

IN THE MATTER OF AN HOURS OF WORK DISPUTE
AND IN THE MATTER OF AN ARBITRATION PURSUANT
TO THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996 c. 244

BETWEEN:

GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA
(MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT)
as represented by the BC PUBLIC SERVICE AGENCY

(“Employer”)

AND:

BRITISH COLUMBIA GENERAL EMPLOYEES’ UNION

(“Union”)

(Provincial Centralized Screening Office)

HOURS OF WORK UMPIRE:

Christopher Sullivan

COUNSEL:

Amanda Smith
for Employer

Kay Sinclair
for Union

DATE OF HEARING:

December 22, 2022

PUBLISHED:

January 20, 2023

The parties agree I have jurisdiction, as Hours of Work Umpire, to hear and determine the matter in dispute. The case involves an application made by the Employer, pursuant to Article 14.2 of the Main Collective Agreement, to change the existing hours of work agreement for Team Leaders and Social Workers, within the Provincial Centralized Screening (“PCS”) offices located at Vancouver, Surrey, and Kelowna. The employees belong to the Social, Information and Health Services Component of the Union.

PCS provides a 24/7 hotline to receive and screen child and youth safety concerns for the entire province. Reports of suspected child abuse and neglect are assessed on a case-by-case basis and, depending on the circumstances, warrant different types of responses. PCS delivers critical services including handling safety reports, making screening decisions and, during out-of-core hours, coordinating safety supports, clinical supervision for district offices, and fielding calls/providing business continuity support for closed district offices.

The affected employment complement comprises of about 69 active Social Workers and 16 Team Leaders. The complement also includes a number of auxiliary employees. Of the active Social Workers, 25 were referred to as “in-core”, currently working a Monday to Friday schedule within a 6:00 am to 6:00 pm time window. All in-core Social Workers are on flex schedule, wherein they can choose to work four days every other week, taking Monday or Friday off.

The remaining 44 active Social Workers were referred to as “out-of-core”. These employees work a shift pattern of 31 rotations of four weeks each, with a Sunday to Saturday workweek. These employees do not have shifts scheduled Monday to Friday between 8:00 am to 4:00 pm. Of note, the Employer has not hired an in-core Social Worker for at least three years and now hires only hired out-of-cores.

Team Leaders currently work a shift pattern of 13 rotations with three floats. Their workweek is Sunday to Saturday and there are no work hours scheduled between 1:00am to 6:00am.

In its present application the Employer effectively seeks to remove the in-core/out-of-core distinction and provide 24/7 coverage on a 4 on/3 off basis, with sixteen four-week rotations of 8.75 hours, including a paid 30-minute meal break.

The relevant portions of Article 14.2 read as follows:

14.2 Work Schedules

- (a) Component agreements shall establish shift patterns, length of scheduled workdays and, where appropriate, averaging periods to meet the annual hours of work.
- (b) The Employer shall determine, pursuant to the appropriate statutory authority, when various services are provided (hours of operation), the classifications of positions and the numbers of employees required to provide the services.
- (c) The Employer's designate and the union steward at the local level will establish work schedules based upon the shift patterns and hours of work clauses in the relevant component agreement and the provisions of this article including the following:
 - (1) if either party wishes a change to existing work schedules it shall provide the other party with the earliest possible advance notice in writing;
 - (2) if a change is requested only at the local level, the notice shall be given to the appropriate union steward or designated employer representative. If a change is requested which involves more than one worksite, notice shall be given to the President of the Union or designated ministry official...
- ...
- (e) (1) The Umpire shall have 14 days, which may be extended by mutual agreement of the Principals by a further seven days, in which to bring in a decision.
- (2) The Umpire shall base their decision on work schedule information in the relevant component agreement and the criteria to be applied in this section. The Umpire may consider a work schedule proposed by either party, however only work schedules which are consistent with the relevant component agreement may be considered.

