

STATE OF CONNECTICUT  
DEPARTMENT OF LABOR  
STATE BOARD OF MEDIATION AND ARBITRATION

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In the Matter of	: Date of Award: January 20, 2022
HARTFORD BOARD OF EDUCATION	: CASE NO. 2021-A-0155
AND	: CLASS ACTION – CHANGE IN
AFSCME CO. 4, LOCAL 566	: CUSTODIAL WORK SCHEDULE
	: HEARING DATE: MAY 25, 2021
	: Location of Hearing: State Board of
	: Mediation and Arbitration
	: 38 Wolcott Hill Road
	: Wethersfield, CT 06109
	: (Zoom)

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APPEARANCES: Lori Mizerak, Esquire  
Assistant Corporation Counsel  
City of Hartford  
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Hartford, CT 06103  
For the Hartford Board of Education

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Staff Representative / Attorney  
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New Britain, CT 06051  
For the Union

**ISSUE**

Did the Hartford Board of Education violate the Collective Bargaining Agreement, specifically, Article V, Section 5(B), when it changed the second shift custodial work schedule from 3:00 p.m. to 11:00 p.m. to 4:00 p.m. to 12:00 a.m., on September 14, 2020?

If so, what shall the remedy be?

## **FACTS**

This grievance concerns AFSCME Co. 4, Local 586 ("Union") allegations that the Hartford Board of Education ("Board") violated Article V Section 5 (B) of the Collective Bargaining Agreement ("CBA"), specifically that the "second shift cannot be changed from the original shift once the school year starts" (Jt. Ex. 2).

A virtual full hearing on the merits was held before the Panel on May 25, 2021. The parties presented documentary and testimonial evidence, examined and cross-examined witnesses, made arguments in behalf of their respective positions and filed post-hearing briefs on or about June 25, 2021.

The grievance was initially denied by the Board of Education on or about September 25, 2020 and then denied at the Superintendent level hearing, and then claimed to arbitration before the Panel.

The first day of school for the 2020 / 2021 school year was set for Tuesday, September 8, 2020. The September 8<sup>th</sup> day was delayed due to a computer virus and school opened on September 9, 2020. Custodians arrive back in school for their shifts the Friday before school resumes and there are two shifts for custodians (Article V, Section 5(B) of the CBA, Jt. Ex. 1). The custodians were therefore brought back to their original shifts on Friday, September 4, 2020. The CBA (Article V, Section 5(B) provides for three different custodial shifts: first shift, second shift and third shift. The second custodial shift is at issue. Second shift is for eight hours to be scheduled anywhere between noon to midnight with a three quarter paid lunch. Shifts available are 12:00 p.m.

to 8:00 p.m.; 1:00 p.m. to 9:00 p.m.; 3:00 p.m. to 11:00 p.m.; 4:00 p.m. to midnight.

Two schools: Martin Luther King ("MLK") and Breakthrough North share the same building at 25 Ridgefield Street and custodians are assigned to an address and the custodians for these schools are assigned to 25 Ridgefield Street and not specifically to either school.

At the commencement of the school year, 2020 / 2021, the second shift custodians working at MLK and Breakthrough was set for 3:00 p.m. to 11:00 p.m. (Tr. Pg. 35). On or about the first day of school the custodial manager for the Hartford Public Schools ("Fenton") learned from the Principal of Breakthrough North that the dismissal time for that school was approximately 3:45 p.m. and she believed the MLK's dismissal was about the same. Fenton thereafter changed the second shift hours of custodians from 3:00 p.m. to 11:00 p.m. to 4:00 p.m. to 12:00 a.m. (Tr. Pg. 35). Fenton did this because if students and staff were in the building at 3:00 p.m. custodians would lose close to an hour of cleaning at the beginning of their shifts and would not be able to clean the hallways, stairways, bathrooms and classrooms (Tr. Pg. 35-36). The new start time of 4:00 p.m. would give custodians ample time to complete their work schedules.

Those affected by the change were notified on Wednesday, September 9, 2020 by email (Jt. Ex. 4). The email advised that effective September 14, 2020 (following Monday) second shift hours would be 4:00 p.m. to 12:00 a.m. for several second shift custodians. At the time the email was sent (Sept. 9), second

shift custodians had worked from 3:00 p.m. to 11:00 p.m. for approximately one full week. The first time Fenton learned of opposition to this change was when he was presented with the instant grievance on September 25, 2020.

### **RELEVANT CONTRACT LANGUAGE**

**Article V, Section 5.0(B)** of the CBA provides in relevant part, as follows:

The shift schedules for the custodial staff shall be as follows:

**First Shift:** Eight (8) hours starting the earliest 6:00 a.m. and the latest 8:30 a.m. with one (1) hour for an unpaid lunch, except that there will be no more than two (2) different schedules of hours per fiscal year. The Union will be furnished with the schedule of hours for each school.

**Second Shift:** Eight (8) hours to be scheduled anywhere between Noon to midnight, with a three-quarter (3/4) hour paid lunch period included. Shifts available:

12:00 p.m. to 8:00 p.m.

1:00 p.m. to 9:00 p.m.

3:00 p.m. to 11:00 p.m.

4:00 p.m. to 12:00 midnight

**Article II, Section 2.0(A)** of the CBA provides, in relevant part, as follows:

Unless it is specifically abridged by any provision of this Agreement, it is recognized that the Board and/or Superintendent has and will continue to retain whether exercised or not, the sole and unquestioned right, responsibility and prerogative to direct the operation of the public schools in the City of Hartford in all its aspects, including but not limited to, the following:...to determine the work year / work day....

