

New York State Contracts

Understanding Key Articles: 27, 32, 44 & 45

CSEA State Operations

Article 27

Distribution of Overtime

27.1 Available overtime shall be distributed equitably among qualified employees who normally do such work.... On a rotational basis.

- Overtime must be available for Article 27 to come into play.
- Management has the right to determine whether work shall be performed on an overtime basis.
- Triage determination to illustrate “available overtime.”

Roberts Triage Decision:

Facts of the Case

Illustration of Available Overtime

- Due to construction at an OMH facility, employees parked in an alternative parking lot which required shuttle service to the facility.
- Grievant was employed as a Motor Vehicle Operator (MVO).
- Initially, grievant and two other MVO's drove a 20 passenger shuttle on an overtime basis.
- After several days, management determined that members of Grounds Department could operate a six passenger van during their regular hours of work.
- Grievant alleges he was deprived of overtime when management allowed other employees, who were not properly licensed to operate the shuttle vans.

Roberts Triage Decision:

Discussion

- The Master Arbitrator ruled there was no obligation for the Facility to perform the shuttle work on an overtime basis.
- Since there is no overtime offered, and Grounds Staff performed work during regular time, there is no “available overtime” as the term appears in Article 27.1
- Additionally, while asserting that the issue of the instant grievance is whether or not overtime is available, the Master Arbitrator addressed the grievant’s claim that the Grounds Staff was not qualified to perform the shuttle work. Thus he stated, “while this is not the proper forum for grievants to assert that Grounds Staff are not qualified to perform the shuttle work....Grounds Staff with a valid driver’s license, are in fact qualified to drive a 6 passenger van.”
- The grievance was denied.

Equitable distribution among qualified employees who normally do such work

- The contract provides a fair and just procedure for the distribution of overtime.
- Procedures for the establishment, publication, maintenance and operation of overtime rosters, and/or a record of employees who have worked overtime shall be updated on a weekly basis and posted at each work location.
- Procedures and records regarding the distribution of overtime and the maintenance of rosters are subject to union participation and oversight.
- The opportunity to work overtime must be equalized among employees.
- If an overtime opportunity one day is for 3 hours of work and the next opportunity is for 2 hours, there is not a violation of the contract.
- Who is qualified to do the work is determined by the duties of the job title.

Rotation

- The opportunity to work overtime must be rotated.
- Rotation lists are initially set up in order of Article 44 seniority in each contract.
- Refusals of overtime offers are treated as overtime worked and the employee's name moves to the bottom of the list.
- Mandatory overtime assignments are made in reverse order of seniority.

Remedy:

In the event an available employee is skipped when available overtime is distributed among qualified employees who normally do such work...

- The employee skipped shall be allowed to work the next available overtime equivalent to the amount of overtime worked by the employee for whom she or he was skipped.
- The contract does not authorize an arbitrator to award a monetary remedy.

Article 32

Workday/Workweek

Non-Shift and Shift Normal Workday/Workweek

32.1(a) covers non-shift operations

- Normal Workweek – Monday through Friday
- Normal Workday – 6:00 am to 10:00 am
- Movement within the normal block starting time is not a deviation under 32.2 (b). Requires reasonable advance notice.

Non-Shift and Shift Normal Workday/Workweek

- Article 32.1 (a) and (b):
 - Requires regular, consistent, predictable workday and workweek
 - There is flexibility in language to change start times and to assign different workweeks
 - Floating across shifts on an as needed basis violates the spirit of the language.

CSEA v. OMRDD (Broome DC)

Facts of the case –

- Stationary Engineers who work at the power plant normally assigned to three regular shifts: day, evening, or night.
- After discussion with the Union, but without its agreement, management establishes two “float” positions.
- Float position – employee normally assigned to the day shift but with seven day notice can be floated to other shifts to cover scheduled absences.
- Union grieves Article 32.1 and 32.2. At the hearing, the Union tries to amend to include a violation of 32.3 but arbitrator denies.
- Union argues that section 32.1 mandates a designated three –shift structure and the float position outside that structure which is inconsistent with the spirit of the provision to promote predictability and consistency in scheduling.
- Management argues that under management rights they can deploy the workforce, creation of float positions not without precedent (i.e. Telephone operators and safety officers), created these float positions so that all the other employees on fixed schedules would not have their work hours changed.

