

**IN THE MATTER OF**

**STATE OF WASHINGTON**

**AND**

**WASHINGTON FEDERATION OF STATE EMPLOYEES**

**Grievance: Carole Burinsky – Work Schedule**

**AAA No.: 75 390 00195 08**

**Date Issued: March 23, 2009**

**ARBITRATION OPINION AND AWARD**

**OF**

**ALAN R. KREBS**

**Appearances:**

**STATE OF WASHINGTON**

**WASHINGTON FEDERATION OF STATE EMPLOYEES**

**Peggy Pulse**

**Debbie Brookman**

**IN THE MATTER OF  
STATE OF WASHINGTON  
AND  
WASHINGTON FEDERATION OF STATE EMPLOYEES**

**OPINION OF THE ARBITRATOR**

**PROCEDURAL MATTERS**

The Arbitrator was selected by the parties with the assistance of the American Arbitration Association. A hearing was held on January 23, 2009 in Tumwater, Washington. State of Washington was represented by Peggy Pulse, Labor Relations Specialist. Washington Federation of State Employees was represented by Debbie Brookman, Senior Field Representative.

At the hearing, witnesses testified under oath and the parties presented documentary evidence. A court reporter was present, and a copy of the transcript was later submitted to the Arbitrator. The parties' briefs were received by the Arbitrator on March 3, 2009.

**ISSUE**

The parties agreed upon the following stipulated statement of the issue:

Did Management violate Article 6.3.B when it denied Ms. Burinsky's request for a 4/10 alternate work schedule?

If so, what is the appropriate remedy?

# RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

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## ARTICLE 6 HOURS OF WORK

### 6.1 Definitions

\* \* \*

#### H. Work Schedules

Workweeks and work shifts of different numbers of hours may be established by the Employer in order to meet business and customer service needs, as long as the work schedules meet federal and state laws.

\* \* \*

### 6.3 Overtime-Eligible Employees (Excluding Law Enforcement Employees)

#### A. Regular Work Schedules

The regular work schedule for overtime-eligible employees will not be more than forty (40) hours in a workweek, with starting and ending times as determined by the requirements of the position and the Employer. . . .

#### B. Alternate Work Schedules

Workweeks and work shifts of different numbers of hours may be established for overtime-eligible employees by the Employer in order to meet business and customer service needs, as long as the alternate work schedules meet federal and state laws. Employees may request alternative work schedules and such requests will be approved by the Employer, except as provided below, subject to business and customer service needs. The Employer may disapprove requests if there are performance or attendance concerns. Previously approved alternate work schedules may be rescinded by the Employer if business and customer service needs are no longer being met, or if performance or attendance concerns occur. The Employer will consider employees' personal and family needs.

\* \* \*

#### G. Employee-Requested Schedule Changes

Overtime-eligible employees' workweeks and work schedules may be changed at the employee's request and with the Employer's approval, provided the Employer's business and customer service needs are met and no overtime expense is incurred.

\* \* \*

**ARTICLE 35  
MANAGEMENT RIGHTS**

Except as modified by this Agreement, the Employer retains all rights of management which, in addition to all powers, duties and rights established by constitutional provision or statute, will include but not be limited to, the right to:

\* \* \*

- H. Establish or modify the workweek, daily work shift, hours of work and days off; . . .

\* \* \*

**NATURE OF THE DISPUTE**

The Grievant is employed as a support enforcement technician in the Central Services Unit of the Division of Child Support, Washington State Department of Social and Health Services. She has worked in that position for over twelve years. The Grievant's current hours are from 7:00 a.m. until 3:30 p.m., Monday through Friday. This dispute concerns the Employer's rejection of the Grievant's request to work an alternate schedule of four ten-hour days with Friday off.

The Grievant was one of about 33 support enforcement technicians of the more than 100 employees who worked in the Central Services Unit. The support enforcement technicians in Central Services are cross-trained and assigned to a variety of duties. David Stillman, the Director of the Division of Child Support, testified that Central Services receives, electronically and by mail, about three and a half million child support payments each year. The mail is delivered at about 6:45 a.m. and a few employees start work at 6:30 a.m. in order to receive and transport the mail to a secure room. Thereafter, the mail, including payments, court orders, and correspondence, is opened and scanned into the computer system. Child support payments are posted to the appropriate account and checks are placed in bags for transit to a bank. Payments are dispersed to the appropriate family. If dispersed payments are returned as non-deliverable,

then support enforcement technicians try to ascertain the correct address. Mr. Stillman testified that Central Services annually handles about a million documents. Each month, these include about 5,000 court orders, 400 interstate referrals, and 400 foster care referrals. Support enforcement officers who work in field offices must be provided access to court orders, correspondence, and other documents as appropriate to their individual assignments. Division Director David Stillman testified that some of the Division's field staff work schedules of four ten-hour days.

