(v) which refers to relief employees as being appointed to a position with no established hours and “may be required to report to work on an as-and-when required basis.”

Neither did the Employer agree that relief employees should be eligible for Standby Pay. Article 29.01(1) references an employee being required to be available on standby during off-duty hours; Article 29.01(2) requires that the employee be available at a known telephone and able to report to duty as quickly as possible; and Article 29.01(3) is specific in that “no standby payment shall be granted if an employee is unable to report for duty when required.” As the relief employees are offered shifts as required as per the definition, the Employer did not see that they would be eligible for Standby pay wherein they would be expected to be “immediately, absolutely, reachable when called to require their attending work.”

In conclusion, the Employer maintained its entitlement to putting information into letter form documentation. It also maintained that it should not be prevented from setting out an

expectation and that it should not be seen as having individually negotiated with any incoming employee by setting out its expectations within the letter of offer. Finally, the clear wording of Article 29 shows that there was no mutual intention that the language be applied to encourage relief worker availability.

**Union's Argument:**

By outlining the expectation of minimum shift requirements within the pre-employment offer letter, the Employer deprived the Union of the position as exclusive bargaining agent. This constitutes an invalid pre-employment contract and is in conflict with the collective agreement for violating the exclusive bargaining rights of the Union. The letter sent to existing employees can also be seen as an attempt to insert a requirement that had not been contractually negotiated.

If the requirement was somehow deemed not in conflict of the collective agreement, then the pre-employment letter and directions to current employees should amount to a "standby letter" under Article 29. The personal time of the relief employees has been compromised enough by the minimum availability requirement to meet the standby element.

**Arbitrator's Decision:**

In regards to grievance 08-G—00728, the Arbitrator found that both the pre-hiring and post-hiring provisions impinge on the Union's exclusive bargaining position under the collective agreement and therefore the grievance was successful.

He noted that Article 2.01(m)(v) states by definition that there are no established hours and that under Appendix A1.07 the Collective Agreement simply outlines the equitable distribution of shifts by the Employer. "There is no suggestion anywhere in that language agreeing to an expressly stipulated minimum availability as to number of shifts, and covering a specific minimum number of statutory holidays..."

Finally, the Arbitrator did comment that in his view the Employer is able to state its position in writing, as a policy driven internal guideline but not as a condition of employment.

Grievance 08-G—00775, regarding standby pay, was dismissed. The Arbitrator found that a legitimate claim to standby pay was not established. He determined that relief employees did not qualify for standby pay as a result of the employer attempting to apply a minimum standard of availability.