

ARBITRATION OPINION AND AWARD

September 4, 2010

[REDACTED]
[REDACTED]
[REDACTED]
-and-

CASE No. A23103-[REDACTED]-10
Holiday Pay

[REDACTED] CHAPTER OF
LOCAL [REDACTED], MICHIGAN COUNCIL 25,
AFSCME, AFL-CIO

Subject: Holiday Pay

Statement of the Grievance: "Employees in Violation of Article 24.

"UNION DEMAND: Pay midnight shift Employees for All hours worked on President Day. Holiday Premium.

Contract Provision Involved: Articles 3, 24, 32, 35 of the January 1, 2010 - December 31, 2010 Agreement; Letter of Understanding, December 2009.

Appearances:

For the Employer:

[REDACTED]
HR Manager

For the Union:

Dan Hamilton
AFSCME Staff Representative

Statement of the Award: The Employer did not violate the Agreement when it paid holiday pay/double time only for hours worked on Presidents' Day, February 15, 2010. This Grievance is denied.

BACKGROUND

This grievance, filed by the Union, protests the Employer's refusal to pay the premium Holiday Pay rate to two employees - [REDACTED] and [REDACTED] - for hours worked on Tuesday, February 15, 2010.

Before setting forth the facts of this particular dispute, some brief history will be helpful. The Employer had decided, in late 2009, to establish a night shift from December 14, 2009 through February 26, 2010. The shift was to operate from 7:00 p.m. to 3:30 a.m. Monday through Friday; the workweek began at 7:00 p.m. Monday and ended at 3:30 a.m. Saturday. [REDACTED] and [REDACTED] worked this shift daily for a little more than two months.

The parties negotiated a Letter of Understanding (LOU) to set some of the terms governing this assignment. The LOU provides, in pertinent part:

"THIS LETTER OF UNDERSTANDING, dated this ___ day of ___ 2009, is executed between the [REDACTED] [REDACTED] [REDACTED] (hereinafter referred to as the 'Employer'), and [REDACTED] [REDACTED] Chapter of 'Local [REDACTED]... (hereinafter referred to as "unit").

"In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

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2. Effective January 1, 2010, overtime will be paid for all hours worked from 3:31 a.m. Saturday until 3:30 a.m. Sunday.

3. Effective January 1, 2010, double time will be paid for all hours worked from 3:31 a.m. Sunday until 3:30 a.m. Monday.

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5. This pay schedule will be in effect for the time period December 14, 2009 through February 26, 2010.

6. All other terms and conditions specified in the Collective Bargaining Agreement between the parties shall remain in full force and effect, except as stated above."

Turning to the critical facts giving rise to this grievance, they are few and not in dispute. Monday, February 15, 2010 is Presidents' Day, designated in Article 32 as a paid holiday, a day on which "full-time employees shall be allowed eight (8) hours paid absence from work...". The Employer summoned [REDACTED] and [REDACTED] to work the evening of February 15, 2010.

[REDACTED] reported to work at 8:06 p.m. on Monday, February 15, 2010; he punched out at 6:02 a.m., on February 16. The Employer paid him double time (the holiday rate) for the four hours he worked

on February 15 and the overtime rate (time and one-half) for the six hours he worked on February 16.

██████████ reported in at 12:26 a.m. on Tuesday, February 16, 2010; he punched out at 6:01 that morning. The Employer paid him the overtime rate (time and one-half) for the 5.5 hours he worked.