By law and regulation, Central Services is required to meet designated timelines for accomplishing many of its responsibilities. Payments must be dispersed to families within two business days of receipt. Court orders must be processed and cases set up for enforcement or modification within two days of receipt from the county clerks. Requests for assistance from other states must be opened and processed within ten working days of the receipt of the request. Central Services has 20 calendar days to open a case after receiving an application for support enforcement or referral for a child in foster care. By internal policy, Central Services has two business days to process all mail so as to allow access by support enforcement officers in the field.

Employer and Union witnesses agreed that Monday is generally a particularly busy day of the week for support enforcement technicians because of the heavier volume of incoming mail. An employer witness testified that Tuesday is also generally busy because of the need to complete work left over from Monday. The Grievant and Mary Pannkuk, another support enforcement technician, each testified that the end of the week tends to be less busy. GERALYN LARSEN, the chief of the Central Services Unit, testified that during 2007, the Unit was often not meeting the required time frames for processing court orders and correspondence.

For about five years, the Grievant worked a schedule of Monday through Thursday, ten hours per day with Friday off. That ended in July 2005 when the Employer abolished alternative schedules of four ten-hour days in the Central Services Unit and required all Unit employees to work a Monday through Friday schedule, eight hours per day. Ms. Larsen testified that the 4/10 schedules were ended because the number of employees working on a given day was unpredictable as a result of people calling in sick or taking vacations. She testified that a lot of employees were gone on Mondays and Fridays and there was not enough personnel to handle the work load on those days.

In January 2006, the Grievant requested that her previous 4/10 schedule be restored. The Grievant submitted a letter from her physician stating that she suffered from depression and as a result, he recommended that she go to a four-day work schedule, so that “she would be able to attend counseling and physician’s appointments on a regular basis, and get a break from some of the stressors that she experiences.” The Grievant testified that she had been seeing a counselor on her Friday day off. The Employer denied the Grievant’s request for a 4/10 schedule. The Union grieved this denial.

The Employer referred the Grievant to its “reasonable accommodation specialist.” The Grievant was asked to submit a form to her doctor which would verify that she has a disability. The Grievant responded that she was not willing to share any further medical information with the Employer and if any additional medical information was required, then she was “not interested in pursuing the Employer’s reasonable accommodation process.” The Grievant was advised that if the additional medical information were not provided, then the Employer would not proceed with its reasonable accommodation process, but that management would approve her leave requests for attending her appointments.

The grievance concerning the January 2006 denial of the Grievant's request for 4/10 workweek was appealed to arbitration. On August 22, 2007, Arbitrator Philip Kienast issued an opinion denying the grievance. That grievance was governed by the parties' 2005-07 Agreement. In that Agreement, the provision for "Alternative Work Schedules," was significantly shorter than the comparable provision in the 2007-09 Agreement. Section 6.3.B in the 2005-07 Agreement reads, in its entirety, as follows:

**6.3 Overtime-Eligible Employees (Excluding Law Enforcement Employees)**

\* \* \*

**B. Alternate Work Schedules**

Workweeks and work shifts of different numbers of hours may be established for overtime-eligible employees by the Employer in order to meet business and customer service needs, as long as the alternate work schedules meet federal and state laws. The Employer will consider employees' personal and family needs.

\* \* \*

Arbitrator Kienast reasoned that since Section 6.1.H,<sup>1</sup> "vests discretion for the determination of work schedules with the Employer 'to meet business and customer service needs,'" the Union would have to prove that the Employer "exercised the scheduling discretion granted to it by the agreement in an arbitrary, capricious or discriminatory manner." He found that the Union presented no such evidence.