### **BOARD POSITION**

The Board argues that the contract language in Article V of the CBA is clear and there are no limitations to changing second shift hours. The Board also points to Article II, Section 2(A) which provides that:

"Unless specifically abridged by the Agreement (CBA) the Board/Superintendent has the sole and unquestioned right, responsibility

and prerogative to direct the operations of the schools in all its aspects including determining the work year/work day."

The Board argues that whenever the parties to the CBA desired to place restrictions on work hours, it was specifically spelled out in the agreement. The Board points to the example of limitations on changes to the first shift, which is clearly set forth in the agreement. The Board contends if the parties intended to place limitations on the Board's ability to change second shift hours, those limitations would be set forth in the agreement. The Board asserts that since there is no limiting language in Article II, Section 2(A), or anywhere else in the CBA, there is no restriction on the Board's ability to make the change.

The Board further argues that many times in the past the Union has requested changes to second shift times and those requests were approved, and the Union cannot now object to a Board initiated change.

The Board disagrees with the Union's position that since the agreement specifies when changes can be made to shift hours, and if none are specified, then no change can be made. The Board argues therefore if there are limitations in the contract on making changes to shifts those limitations are set forth in the CBA, and with regard to the second shift, there are no limitations in the CBA, and therefore the Board is permitted to make changes to the second shift hours.

The Board argues that flexibility to make changes in a timely fashion is necessary to ensure safety and to optimize cleaning and sanitation. In this case, the Board argues, Fenton made a decision to change the second shift hours in an effort to optimize efficiency and ensure appropriate cleanliness of the school building (Tr. Pg. 49, Board Brief, pg. 16). The Board also contends there was no

reason, and no requirement, that the Board ask if anyone was interested in going to a 4:00 p.m. to midnight work schedule, as it had the authority to make the changes it deemed appropriate.

The Board concludes its argument by stating the Union's requested remedy is moot. The Union proposed remedy was that custodians go back to their original shifts for this school year and this school year ended on June 16, 2021.

### **UNION POSITION**

The Union argues that the remedy requested is not moot since the underlying case is "capable of repetition, yet evades review" (Union Brief, pg. 3). The Union contends that other members of the Union in the future will question how the Board changed their shift mid-school year.

The Union argues the CBA "is very specific and complex in enumerating employee shifts and schedules" (Union Brief, pg. 4). Moreover, the CBA is bountiful with shift exceptions and when they may occur. The Union offers Section 5.0(A), truck drivers hours may be changed up to four times per year (Union Brief, pg. 4). The Union cites several CBA provisions which permit changes to shift hours (Article V, 5.0(A), (C), (E), Article VI, 6.4). The Union argues that arbitrators frequently apply the principle that when parties list specific items, within any more general or inclusive term, they intend to exclude unlisted items, even though they are similar to those listed (Union Brief, pg. 5). The Union uses the phrase, "the expression of one thing is the exclusion of another

and thus agreements that specify certain exceptions imply that there are no other exceptions" (Union Brief, pg. 5).

The Union asserts that there is no CBA language which permits changes to second shift hours during the year and the absence of any second shift change language, unlike the plethora of shift change exceptions for other positions and shifts in the CBA, means the second shift custodial hours cannot be changed mid-year (Union Brief, pg. 6). Once the Board elects a second shift option it cannot be changed, according to the Union.

### **DISCUSSION**

The essential facts in this grievance are not disputed. The Board changed the hours of second shift custodians from 3:00 p.m. to 11:00 p.m. to 4:00 p.m. to 12:00 a.m. effective September 14, 2020, and the Union filed a grievance claiming the second shift cannot be changed once the school year starts. This grievance requires the Panel to interpret relevant contract language contained in the CBA. Both parties in their briefs cite Article V as relevant language and the Board has also named Article 11, Section 2.0(A) as a relevant provision.

It is undisputed that the CBA does not specifically contain any exception language with respect to limiting the number of times the second shift can be changed, unlike several other provisions relating to the first shift. The Union argues that the omission of this language means that the Board cannot make any changes whatsoever to the second shift hours.

A majority of the Panel finds the language contained in Article II, Section 2(A) to be persuasive. That provision, in part, gives the Board / Superintendent

the sole and unquestioned right to direct the operation of the public schools in all its aspects, including to determining the work year / work day. That provision gives this responsibility to the Board / Superintendent, "unless specifically abridged" (emphasis added).

The CBA does not "abridge" in any way the Board's ability to direct "the work year / work day".

A majority of the Panel finds the Union's argument that collective bargaining agreements which specify certain exceptions imply that there are no other exceptions to be unpersuasive. Here, the parties contemplated and negotiated specific and detailed limitations to the Board's ability to modify work schedules. Accordingly, if the parties wanted to place similar limitations on the Board's ability to change work hours on the second shift, they would have done so. Barring any such limitations, the Board is permitted to make the changes to the second shift hours of custodians and there was/is no CBA violation.

The change to the second shift custodial hours was implemented in order to make the cleaning process of the two schools at 25 Ridgefield Street efficient and enable custodians to complete their work schedules. This change was reasonable, and most important, consistent with the plain language of the relevant CBA provisions. There is no CBA provision limiting the Board's ability to change the hours of second shift custodians.

After a review of the documentary and testimonial evidence, and by a preponderance of the evidence, a majority of the Panel concludes that the Board did not violate the CBA, specifically, Article V, Section 5(B), when it changed the




second shift work scheduled from 3:00 p.m. to 11:00 p.m. to 4:00 p.m. to 12:00  
a.m. on September 14, 2020

**DECISION**

The grievance is denied.

  
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Gerald T. Weiner, Neutral Arbitrator

  
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Maria C. Alfonso, Union Arbitrator  
Dissent

  
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Christopher J. Duby, Management Arbitrator