- (3) The party requesting a change from what has been previously agreed to shall bear the onus for justifying the change.
- (4) In coming to a decision, the Umpire shall abide by the following rules:
- (i) the decision must not be retroactive;
 - (ii) the hours of work schedule awarded shall not contain scheduled overtime;
 - (iii) the decision must not interpret the Main or Component collective agreements except for the provisions of Clauses 14.2(e)(4) and 14.2(f).
- (f) The Parties recognize that in reaching mutual agreement on work schedules, or where the Umpire is determining a schedule in accordance with this article the following will also apply:
- (1) work schedule shall meet the hours of operation and shall consider unusual or seasonal demands and functionally linked work groups within and without the bargaining unit;
 - (2) work schedule changes, within existing hours of operation must not result in increased cost to the Employer and where possible shall result in decreased cost to the Employer and/or improved efficiency and/or improved service to the public. The onus of proof shall be on the Employer to provide decreased cost;
 - (3) consideration shall also be given to employee preferences, fairness and equity.

The Employer's current proposal to change the existing hours of work was based on an operational review conducted by an independent consultant that identified a number of problems in relation to service quality, staff health and wellness, team cohesion, equity, operational agility, and cost sustainability. These problems were summarized as follows:

Service Quality

- Chronic long wait times e.g., end of the business day (4-6pm weekdays), graveyard (midnight to 4am), AWOL reporting (10pm to midnight)

- In-Core flex schedule leads to consistently lower service levels on Mondays and Fridays
- Graveyard Team Leader standby shift results in supervision gaps (amplified by trends in having less equipped staff)
- Post-graveyard shift transitions are intense as Social Workers try to complete the consults batched over night with Team Leaders starting in the morning

Staff Health & Wellness

- Shift rotations for evening, graveyard and weekends have abrupt transitions leading to additional stress and impact staff wellness (10am to 11pm in next shift rotation)
- Graveyard Team Leader standby shift results in chronic sleep disruption
- Shift rotations are complex, further complicating scheduling and responding to changes

Team Cohesion / Continuity

- Current schedule does not maintain a consistent level of overlap between Social Workers and their assigned Team Leaders

Equity

- Two distinct teams, In-Core and Out-of-Core, impact schedule fairness and perception of fairness, creating division amongst staff (e.g., flex option, access to overtime shifts, relative staffing level, rotational vs. fixed shifts)

Operational Agility / Flexibility

- Schedule is committed for the year despite seasonality in call volume and scheduling of non-call work such as meetings
- 25% of scheduled shifts need to be backfilled due to leaves, 70% of which will have lead time to backfill

Cost Sustainability

- PCS is unable to recruit & retain staff for evenings, nights & weekends to meet the scheduled staffing level and backfill for leaves – leading to unsustainable use of overtime & auxiliary and in some cases shifts unfilled

During the course of these proceedings, I heard from a number of employees who spoke to their particular circumstances and concerns. As a general theme many, if not all, in-core employees did not favour the change. By and large they are a senior and experienced group who years ago were hired to work Monday to Friday daytimes and have done so for many years. Most have built their lives around their Monday to Friday daytime schedule, and saw significant difficulties, if not absolute impediments, to having to work outside of those hours. In-core employees cited matters such as family obligations and health well-being as impediments to moving to the schedule the Employer proposes.

As a general observation, many of the in-core Social Workers who provided *viva voce* and/or written statements and information at these proceedings not only stated their individual preferences to maintain their longstanding Monday to Friday day shift hours, but also expressed serious concerns about a potential exodus of senior Social Workers from PCS, and a consequent drop in irreplaceable knowledge and level of service for an already vulnerable population.

At the same time, some out-of-core employees expressed frustration with in-cores being able to obtain overtime shifts by working beyond the time frames they say they are available. Some of these employees indicated a desire to include Monday to Friday daytime work into their schedules.

ANALYSIS AND CONCLUSION

Having carefully considered the parties' respective positions, I determine the Employer has met its onus for justifying the hours of work changes it seeks to implement at the PCS. The Employer has established a compelling business case for the change it seeks to make. The schedule changes sought are consistent with those contained in the relevant Social, Information and Health Services Component Agreement and also the requirements set out in Article 14.2 of the Main Collective Agreement.

On the information presented, the Employer's concerns about the present work schedule are legitimate in relation to addressing anticipated peaks in call volume resulting in longer call

wait times and levels of service delivery. The fixed nine-day flex schedule has shown itself to significantly impact the Employer's ability to meet scheduling needs and service level goals on Mondays and Fridays. This is not a work environment where, for example, work can be adjusted to address having fewer employees scheduled on Mondays and Fridays. An even distribution of staff across the schedule and greater flexibility in scheduling will allow the Employer to respond much more effectively to changes in service requirements and provide better service to the public, including reducing backlogs in the queues.