Ms. Larsen testified that management recognized that the abolishment of alternate schedules was unpopular with employees. Bill Green, the child support program manager in Central Services, testified that in about August 2006, management began studying work flow,

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<sup>1</sup> Section 6.1.H was retained verbatim in the 2007-09 Agreement.

absenteeism, and other data in order to re-establish alternate schedules. He testified that based on that data and feedback from employees obtained during team meetings, management developed new rules entitled “Alternative Work Schedule Guidelines for OCB Central Services.” Those guidelines defined “office hours” as from 7:00 a.m. to 5:30 p.m., and “core business hours” as 9:00 a.m. to 3:30 p.m., Monday through Friday. The guidelines further provided, in relevant part:

\* \* \*

**Alternate Work Schedule Options:**

- A. 4 nine-hour days plus 1 four-hour day (A one week work cycle)
- B. 8 nine-hour days plus 1 eight-hour day plus 1 day off every two weeks (9/80) (A two week work cycle)

**Alternate Work Schedule Requirements:**

- Business Needs
  - The business needs of Central Services must be considered and met.
    - § Alternate work schedules shall not adversely affect the services that are provided to customers, other operating units, co-workers or the public.
    - § The quantity, quality, and timeliness of employee work must be maintained or enhanced.
    - § Costs to the State, DCS and Central Services will remain neutral.
    - § Critical job duties as *determined by management* must be covered during office and core business hours.
    - § Alternate work schedules shall not cause or contribute to the need for additional staff, or for staff to work additional overtime hours.
    - § For business reasons:
      - OA staff may not choose Monday as their day off.
      - SET staff may not choose Tuesday as their day off.



- Performance and Attendance Standards
  - Individual performance and attendance expectations must be met.
  - Employees must not have had any disciplinary actions within the pasts twelve months.
  - Employees should be fully trained in the primary functions of their position before they may be considered for an alternate work schedule.

**Administration:**

- An alternate work schedule request must be submitted in writing. Employees may request an alternate work schedule by completing and submitting the *Employee Work Schedule* form.
- Requests will be reviewed for approval by the immediate supervisor to determine if the employee is meeting performance and attendance expectations. The supervisor will forward the approved request to the Central Services' Management Team for final review and approval. If disapproved, the supervisor should provide a written response to the employee.
- The Central Services' Management Team will assess requests to ensure that the efficient operation of Central Services is not interrupted and that sufficient coverage is maintained in each respective area prior to approving alternate work schedules. To ensure sufficient staff coverage for each work day, the number of staff approved for any given day off may be limited.
- Employees working nine hour days may be required to change their current start time to ensure sufficient workload coverage.
- During the weeks that the New Year's Day, Thanksgiving and Christmas paid non-working holidays occur, employees with alternate work schedules will revert to a 5 day per week, 8 hour per day work schedule for the work cycle. (Two weeks for a 9/80 schedule).
- During the weeks when other paid non-working holidays occur, employees may be required to revert to a 5 day per week, 8 hour per day work schedule for the work cycle. (Two weeks for a 9/80 schedule).

- Any approved alternate work schedule may be reviewed or canceled by management at any time based on business, customer or employee needs, and attendance or performance changes with advance notice consistent with a collective bargaining agreement.

\* \* \*

After the publication of the new guidelines, the practice was that support enforcement technicians could request an alternate schedule of either four nine-hour days and one four-hour day within a week, or else a schedule of eight nine-hour days, one eight-hour day, and one day off within a two week period. Employees could choose which day of the week they would have time off, either weekly or biweekly depending on which of the two offered alternate schedules was selected. Only one employee was allowed to be off at a time on a given alternate schedule, on a first come basis. This meant, for example, that two employees could choose a biweekly schedule with every other Friday off, since only one would be off on a particular Friday. In addition, two employees could choose to work a weekly schedule, working only a half day on Friday, but one would have to choose a.m. and the other p.m. Once an alternative schedule slot was selected, no other employee could select it. Support enforcement technicians did not have the option of selecting Tuesday as a day or half day off because management deemed that to be a particularly busy day for support enforcement technicians.

When the new guidelines were enacted, two support enforcement technicians, other than the Grievant, elected to have every other Friday off. One support enforcement technician elected to work an alternative schedule with every Friday afternoon off. The Grievant chose to work an alternative schedule with every other Monday off. After some months working this schedule, the Grievant chose to return to a regular schedule. Support enforcement technicians were not given the option of working an alternative 4/10 schedule.

On July 2, 2007, the Grievant submitted to Mr. Green another request for a change in her work schedule. The Grievant again requested a 4/10 schedule with Fridays off. She requested a Monday through Thursday schedule from 6:30 a.m. until 5:00 p.m. This request was made during the month prior to the issuance of Arbitrator Kienast's Opinion, but shortly after the execution of the parties' 2007-09 Collective Bargaining Agreement. On July 6, 2007, Mr. Green responded with the following email to the Grievant:

I have received and reviewed the Work Schedule/Shift Change Notice you submitted dated 07/02/2007. Unfortunately, the schedule and hours you requested do not fit in to the Alternative Work Schedule Guidelines for Central Services, therefore your request is denied. . . .

