



**WITNESSES TESTIFYING**

Called by the Union

Brenda Arndt, Grievant  
Housekeeping Attendant

Beverly Lund, Grievant  
Housekeeping Attendant

Keith C. Ferrington,  
Business Agent, AFSCME Council 65

Called by the Employer

Beth Dittbenner,  
Human Resources Manager

Jamie Schalloch,  
Environmental Services  
Operations Manager

Yvonne Andresen,  
Lead Housekeeping Attendant

Farrukh Bashir,  
Environmental Services Director

**ALSO PRESENT**

For the Union

No others were present

For the Employer

Julie Oliver,  
Chief Human Resources Executive

**JURISDICTION**

The issue in grievance was submitted to James L. Reynolds, as sole arbitrator, for a final and binding resolution under the terms set forth in Article XVIII Step 4 of the Collective Bargaining Agreement (Joint Exhibit 1) between the parties. At the hearing the parties mutually waived the requirement for a tri-partite Board of Arbitration specified in Step 4.

The parties mutually stipulated at the hearing that the grievance had been processed through the required steps of the grievance procedure without resolution, and that it was properly before the Arbitrator for a decision. The parties also stipulated that the Arbitrator had been properly called.

At the hearing the Arbitrator inquired if the parties had any objection to the award in this matter being submitted for publication by the Minnesota Bureau of Mediation Services, or by recognized labor arbitration publishing agencies. No objection was raised, and an appropriate release form was signed by the advocates of both sides.

At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. Final argument was provided by post hearing letter briefs filed by both parties which were received by the Arbitrator by the agreed upon deadline as amended. With the receipt of the briefs the record in this matter was closed. The issue is now ready for determination.

#### **STATEMENT OF THE ISSUE**

The parties presented somewhat different versions of the issue to be decided in this case, and deferred a final framing of the issue to Arbitrator. After hearing all the testimony and reviewing the evidence adduced at the hearing, the issue was determined to be:

Whether or not the Employer violated Article V, Sections 1, 3, or 4 of the Collective Bargaining Agreement by declining to provide extra compensation to the Grievants if they were required to wear their pagers during their breaks or lunch periods, were required to remain in the building during their lunch periods, or interrupt their breaks or lunch periods to respond to a call for their services in the Hospital. If so, what shall the remedy be?

The grievance (Joint Exhibit 2) was filed on March 17, 2004 and provides the following statement of the grievance:

**List applicable violation:** “Employees have to be at their job 8 ½ hr. but are paid for only 8 hr. They are not allowed to leave the building or turn off their pager phones during their unpaid ½ hr. break. This is an on going problem.”

**Adjustment required:** “Employees should not be required to keep pagers on or stay in bldg. during unpaid break. Want to be compensated for past unpaid breaks for which they were required to be there & keep pagers on.”

The sections of the Collective Bargaining Agreement that bear on this issue are found in Article IV – RIGHTS OF MANAGEMENT, Article V – HOURS OF WORK, and Article XVIII – GRIEVANCE PROCEDURE. In relevant part they read as follows:

#### Article IV – RIGHTS OF MANAGEMENT

Except as limited by the provisions of this Agreement, the management of the Hospital and the direction of the working forces, including the right to direct, plan and control Hospital operations, . . . schedule employees, . . . and to manage the Hospital are vested exclusively in the Hospital.

#### Article V – HOURS OF WORK

##### **Section 1**

The normal hours of work shall be eight (8) hours per day and eighty (80) hours in a 14-day period. All hours worked in excess of eight (8) hours per day and eighty (80) hours in a 14-day period shall be compensated for at the rate of time and one-half. Overtime payments shall not be duplicated for hours worked in excess of eight (8) in a regular work day and in excess of eighty (80) in a 14-day period.

\* \* \* \*

##### **Section 3**

The lunch period for all employees shall be one-half hour.

##### **Section 4**

Except in emergency, all employees shall receive two 15-minute rest periods in each eight (8) hour shift, at times designated by their immediate supervisor. No employee can leave work before the end of his/her shift in lieu of rest periods.

Article XVIII – GRIEVANCE PROCEDURE

**Step 4**

\* \* \* \*

The authority of the Board of Arbitrators shall be limited to making an award related to the interpretation of or adherence to the written provisions of this Agreement, and the arbitrator shall have no authority to add to, subtract from or modify in any manner the terms and provisions of this Agreement. The award of the arbitrator shall be confined to the issues raised in the written grievance, and the arbitrator shall have no power to decide on any other issues. The decision of the arbitrator shall be accepted and binding on the Hospital and the Union.