The parties presented no testimony at the arbitration hearing, instead relying upon stipulated documents. The circumstances that caused the Employer to call in ██████████ and ██████████ and the differences in their reporting times are not explained in these documents.¹

Article 24 contains the applicable language governing premium pay:

- "1. Time and one-half will be paid as follows:
For all hours over eight (8) in one day or forty (40) in one one week. ...
- "2. Double time will be paid as follows:

...
For all hours worked on holidays that are defined in this Agreement in addition to holiday pay." [Underlining added]

The LOU does not address how a night shift falling (in part) on a holiday will be paid. The Employer contends this silence in the LOU means that "the issue [is] to be handled as covered by the Collective Bargaining Agreement [CBA] and practice." However, as it notes, the CBA does not define when a holiday begins and ends. Furthermore, there is no evidence on the record of a practice in this regard. The Employer therefore maintains it properly exercised its management right (Article 3) to "determin[e] when a contractual holiday starts and ends for the purpose of paying holiday pay." It asserts it used "the only common sense understanding of when the holiday actually falls according to the clock and calendar, from 12:00 a.m. - 11:59 p.m. of the actual calendar day of the holiday..." (Employer Brief, p. 2)

DISCUSSION AND FINDINGS

The sole issue in this case concerns how ██████████ and ██████████ should be paid for the hours they worked from Midnight through 6:01 and 6:02 a.m., respectively, on February 16, 2010.

¹ There was reference made at the hearing to an expected storm, but no more. Their having been "called in" clearly implies they were not scheduled to work the holiday.

The Union argues that the LOU provisions in paragraphs 2 and 3 governing premium or double time pay for "all hours worked from 3:31 a.m. Saturday [Sunday] until 3:30 a.m. Sunday [Monday]" should apply to the hours in dispute here. The Union acknowledges that "a day means a calendar day", but it insists the parties in the LOU changed the definition of a day. For purposes of these two employees earning premium pay, it asserts, a "'day' extends until eight hours after the start of their regular shift." It urges that "while a day, or the period of a holiday is not defined in the contract this concept is defined by named days and hours in the [LOU]." (Union's Post Arbitration Memo) It contends the Employer must apply the logic of LOU paragraphs 2, 3 that pays the Sunday premium for Monday hours to this situation, namely, they must treat the hours continuing from Monday Presidents' Day into Tuesday as hours worked on a holiday.

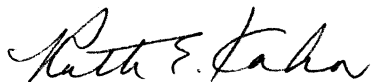
The Union maintains the Employer is benefitting from the concept agreed to in the LOU that premium pay would not be earned during a worker's regular shift, even if that is normally a period in which premium pay is earned. The LOU permits the Employer to pay "Friday pay" for "Saturday work", or "Saturday pay for Sunday work". It urges the Employer should, in this instance, pay holiday premium for all hours worked on a shift that began on the holiday.

The flaw with the Union's argument is that the language of LOU paragraphs 2,3 is both specific and restrictive: it governs only hours on regular shifts worked between "3:31 a.m. Sunday until 3:30 a.m. Monday." I find no basis in the CBA or the LOU to extend this provision to a holiday-pay dispute, to say that 'double time will be paid for all hours worked from 3:31 a.m. on a holiday until 3:30 a.m. on the day following the holiday.' It could well be that this would be a desirable quid-pro-quo for the pay arrangements set out in paragraphs 2 and 3 of the LOU, but it would constitute arbitral over-reaching to insert this into the LOU.

I am persuaded that the Employer's decision in this case is proper. Presidents' Day, a contractually recognized holiday, was February 15. It began at 12:01 a.m. and continued for twenty-four hours. [REDACTED] and [REDACTED] were not scheduled for their "regular" shift that day. [REDACTED] worked on the holiday, reporting at 8:06 p.m. and, consistent with Articles 24 and 32, he received "Double time ... for all hours [he] worked on [the] holiday". [REDACTED] did not work on February 15, the holiday. I find no basis in the record to reject the Employer's determination that the hours [REDACTED] and [REDACTED] worked on February 16, 2010, a day that is not a holiday, were not entitled to be paid at double time.

AWARD

The Employer did not violate the Agreement when it paid holiday pay/double time only for hours worked on Presidents' Day, February 15, 2010. This Grievance is denied.



Ruth E. Kahn, Arbitrator

Grievance Data:

Date:

Grievance Filed:
Case Heard:
Briefs Exchanged:
Record Closed:

March 12, 2010
July 20, 2010
August 10, 2010
August 27, 2010