Mr. Green testified that not only did the 4/10 schedule requested by the Grievant not fit the Employer's business needs, her requested starting time of 6:30 a.m. was not within the business hours and would not provide coverage for customers in the field, the public, nor other jurisdictions.

On July 24, 2007, the Union submitted a grievance, alleging that the denial of the Grievant's requested schedule was in violation of Section 6.3 of the 2007-09 Agreement. At the step 1 grievance meeting, the Grievant referenced her medical needs, and the need to care for a child and an elderly person. The Grievant did not, in her testimony, provide any further explanation of her personal circumstances, other than that her doctor had recommended that she have a 4/10 schedule and continue with her Friday counseling appointments. In her step 2 response, the "Secretary's Designee," Nikki Barnard, denied the grievance, explaining that according to the Agreement, the Employer establishes the work schedules, and that the Division of Child Support, after examining its business and customer service needs, "determined it cannot permit the 4/10 work schedules in [the] Grievant's unit . . ." She further wrote that management did consider the Grievant's personal and family needs to the extent it could based on the

information that the Grievant was willing to provide. Ms. Barnard further wrote that management was willing to allow the Grievant to flex her work hours so that she could attend her appointments without use of leave. The Union then appealed the matter to arbitration.

## **BARGAINING HISTORY**

Diane Leigh, the director of the State's Labor Relations Office, was present during negotiations for the 2005-07 Agreement, and was the Employer's lead negotiator for the 2007-09 Agreement. Ms. Leigh testified that under both Agreements, Section 6.1.H provides that it is the Employer that establishes the work schedules in order to meet business and customer service needs. Ms. Leigh testified that in negotiations leading to the 2007-09 Agreement, the Union did not propose any changes to Section 6.1.H. She further testified that the agreed upon change in Section 6.3.B of the 2007-09 Agreement was a response to the Union's expressed interest in insuring that employees had the opportunity to request alternate schedules which would be approved unless business and customer service needs could not be met. Ms. Leigh testified that the agreed-upon language set forth a process, whereby the employee requests an alternate schedule, the Employer reviews the request to determine if business and customer service needs can be met, and if they can, the Employer can still disapprove the request if there were performance or attendance concerns. Ms. Leigh testified that "there needs to be a review process to determine . . . what are those business and customer needs. . ." but that the parties did not agree on the specifics of that review process. Greg Devereaux, the Union's executive director, testified that he was present during bargaining for the 2007-09 Agreement. Mr. Devereaux testified that he understood that Section 6.3.B required that there would be a process for

reviewing requests for alternative schedules, and that if the request was denied, management would articulate the business and customer service needs which supported their decision.

## **POSITION OF THE UNION**

The Union contends that the Employer violated the Agreement by denying the Grievant's request to work an alternative schedule. It maintains that the Agreement allows the Employer to deny a request for an alternative schedule only if business and customer service needs cannot be met or if there are job performance or attendance concerns. The Union asserts that there is no suggestion that the Grievant had any job performance or attendance concerns, and the Employer cannot show that its business needs will be harmed if the request was granted. The Union claims that the Employer's business needs would not be affected if the Grievant has Fridays off, since Friday is consistently one of the slowest days of the week in Central Services. The Union recognizes that the Employer is not obligated to offer an alternative schedule to every employee because it is offered to one employee. The Union maintains that the Agreement requires the Employer to consider each request individually, including personal reasons for the request, and the business needs as they relate to that specific request. The Union recognizes that there was evidence regarding the need to have schedules fall within the core business hours of 7:00 a.m. through 5:30 p.m., but observes that the Grievant was never asked if she would modify her request to conform with this particular business need. The Union further recognizes that holidays such as Christmas, Fourth of July, and Thanksgiving cause staffing issues because of increased absences. The Union states in its brief that the Grievant's "request would not compound any holiday staffing issues as all alternate schedules, including the 9-80's that are currently allowed, are suspended during major holidays." The Union argues that the denial of the Grievant's

request was arbitrary since the Division of Child Support allows its field staff to work 4/10 schedules. The Union maintains that the new contract language in Section 6.3.B shifts the burden of proof to the Employer to demonstrate that business and customer service needs will not be met if the requested schedule is granted. The Union opines that the Employer's theory that the Employer determines the business needs, whether they make sense and can be demonstrated or not, would render the new contract language superfluous. The Union proposes as a remedy that the Grievant's requested schedule change be granted.