CSEA v. OMRDD (Broome DC)

Discussion –

- The language of Article 32.1(a) and (b) require the establishment of regular, consistent, and predictable workweek and workday schedules.
- The flexibility of the agreement permits the state to have different starting times and to assign workweek other than 5 and 2.
- The flexibility does not extend to the creation of a shift, which has as a normal part of its structure a ‘float’ to other shifts on an as needed basis.
- This violates the spirit of 32.1 of the agreement.
- The state was directed to terminate the ‘floater’ shifts and to assign the grievants consistent with their seniority to permanent shifts full-time.
- It should be noted that depending on the circumstances of the situation management may be able to move staff temporarily to other shifts via Article 32.3 to avoid the payment of OT.

Deviations to the Normal Workday/Workweek

Understanding Article 32.2 (b)

- Specifies the steps the Agency must follow when it wishes to deviate from the normal workday/workweek
- Agency does not need to prove or justify the rationale for the deviation if :
 - All of the employees involved agree to the deviation or
 - If there is an emergency or
 - Advance written notice and consultation with CSEA
- CSEA is defined as CSEA Local President and/or recognized CSEA representative
- 30 days written notice prior to the date of change should be provided

Deviations to the Normal Workday/Workweek

Understanding Article 32.2(b)

- Consultation – defined by Arbitrator Benewitz in the 1970's
 - Consultation must be with responsible agents of CSEA
 - Not pro forma before a fait accompli (can't be a done deal)
 - Presentation of the proposed change
 - Presentation of the reasons
 - Consideration of CSEA's analysis and objections (if any)
 - An attempt to arrive at a mutually acceptable conclusion

- Consultation does not mean we have to agree or have veto power

CSEA (Snyder) v. OMH (Hutchings PC)

Facts of the case –

- Maintenance employees are assigned to a regular work schedule consisting of a 5-day workweek, Monday through Friday.
- The normal work hours are 8:00 am to 4:30 pm.
- When maintenance services were needed on a weekend, one was called in on an overtime basis.
- Management wanted coverage on a 7 day a week basis.
- Maintenance employees attended a meeting and management told them that the weekend coverage would begin in the near future.
- Management advised employees to discuss the matter among themselves as well as with CSEA representatives (**No CSEA official or Field Rep was present at the meeting – none had been invited to the meeting**).
- Management argued that it met the procedural requirements – a meeting was held, the purpose of the meeting was not to announce a ‘fait accompli’ but to engage in a two-way conversation, open discussion of the plan, and the door was left open for employees or CSEA reps to have further discussion.

CSEA (Snyder) v. OMH (Hutchings PC)

Discussion –

- Consultation is a requirement and the form of consultation is inferable by the Agreement.
- The Agreement is between the State and CSEA not between the State and the employees.
- Any consultation must be had with responsible agents of the CSEA acting in their official capacity.
- Responsible agent is defined as the elected Local President and/or recognized CSEA representative.
- The Arbitrator found that management violated Article 32.2 by not meeting with CSEA and for not providing a presentation of the proposed change, but just telling the employees of the change. The Arbitrator said that consultation was pro forma in violation of the Agreement.
- The Arbitrator required management to meet within 14 days to enter into meaningful consultation with CSEA Local President and he made those employees who worked the weekend whole for the lost overtime.

Limitations on Temporary Rescheduling

Understanding Article 32.3

- Article 32.3 pertains to temporary rescheduling of pass days or shifts to avoid the payment of overtime (OT)
- Three Conditions need to be met:
 - Specific case
 - One week's notice
 - Necessary for the continuation state services

Limitations on Temporary Rescheduling

Understanding Article 32.3

- Specific case –
“an identifiable, projected assignment for a more or less determined time period as opposed to a sporadic and irregular, open-ended, blanket-type of assignment.”

