Arbitration Decision Favours MAHCP

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Recent arbitration hearings which occurred between the MAHCP and the Northern Regional Health Authority have led to a win for members of MAHCP.

The dispute centered around the interpretation of MAHCP language in some of its collective agreements over telephone consults. There are provisions in some of the rural MAHCP collective agreements that provide a benefit for situations when employees are called for work related matters at home while not scheduled to work.

These provisions are under Article 812, called "Telephone Consults". The benefit provided is that a work related call must be compensated in 15 minute increments at overtime rates.

MAHCP negotiated Article 812 to allow for an employee to benefit if they chose to answer a call from their employer when they had no obligation to do so. The telephone consult benefit was part of these rural agreements since the 2002 round of collective bargaining.

The telephone consult language is in a separate Article of the Collective Agreement from the "On Call/Standby" provisions which are included under Article 9. However, there was a long standing practice of the Nor-Man Regional Health Authority to provide the three hour minimum for situations where the call back to work consisted of work done over the telephone. "Standby" is defined under the collective agreement as:

> *Standby is that time duly authorized by the Employer during which an employee is required to be available to return to work without undue delay.*
>
> *An employee designated by the Employer to be on standby shall be paid an allowance of two (2) hours' basic pay for each eight (8) hour period, or a pro rata payment for any portion thereof.*

Callback is when an employee is called back to work outside of her regularly scheduled shift. Payment for a callback is provided as follows:

> *The callback minimum shall be an amount equal to three (3) hours at overtime rates with the understanding that the double time overtime rate shall be applicable to only those hours, if any actually worked by an employee while on callback which exceeds three (3) hours in any one day.*

At a staff meeting on October 31, 2011, MAHCP was informed that there would be a change in how the telephone consult benefit was going to be implemented. The new practice of the Employer would be to implement the telephone consult calculations "whether on call or not".

Nor-Man and the Labour Relations Secretariat (LRS) had apparently discussed the implementation of the telephone consult benefit and decided, without consulting MAHCP, that they would apply the telephone consult calculation even when an employee was designated on standby. ***The employer's position would deprive the employee of the 3 hour minimum received when "called back" to work and instead allow the employer to pay the called back employee in 15 minute increments.***

Armand Roy, the LRO with MAHCP disputed the Employer's application of the telephone consult language to the standby provisions.

The LRS countered by saying that identical language was being interpreted by other employers around the Province; the telephone consult language would be applied to on-standby employees. However, MAHCP disputed this interpretation, our stance being that none of the contracts it had with any employer across the Province should be interpreted in this fashion.

The employer preferred their position because having the employees "return" to work over the phone was much more cost effective for employers - they could pay by 15 minute increments instead of 3 hour increments as specified under the contract.

MAHCP referred the matter to arbitration and over the period of 4 days submitted evidence and argument to support its position that the telephone consult language did not apply to on-standby employees.

MAHCP pointed out that Article 812 relates to "work-related matters without returning to the workplace". The term "work-related matter" is not used in the standby and call-back provisions. The parties must have intended it to mean something different than "return to work" or they would simply have stated that. Also, Article 812 falls under the heading of Overtime not "Standby and Call-Backs". Overtime is voluntary. Article 809 provides that "No employee shall be required to work overtime against his wishes when other employees who are capable and qualified to perform

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the duties are willing and available to perform the work." However, call-back is not voluntary. It is the time required of an employee who is on standby to return to work without undue delay.

After hearing the case, it didn't take the arbitrator long to reach his decision. He agreed entirely with MAHCP's position that the telephone consult language did NOT apply to employees who were called back to work even though the employees could complete their work over the phone. The arbitration award is binding on the Northern Regional Health Region (formerly the Nor-Man and Burntwood Regional Health Authority).

Leading up to the arbitration hearing and at the hearing, the LRS said they relied on the telephone consult language to advise other employers across the Province to apply the telephone consult language to on standby employees.

Because a labour arbitrator has now clearly said that the language cannot bear such an interpretation, those employers who were so advised should now "correct" their application of the telephone consult language and will be obligated to change their practice.