## **POSITION OF THE EMPLOYER**

The Employer urges that the grievance be denied. It argues that the Agreement requires that when an employee requests a schedule change, the Employer first must determine whether it could meet its business and customer service needs with the requested schedule, and if the determination is that it cannot, then it may deny the request. The Employer relies on Section 6.1.H and Article 35 to argue that it is the Employer that determines business and customer service needs and the employee work schedules that meet them. The Employer maintains that the requested 4/10 schedule was not a viable option for Central Services employees due to the daily volume of work, and the need to balance this unpredictable workload with its limited staff resources. The Employer asserts that the bargaining history establishes that when the Employer receives an alternate schedule request, it would conduct a review and thereby would determine if its needs could be met with the requested schedule. According to the Employer, management carefully reviewed their work processes and determined that some alternate work schedule options could be offered to employees while still allowing it to meet its business and customer service needs, but that a 4/10 schedule was not within the offered options because it was

determined not to be viable, and that is why the Grievant's request for a 4/10 schedule was denied. The Employer argues that the fact that it has not offered the specific alternate work schedule requested by the employee is in no way a violation of the Agreement. The Employer maintains that it did consider the Grievant's personal and family needs.

## **DISCUSSION**

Section 35.H of the Collective Bargaining Agreement provides that the Employer has reserved the management right to “[e]stablish or modify the workweek, daily work shift, hours of work and days off. . .” “[e]xcept as modified by the Agreement.” Article 6 modifies Section 35.H by setting forth the parties’ specific agreements on “Hours of Work.” Section 6.1.H provides that “[w]orkweeks and work shifts of different numbers of hours may be established by the Employer in order to meet business and customer service needs. . .” Arbitrator Kienast, in an arbitration involving the same Grievant as in the instant dispute, determined that under the 2005-07 Agreement, Section 6.1.H “vests discretion for the determination of work schedules with the Employer ‘to meet business and customer service needs. . .’” In light of this language, Arbitrator Kienast required that the Union prove that the Employer abused its discretion in an arbitrary or capricious manner when it denied the Grievant’s January 2006 request for a 4/10 workweek. He held that the Union did not meet this high standard of proof.

In the 2007-09 Agreement, which is the one applicable to the instant dispute, the parties negotiated new language in Section 6.3.B which limited the Employer’s discretion with regard to work schedules. This new language read:

. . .Employees may request alternative work schedules and such requests will be approved by the Employer, except as provided below, subject to business and customer service needs. . . .

The exceptions to this language, which involve “performance or attendance concerns,” are not applicable to this dispute. Article 6 is ambiguous, because it both provides that the Employer may establish regular and alternate workweeks and work shifts and it also provides that [e]mployees may request alternative work schedules which “will be approved” under certain circumstances. How these rights mesh is not clear. Arbitrators frequently rely on evidence of bargaining history to ascertain the parties’ intent with regard to ambiguous language.

Diane Leigh and Greg Devereaux participated in the contract negotiations leading to the 2007-09 Agreement, Ms. Leigh on behalf of the Employer and Mr. Devereaux for the Union. Both agreed that there was an understanding at the bargaining table that there would be a review process to determine whether an employee’s requested alternative schedule would conflict with business and customer service needs. Such a process is consistent with the newly negotiated language of Section 6.3.B. By requiring that “requests” for “alternative work schedules” “will be approved by the Employer . . . subject to business and customer service needs” and an examination of the employee’s performance and attendance, the parties agreed that the Employer has an affirmative duty to grant the request, unless the Employer can establish that the request was not compatible with “business and customer service needs” or that the employee was otherwise ineligible. If the Employer relies on business and customer service needs to reject a request for an alternative schedule, the language of Section 6.3.B effectively places the burden on the Employer to establish that the need to reject the request exists, since otherwise, the request “will be approved.” It is, of course, the Employer that determines its needs and is in position to determine if they have been met. An arbitrator should recognize that the Employer has considerable discretion in such basic management functions. However, that discretion is not absolute here, given the language of Section 6.3.B. If it could deny the request by merely citing



“business and customer service needs,” without having to prove that such needs actually justify the denial of the specific request, the mandate in Section 6.3.B would be effectively meaningless. The Employer must review each individual request for an alternative schedule, not only with regard to compatibility with business and customer service needs, and the employee’s performance and attendance, but also with regard to the employee’s “personal and family needs” as required by the last sentence of Section 6.3.B. It must then be prepared to justify its rejection of such a request in a rational and understandable manner under the criteria set forth in Section 6.3.B.