- Examples that meet the definition of specific case -
 - staff coverage during a block vacation
 - staff coverage during a short term illness
 - transportation of ‘Individuals/ Service Recipients’ to Christmas season activities
 - Ramadan Holiday

- Examples that do not meet the definition of specific case –
 - staff coverage for routine incidents such as WC leave and transfer of employees to cover other employees’ day off

Limitations on Temporary Rescheduling

Understanding Article 32.3

- Necessary for the continuation of state services –
“the absence of the rescheduling could cause, or threaten to cause the breakdown, interference or diminution of the continuing delivery of state services.”

- Examples that meet the definition -
 - rescheduling to attend training that is required to receive federal funds
 - rescheduling of pass day to work Family Day event for SUNY on a Saturday
 - rescheduling to provide PUE coverage for the power plant.

- Examples that do not meet the definition -
 - first aid training and sexual harassment training

CSEA (Pflanz, et.al) v. SUNY (Binghamton)

Facts of the case –

- Group of Stationary Engineers provides 24-hour coverage for the SUNY power plant.
- The employer provides several engineers more than one week's notice that for a 2 week period of time their shift would be rescheduled to cover for another co-worker's vacation.
- Due to the rescheduling, SUNY incurred no overtime expense for the engineers service during that block of time.

CSEA (Pflanz, et.al) v. SUNY (Binghamton)

Discussion –

- The Arbitrator found that all three criteria for avoiding the payment of OT were met.
 - Specific case – 11:00 pm to 7:00 am / 2 week vacation;
 - More than one week's notice was provided;
 - Necessary for continuation of state services – coverage by qualified stationary engineers was necessary for the continued operation of the power plant which is essential for maintaining health and safety.



Article 44

Seniority

Understanding Seniority

■ Key Issues

- How is seniority defined?
- How are breaks in service treated?
- How is seniority applied; what can it be used for?
- What are exceptions or limits to employee seniority rights?
- Can local labor management negotiate agreements?

Definitions

Each bargaining unit has a different definition

ASU:

- Only permanent State service
- Regardless of bargaining unit
- Example:
 - 5 years permanent service as a Cleaner (OSU)
 - +
 - 2 years permanent service as a Office Asst. (ASU)
 - = 7 years seniority under ASU.

Definitions

ISU

- Length of State service
- Regardless of bargaining unit
- All types: permanent, temporary, provisional
- Example:

3 years temporary service as a Maintenance Assistant (OSU)

+

2 years permanent service as a Direct Support Assistant (ISU)

= 5 years seniority under ISU.

Definitions

OSU

- Length of service in the “Entity”
 - Agency, region, facility/institution/campus, residency/camp
 - Defined by 44.1

- All types: permanent, temporary, provisional

- Regardless of bargaining unit

- Example:
 - 4 years permanent service as a Food Service Worker (ISU) at Capital District DDSO
 - +
 - 1 year permanent service as a General Mechanic (OSU) at Sunmount DDSO
 - = 1 year seniority under OSU.

Breaks in Service

Different in each bargaining unit

- OSU - None permitted
- ASU - 1 year or less no break
- ISU - 2 years or less no break
 - However, deduct time > 1 year
- Approved leaves no break, regardless of length
- “Clock” stops for breaks & approved Leaves of Absence (two exceptions):
 - ASU – disability
 - ISU - military

Applicability

What can it be used for?