\* \* \* \*

**FACTUAL BACKGROUND**

Involved herein is a March 2004 grievance that asserts the Employer required housekeeping employees to keep their pagers/phones on during their lunch and rest periods and respond to calls for service during those periods if necessary. The Employer operates a general hospital in Mankato, Minnesota which is affiliated with the Mayo Health System. The Union is the exclusive bargaining representative of the employees working in the job classifications shown in Article II, Section 1 of the Collective Bargaining Agreement.

The Grievants are employed by the Hospital as Housekeeping Attendants, and have been working in that capacity for a number of years. For all relevant times, they were covered by the Collective Bargaining Agreement between the parties that was made effective on April 1, 2002, and continued in full force and effect through August 31, 2005.

As Housekeeping Attendants the Grievants are responsible for cleaning, changing bed linens and related tasks. At the time of the grievance they both worked the night (11:00 PM to 7:30 AM) shift, and were the only two Housekeeping Attendants on duty during that shift.

Both Grievants testified at the hearing that they were required by their supervisor (Jackie Stocker) to stay in the hospital building during their lunch period and were required to be available to respond to calls for their services when paged during their lunch and rest periods. They testified further that many of their lunch and rest periods were in fact interrupted by being paged to perform their duties. They went on to testify that Housekeeping Attendants on the day shift were permitted to leave the hospital during their lunch period and turn off their pagers during their rest periods.

Cross examination of the Grievants yielded a finding that on at least some occasions they were permitted to take their lunch breaks at a later time if interrupted by being paged to perform their duties.

Upon receiving no relief that was satisfactory to them the Grievant's filed the instant grievance on March 17, 2004. The grievance proceeded through the required steps of the grievance procedure without resolution and was heard in arbitration on April 17, 2007.

## **POSITION OF THE PARTIES**

### **Position of the Union**

The Union argues that the Employer violated Article V, Sections 1, 3, and 4 of the Collective Bargaining Agreement. In support of its position, the Union offers the following arguments:

1. The Grievant's supervisor had a rule that they could not leave the building to take their lunch period, and that they had to carry a pager so they could be summoned from their breaks to answer calls for service through out the hospital.
2. The overnight shift housekeepers were quite busy, were short staffed, and often worked alone. They frequently had their lunch periods or rest breaks interrupted or were not able to take them at all. They were denied compensation for missed lunch or break time.
3. The Employer's witnesses at the arbitration hearing were all new to the Hospital since the grievance was filed in 2004. They could not speak from experience about the circumstances that lead to the grievance, particularly since the circumstances have since changed.
4. The Employer's investigation into the matter produced notes that the housekeeping supervisor at the time, Jay Herman, permitted employees on all shifts to leave the building during their breaks. This is directly contrary to what the Grievants had been told, yet this discrepancy was never discussed with the Grievants.
5. The Grievants should be paid 8 ½ hours for each shift in which their breaks were interrupted or missed altogether.

### **Position of the Employer**

It is the position of the Employer that the grievance should be denied in its entirety. In support of this position the Employer offers the following arguments:

1. The Union is burdened to show that a violation of the labor contract occurred, and they have failed in that burden. There is no contractual provision supporting the Grievant's claim that they had a right to leave the hospital during unpaid break times. In order to ensure appropriate coverage within its facility it is perfectly reasonable that the Hospital required its only two trained night staff housekeeping employees to stay on hospital grounds during unpaid meal breaks. Such a requirement would be a sound public health and patient safety initiative.
2. The Union failed to show a contract violation occurred when the Employer required the Grievants to carry a pager/phone while on break. No contract provision has been cited that could establish a breach based on such an obligation. Merely carrying a pager/phone during a break does not equate to being interrupted, and a minor interruption in the form of an occasional page is not a material interruption of a break unless the employee proceeds to take action as a result of the page.
3. Employees have always been free to leave the campus during their breaks, even during the night shift. They are free to defer acting on a page until their break is completed, or if they respond to page, they simply resume their break later, or confirm the lack of a break and receive pay for the half hour.
4. There was no evidence offered that established a worked break that was not paid for.
5. This grievance is an attempt to control or inhibit management prerogatives. Management determined that pager/phones should be monitored to ensure patient/customer safety and security. Management is well within its rights to require pagers/phones be monitored by its employees, and there is no contractual bar to that requirement.
6. While it is disputed as to the right of an employee to leave the hospital during breaks, there is no evidence of any contract breach, and management is well within its rights to administer the policy even as the Grievant's described it.
7. The Grievants would like to take minimal meal break time and then be permitted to leave early. That desire is not supported by any contract provision. The Employer is entitled to schedule housekeeping employees pursuant to the terms of the labor agreement: eight and a half hours per day with eight hours being time worked and one-half hour being an unpaid meal break.
8. The evidence before the Arbitrator is wholly deficient to establish even a contract breach, let alone dictate a reasonable remedy. Indeed it is hard to discern exactly what remedy it is the Union is seeking.