The Grievant requested a 4/10 schedule with Fridays off. That is a schedule that is in effect in the Department’s Division of Child Support, though not in the Grievant’s particular Unit. The Employer discontinued the 4/10 schedule in the Central Services Unit in about 1995. Too many employees had Monday or Friday off when the 4/10 schedule was in effect in Central Services resulting in the Unit’s inability to comply with the short timelines for processing child support payments, court orders, and other time sensitive materials.

I find that the Employer has not established that its business and customer service needs are inconsistent with allowing one employee in the Central Services Unit to work a 4/10 schedule with Fridays off. I am aware that the Employer already offers a schedule which permits one employee to be off work each Friday, and another employee to be off each Friday afternoon. The Employer also established that it was not always meeting required timelines for processing documents in 2007 when this grievance was filed. However, the Employer has offered no evidence that its difficulties in this regard related to its staffing on Fridays. It was established that Monday and Tuesday were the Unit’s busiest days of the week for support enforcement technicians. The schedule request by the Grievant would have her work an additional two hours

on Monday and also on Tuesday. It may be that the Grievant's requested schedule would help in meeting timelines. It may not, but, in any event, the Employer has just not established that granting the Grievant's schedule change request would harm its business and customer service needs. Of course, allowing too many employees to choose a particular day off would have a negative effect. It has just not been demonstrated that allowing one employee, the Grievant, to work a 4/10 schedule with Friday off would not be compatible with business and customer service needs.

The Employer's assertion that it cannot offer a 4/10 schedule in the Central Services Unit because of a study that it conducted is not persuasive. It must be remembered that the Employer allows other employees within the same Division as the Grievant to work a 4/10 schedule. If there was a study that gathered and recorded information on work flow and staffing needs in that Division's Central Services Unit that demonstrated that no employees in that Unit could work a 4/10 schedule, without adversely affecting business and customer service needs, that study was not shared with the Union or the Arbitrator. Merely asserting that the Employer's decision regarding the Grievant's scheduling change request was supported by a 2005 study, without producing that study or even those individuals who actually conducted the study and would describe in detail its findings, is insufficient to establish that business and customer service needs actually exist which preclude granting the Grievant's request or any other 4/10 schedule in the Unit.

Section 6.3.B required an individual review of the Grievant's requested schedule based on specified criteria. I am not persuaded that the Employer engaged in an individualized review, applying the criteria of Section 6.3.B. Therefore, I conclude that the Employer did violate Section 6.3.B when it rejected the Grievant's request for an alternative schedule.

As a remedy, the Employer shall be ordered to offer the Grievant a Monday through Thursday schedule of ten hours each day, with Friday off. The Union, in its brief, recognizes that the Employer may not have a business need to begin the Grievant's shift as early as 6:30 a.m., and also that the Employer may have special scheduling needs during holiday weeks. The Employer's offer of a schedule change to the Grievant may take into account these business and customer service needs. In accordance with Section 6.3.B, the alternate work schedule may be rescinded if it becomes evident that as a result of that schedule, "business and customer service needs are no longer being met, or if performance or attendance concerns occur."

### **AWARD OF THE ARBITRATOR**

It is the Award of your Arbitrator, for the reasons set forth in the attached Opinion, that:

- I. Management did violate Article 6.3.B when it denied the Grievant's request for a 4/10 alternate work schedule.
- II. It is therefore ordered that the Employer offer to the Grievant a 4/10 alternate schedule, with Friday off. If the Employer determines that the Grievant's requested 6:30 a.m. start time does not meet its business and customer service needs, it shall offer her a schedule with the nearest starting time that does meet those needs. The Employer may alter the Grievant's schedule during holiday weeks in the same manner that it adjusts the schedules for other employees who work alternative schedules.

III. Pursuant to a stipulation of the parties, the Arbitrator retains jurisdiction for the sole purpose of resolving any dispute which may arise between the parties regarding compliance with this Award.

Sammamish, Washington

Dated: March 23, 2009

/s/ Alan R. Krebs  
Alan R. Krebs, Arbitrator