Selecting:

- Shifts
- Pass Days
- Work Locations
- Vacations
- Overtime
- Involuntary transfers
 - ISU & ASU

Applicability

ASU:

- Shifts, Pass Days, Work Location, and Vacations
- Two Limitations:
 - Operating Need
 - Identification of Differences

Applicability

ISU:

- Shifts and Work Location
 - Two Limitations:
 - Operating Need
 - Identification of Differences

- Pass Days
 - Seniority

- Vacation
 - Covered in Article 10.4
 - Seniority if more than 1 person want same time

Applicability

OSU (Refer to Article 50):

- Shifts and Work Location
 - Two Limitations: Operating Need & Identification of Differences

- Pass Days
 - Seniority

- Vacation
 - Covered in Article 10.6
 - Seniority if more than 1 person want same time

Seniority Exceptions

- Operating Need
 - Legitimate “preferred” qualification
 - Burden of proof on management
 - Example: T&A, Gender, NOD history
- Identification of Differences
 - Legitimately related to ability to perform duties & responsibilities
 - Example: Writing skills for supervisory functions

Other Issues

- Local Labor Management Implementation
 - Local agreements on procedures
 - Dispute not arbitrable
- Involuntary Transfers
 - If change in shift or work location occurs to meet operating need, employees have rights (unless a result of disciplinary action) to select
 - ASU:** shift (if applicable), vacation & AWS
 - ISU:** pass days per local procedures

Article 45

Posting & Bidding

Posting and Bidding

- Restricts Management Rights (Article 5)
- Provides Qualified Seniority Rights
- Provides Notifications on Vacancies and Exams

Key Issues

- Permanent Employees
- How seniority is defined and applied
- What are exceptions and limitations (Qualified Seniority)

Definitions

ASU:

- Initial Appointment to State Service
- Includes Temporary Service

OSU:

- Length of OSU Service
- Includes Temporary Service

ISU:

- Length of State Service
- Includes Temporary Service

Applicability and Limitations

ASU:

- Seniority Shall be a Factor
 - No Distinction Relevant to Ability to Perform Required Duties and Responsibilities Satisfactorily
 - Operating Need

- Transfers and Reassignments

- Within Operating Unit

Applicability and Limitations

ISU:

- Most Senior
 - Subject to Operating Needs
 - Ability to Perform Required Duties and Responsibilities Satisfactorily

- Transfers or Reassignments

- Promotions (Non-Competitive and Labor Classes)

- Within Operating Unit

Applicability and Limitations

OSU:

- Made by seniority if employee meets:
 - Posted minimum qualifications
 - Legitimate operating needs
 - Ability to perform duties and responsibilities satisfactorily

- 45.1(d) Appointment to **higher salaried non-competitive** vacant position:
 - Pursuant to 45.1(b) Operating Unit

- If vacancy filled by transfer, reassignment, or demotion, then the seniority provisions of Article 45 do not apply.

Issues to Consider

Management Defenses to Deny Senior Employee the Position

- **Does the employee meet the posted minimum qualifications?**
(burden of proof rests with the employee)
- **Does the employee meet the legitimate operating needs?**
(burden of proof rests with management)
- **Can the employee perform the duties and responsibilities satisfactorily?**
(burden of proof rests with management)

In the absence of qualified promotional candidate, management can appoint from “off the street”

Posted Minimum Qualifications

(burden of proof rests with the employee)

Resume or Work History

- Employment (Names and titles of employers)
- Dates and periods of time worked
- Type of work (Be specific)
- Supervisors and their qualifications (e.g. Names, addresses, telephone numbers - journey level)
- Education and/or training
- Certifications or licenses
- References

Legitimate Operating Needs

(burden of proof rests with management)

Should be described on the vacancy posting:

- A particular skill (e.g. welder certification)
- An area of expertise (e.g. can read blue prints)
- An attitude or work ethic
- A level of responsibility (supervisory experience)
- A level of reliability (e.g. time and attendance)

Can argue before Master Arbitrator that the operating need is not legitimate

Ability to Perform Duties and Responsibilities Satisfactorily

(burden of proof rests with management)

Impact of Prior Notice of Discipline (NOD)

- No set standard
- Case-by-case determinations
- Relevance to promotional opportunity
- Relevance to operational needs
- Time passed since NOD
- Seriousness of the charges

Past Performance Evaluations

- No set standard
- Case-by-case determinations
- Relevance to promotional opportunity
- Relevance to operational needs
- Time passed since evaluation
- Satisfactory/ Unsatisfactory
- Special note of projects, skills, abilities, etc.



Q & A