9. Any minor deviations from ordinary policy that may have led up to the grievance have long ago been entirely resolved. No contract breach pre-grievance was proven by the Union and no contract breach currently exists.

### **ANALYSIS OF THE EVIDENCE**

In the field of labor relations as it has grown and developed in this country a grievance must be based on a specific provision of the collective bargaining agreement between the parties. A dispute that cannot reasonably be based on an alleged violation of the contract is simply not grievable. Clearly the parties in this case have recognized this principle. They provide in Article XVIII that “a grievance shall be defined as any controversy arising over the interpretation of, or the adherence to, the terms and provisions of this Agreement.” Additionally, at Article IV the parties have agreed that management has retained all rights to operate the hospital and schedule employees except where those rights have been abridged by a specific provision of the contract. Such language clearly limits what can be complained of through the grievance procedure.

The Union is the moving party in this grievance, and as such is burdened to show a violation of the contract. They point to Article V, Sections 1, 3, and 4 as having been violated in this case. In order for this grievance to be sustained, a preponderance of the evidence must show that one or more of those sections have been violated.

The hearing revealed that there were several specific complaints involved in this grievance. They were:

1. The Grievant's were required to be at work for 8 ½ hours, but were paid for only 8 hours.
2. The Grievants were not permitted to leave the campus during their unpaid one-half hour lunch period.
3. The Grievants were required to monitor their pagers/phones during rest breaks and lunch periods.
4. The Grievants were required to respond to calls for their services during their rest breaks and lunch periods.
5. The Grievants did not receive their contractually provided rest breaks or lunch periods due to the need for their services during their shifts.
6. The Grievants were not compensated when they had to work through all or part of their unpaid lunch period.

In order to sustain this grievance the evidence must show that one or more of these complaints is can be associated with a violation of Article V, Section 1, 3, or 4. Considering the first complaint above, Section 1 of Article V specifies that normal hours of work shall be eight (8) hours. Section 3 provides that the lunch period shall be one-half hour. Notwithstanding the clarifying language that was added to Section 3 in the 2005-2006 labor contract (Joint Exhibit 3), it is not reasonably disputed that the parties had been following a work schedule in 2004 that included two paid 15 minute rest breaks and a 30 minute unpaid lunch period. Clearly, the parties intended that the two 15 minute paid rest breaks are to be included in the normal eight hours of work, and that the unpaid 30 minute lunch break would not be. Accordingly, the complaint that the Grievants were required to be at work for 8 ½ hours, but were paid for only 8 hours is not sustained by the evidence. Indeed those hours are the natural consequence of the parties following the agreed upon language of the contract.

As to the second complaint, there is no contract provision that would bar the Employer from requiring employees to remain on the campus during their thirty minute lunch period. Article IV of the contract reserves to management such a right unless a specific provision of the contract provides otherwise. No such limitation on that management right is found in the contract. Testimony at the hearing indicated that management is currently allowing employees to leave during their lunch break. Additional testimony indicated, but not with certainty, that practice may have been permitted at the time of the grievance as well. In any event the contract does not currently limit management in this regard. Accordingly the second complaint that the Grievants were not permitted to leave the campus during their unpaid one-half hour lunch period is not sustained by the evidence.

As to the complaint that the Grievants were required to monitor their pagers/phones during their rest breaks and lunch periods, the contract does not limit management's right in that regard. To sustain this complaint there would have to be contract language that specifically limits management from making that a requirement. No such language is found in the agreement. Additionally, and importantly, simply monitoring a pager/phone during a break period can hardly be considered a major imposition on the Housekeeping Attendants. Accordingly, this complaint is not sustained by the evidence.