The Employer's proposed work schedule reflects its actual hours of operation and takes into account the functional linkage/interrelationship between all Social Workers and their Team Leaders. The new schedule notably provides for consistent overlap between Teams and their Team Leaders that allows for enhanced mentoring, support and staff supervision. The new schedule allows Team Leaders to be present for more hours during the graveyard shift, easing the post-graveyard shift transitions and reducing the length of the Team Leader standby shifts.

From an organizational standpoint, by removing the divide between in-core and out-of-core Social Workers, there is greater equity amongst all team members to the extent that all move through the same schedule and utilize the same vacation and shift trade processes, with more equitable access to overtime opportunities.

The Employer's proposed schedule also addresses concerns regarding abrupt rotation transitions that impact wellness and stress levels as it contains fewer scheduling rotations for all employees than the previous schedule. Each rotation lasts for four weeks, and employees stay within daytime or afternoon/evening start times for two to three rotations in a row. The schedule provides equitable access to daylight hours. Further, telework arrangements allow employees to work at home up to three days per week, which can be particularly significant in a 4 on/3 off schedule as employees only have to commute to work for one day per week.

In all of the circumstances I determine the Employer is entitled to implement the schedule it proposes. Having made this finding, I also determine Article 14.2(f)(3), which expressly provides that "consideration shall also be given to employee preferences, fairness and equity",

requires further mitigation than that currently offered by the Employer for those most affected by the work schedule changes, predominantly in-core employees who have worked Monday to Friday day hours, and were likely hired with that particular work schedule in mind.

For certainty, the present case is a significant one involving far reaching consequences that affect a large number of employees, many with long and dedicated loyal service. The move from a Monday to Friday day shift with every second Friday or Monday off to a 4/3 sixteen week rotation that includes evenings, overnights and weekends, is monumental for many people. For some, this change directly affects the way they have scheduled their personal lives, including dealing with childcare and/or elder care obligations to name only two.

During the course of these proceedings, and in response to the Union's arguments regarding the particularly significant effect the Employer's proposed changes would have on the in-cores, the Employer mentioned seeking an opportunity to allow these employees an opportunity to laterally transfer elsewhere and maintain their Monday to Friday daytime work schedules. Subsequent to the hearing, the Employer has confirmed it is willing to do so but, as at the date of the issuance of this award, many important details of this avenue of mitigation have yet to be disclosed.

To my mind, such a one-time offer may well constitute a full practical resolve wherein in-core employees are effectively "grandfathered" in relation to the work schedules they prefer by being able to move elsewhere with the Monday to Friday daytime work schedules they have argued strongly in favour of. The task of balancing the parties' respective interests is largely taken care of in light of such a lateral transfer offer that allows for protection of the desired work schedule.

I therefore determine the Employer is entitled to make the hours of work changes it proposes, based on offering the lateral transfer option it has raised as an essential component to mitigating the effects of such change on its employees. The details of the lateral transfer option the Employer proposes must be clarified no later than four weeks prior to the February 26, 2023,

implementation date. Such an offer must be consistent with the transfer provisions of the Collective Agreement in terms of matters such as distance from one's current location.

This resolve practically addresses the various concerns expressed by in-core employees about the Employer's proposed schedule, such as the amount of time between rotations with certain shift patterns, the staggered start times, and addressing medical and family status matters. An in-core employee who does not want to change their work schedule does not have to.

Having arrived at this conclusion, it appears some in-core employees not only wish to protect their current hours of work and work schedule, but also their job with PCS. That protection is outside the jurisdiction of the Hours of Work Umpire, which has a focus on work schedules and hours of work, not organizational structure.

In all of the circumstances, the Employer's application to change the hours of work is upheld, subject to the condition raised above. I shall retain jurisdiction to ensure the terms of the lateral transfer option are reasonable as such constitutes an integral component of the rationale for upholding the application.

It is so awarded this 20th day of January, 2023.



Christopher Sullivan
Hours of Work Umpire