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COUNTY OF DANE

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Date: November 1, 2024

To: Employee Group #1871
Marissa Burak

From: Greg Brockmeyer
Director of Administration

Subject: Step 3 Grievance Decision – LWRD Non-Work Days

A third step hearing was held on October 17, 2024. I have summarized the primary arguments of each of the parties below:

Employee Group #1871

Marissa Burack presented:

- It was brought to my attention by staff at LWRD about a non-work day schedule where staff were allowed to work longer hours for nine days and then have the tenth day off. This had been a practice for the past 20 years. In August, Laura Hicklin emailed the staff rescinding the practice starting in January.
- Our concerns are that this schedule is an existing benefit and past practice. A change would be part of the meet and confer process. There are other departments that have schedule in the handbook.
- We met with the department to discuss and our end goal is to have the department and employees talk about the issues and figure out what minimal coverage needs to happen and come up with a schedule together.
- None of us want every department to have a schedule in the handbook, but those are our main concerns regarding existing benefits.

Brian Standing presented:

- In the 1871 handbook, there's language as professional employees shall be allowed to establish their working hours with advanced supervisory approval.
- The remedy is to rescind the memo that rescinds the off-work day and have LWRD management meet with 1871 employees and their representatives and work through the process and find out a schedule that is mutually agreeable.

Management:

Laura Hicklin presented:

- We are in compliance with the Employee Handbook. We work with staff to meet their needs long with the county and the department.
- There's history with the department where professional staff under certain circumstance could use the schedule. This was done before my time as the director.

- That schedule was to expedite efficiency with field work and the expectation was to not use leave time or break up their days. The tenth day was to handle personal appointments.
- This practice was not in writing until 2021. As we came out of the acute face of the pandemic and were learning how to standardize telecommuting.
- A memo was sent out in November, 2021 to give staff options for scheduling which included the 4-5 nine-hour schedule. It was updated in August of 2024 when LWRD managers met and realized it was no longer practical to continue offering the option in question.
- After an email in August went out to notify staff that currently build non work days into their schedule that supervisors would no longer approve such schedules, we did receive some feedback from staff. A memo was issued on August 20th to address concerns. After concerns were addressed, the feedback is their voices have been heard and no outstanding concerns. We continue to encourage alternate and flex scheduling.

Jeremy Balousek:

- We still allow and approve flexible work schedules on a needed basis.
- As someone who has here since that option began, it was offered for efficiency in the workplace so one could leave office in the morning and have more time out in the field. Over the years that hasn't been happening and more so now that we have telecommuting.

Decision

The grievance is denied.

The Employee Group Representatives are advocating that the Existing Benefits clause of the Employee Benefit Handbook prevents the Land and Water Resources Department (LWRD) from removing the “non-work day” schedule option without going through a discussion during the Annual Employee Benefit Handbook Update Process. However, three sections of the Employee Benefit Handbook apply to this topic and no section contains language that is inconsistent with the action that the Land and Water Resources Department has taken.

First, the Alternative Scheduling Section describes a process where that the County could develop alternative schedules for employees and approve them. The section reads, “The County encourages all managers to review employee requests for an alternative work schedule and to approve them when they are practical.” As described in the hearing, Land and Water previously supported the “non-work day” schedule option to offer flexibility to employees and to better serve clients in the field. With the advent of telecommuting and the need to serve the public in person, this option no longer became practical. As a result, Land and Water communicated to staff in memo that those schedules would no longer be approved starting on January 1. Land and Water appears to be within its rights not to approve these alternative scheduling requests.

Second, the Flex Time Arrangements Section describes a process where employees could make adjustments to their schedule as long as the employee maintained 80 hours in a pay period. That section reads:

Employees with the mutual agreement of their supervisors, may elect to participate in a flextime arrangement on a regular or intermittent basis. The flextime arrangement will be based on established County pay periods. This means that an employee may work more than forty (40) hours in a week and less than forty (40) hours in the next week of the payroll period, (with supervisory approval), so that the total hours worked in the payroll period does not exceed eighty (80) hours. Where such mutual agreement exists employees will have their contractual overtime based on work over eighty (80) hours in a pay period. Employees who, with supervisory approval, work over eighty (80) hours in a pay period

shall receive overtime compensation as provided per the overtime policy. The supervisor or employee may withdraw agreement to a flextime arrangement at any time upon ten (10) workdays notice.

The “non-work day” schedule also appears to be a Flex Time Arrangement, especially given that the language of this section recognizes that these arrangements can be made “on a regular ... basis.” In so far as the “non-work day” schedule is a Flex Time Arrangement, Land and Water would be well within its rights to suspend these arrangements. First, the opening sentence uses the language, “with the mutual agreement.” By sending a memo to the affected employees, LWRD has communicated that it no longer mutually supports these arrangements. Second, and most importantly, the language of the Flex Time Arrangements section says, “The supervisor may withdraw agreement to a flextime arrangement at any time upon ten (10) workdays notice.” By sending a memo and proving more than 10 days’ notice that these arrangements would be removed, the Department has fulfilled this requirement under the Employee Benefit Handbook.

Third, LWRD is well within the established Management Rights under the Employee Benefit Handbook to determine how many staff need to be available on work days and to modify the schedule options to employees in order to meet those appropriate staffing level goals. The Management Section of the Employee Benefit Handbook states, “These management rights include, but are not limited to the following: The rights to plan, direct and control the operation of the work force, determine the size and composition of the work force...” Determining the minimum number of staff that need to be available during the work week is a determination of the size and composition of the workforce.

Finally, the Employee Group Representative cites the language of the Hours of Work/Rest Breaks/Lunch Periods section as a reason to suggest that staff ought to maintain the option to have a “non-work day.” That language reads, “As professionals, employees shall be allowed to establish their working hours according to the job they are to perform with advance supervisory approval which shall average on an annual basis forty (40) hours per week.” On the contrary, this section hinges on the language “with advance supervisory approval.” Employees under this section do not have an affirmative right to determine their schedule as they fit; Supervisory approval is necessary. By sending a memo to affected employees, LWRD has communicated that advance approval would no longer be offered for “non-work days” arrangement. And so even this section of the Employee Benefit Handbook suggests that LWRD may suspend the “non-work days” arrangement with adequate notice.

If you have any questions, you may contact me at 608-266-4519.

Sincerely,



Greg Brockmeyer
Director of Administration

Cc: Brian Standing
Laura Hicklin
Jeremy Balousek
Ben Ratliffe
Nick Bubb