As to the complaint that the Grievants were required to respond to paged summons for their services during their rest breaks or lunch period, the contract provides that the employee has a contractual right to those breaks and an unpaid lunch period. There is,

however, no language that would compel a finding that such breaks must be uninterrupted or occur at a specific time. To the contrary, the contract at Article V, Section 4 specifies that rest periods are taken “at times designated by their immediate supervisor”. While clearly an inconvenience, interruptions to a break period are not specifically barred by the contract provided the employee has the opportunity to resume and complete his/her break in a timely manner after the urgent need for their services has been satisfied. If the parties deem it necessary to provide uninterrupted breaks and lunch periods for employees, the place to gain that provision is at the bargaining table. Accordingly the fact that breaks and lunch periods may have been interrupted in the past does not demonstrate a violation of the current language of the contract. That complaint cannot be sustained based on the evidence.

Complaint number five speaks of the Grievants not receiving their contractually provided rest breaks or lunch periods due to interruption and not being able to resume their break/lunch period following the interruption. Complaint number six speaks to not being compensated for that loss. Clearly, if an employee has to respond to an urgent page during a rest break or lunch period, he/she is entitled to resume and complete that break or lunch period upon performing the duties that urgently required his/her services. If not allowed to do so either by management directive, or by the press of other business, they would be entitled to compensation. The Grievants testified, without serious challenge, that many of their breaks and lunch periods were interrupted and they were not able to resume them upon completion of the work due to the press of other business. Management does have a right, however, to determine if the Grievants could have

reasonably resumed their rest break or lunch period. The Grievants would not be entitled to make that determination unilaterally. If management agrees that it would not be reasonable for the Grievants to resume their rest break or lunch period, then compensation would need to be provided. Indeed the current management in the Housekeeping Department testified that they would authorize such compensation today.

What is troubling about the Grievant's 2004 claim, however, is the absence of any reliable record of how many interruptions were involved in which they were not able to reasonably resume and complete their breaks or lunch periods. No notes, time cards, work schedules, or other such proof were offered. There is simply nothing in the record of this hearing to substantiate the magnitude of the loss incurred by the Grievants. While I do not doubt that they may have suffered some lost break/lunch period time, the burden of proof falls on them and the Union to substantiate their claim. An arbitrator lacks authority to simply make up a remedy not based on some reasonable evidence. It is noted that this grievance was filed over three years ago. The prospect appears dim for determining, with any accuracy, the amount due the Grievants for breaks or lunch periods that were missed in whole or in part. What needs to be substantiated is the number of lost rest breaks or lunch periods for each Grievant, and that management concurred that it was not possible for the Grievants to resume them. The circumstances surrounding each incident are likely to have been forgotten, and the present supervision was not there at the time. In any event no evidence was adduced at the hearing substantiating the loss the Grievants may have incurred. The Arbitrator is without authority to award a monetary remedy for the Grievants due to the lack of evidence on which to base such a remedy.

Similarly, it does not appear from the evidence that remanding the determination of how much, if anything is due the Grievants would be a productive and accurate exercise. This finding should not, however, be construed as a bar to the parties attempting to determine what may be due the Grievants. The parties are free to do so, if they choose. The arbitrable finding is simply that the evidence in the record of this hearing does not permit such a determination, and it does not rise to a level that would compel a remand to the parties.

**IN THE MATTER OF ARBITRATION BETWEEN**

IMMANUEL ST. JOSEPH'S HOSPITAL  
Mankato, Minnesota  
Employer/Hospital

-and-

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES  
Council 65 and its Local 1856  
AFL-CIO  
Nashwauk, Minnesota  
Union

DECISION AND AWARD

BMS Case No. 05-RA-190

Pager/Break Time Grievance

**AWARD**

The right of employees to their entire contractually provided rest breaks and a full thirty minute unpaid lunch period is affirmed. When circumstances, as reviewed and approved by management, do not reasonably permit the completion of a rest break or a lunch period that was interrupted to meet the business needs of the Hospital, compensation is due the affected employee. Notwithstanding the foregoing language of this award, based on the evidence and testimony entered at the hearing, the Arbitrator is without authority to sustain the grievance. The grievance and all remedies requested must be denied.

Dated: \_\_\_\_\_

\_\_\_\_\_

James L. Reynolds  
Arbitrator