GOVERNMENT LICENSED PROFESSIONALS

KNOW YOUR AGREEMENT

ESTABLISHING A MODIFIED WORK WEEK SCHEDULE

Work schedules are a matter to be worked out between local management and the professionals employed in a work unit -- not unilaterally by the employer.

What this means is that PEA members have an established right to make representations on their work schedules, to have management take them seriously, and to expect that the outcome will be determined mutually and consensually.

Do government licensed professionals have an absolute right to work a modified work schedule?
No, but Article 13.01 (b) of the Sixteenth Master Agreement does establish that work schedules are subject to mutual agreement within each work unit. The employer retains the right to determine its hours of operation — the daily time span in which the employer conducts its business — and work schedules must fall within that span, but determination of actual work schedules, the specific hours in which individual employees are scheduled to work, is by mutual agreement within each work unit.

Work schedules are a matter to be worked out between local management and the professionals employed in a work unit — not unilaterally by the employer. What this means is that PEA members have an established right to make representations on their work schedules, to have management take them seriously, and to expect that the outcome will be determined mutually and consensually. Refusal by management to make an effort to effect a mutual determination of scheduling issues constitutes a breach of Article 13.02.

What Rules Govern Work Schedule Decisions?
Article 34.01 (h) (v) lists seven criteria the joint committee must satisfy in any work schedule decision it makes:

- schedules must meet the annual hours of work requirement established under Article 13.01 (a), i.e., 1,827 hours;

- the committee must consider "unusual or seasonal demands and functionally linked work groups" both in and out of the PEA's licensed professional bargaining unit;

- schedules must result in no additional cost to the employer, and preferably, produce actual cost savings

or improved efficiency and service;

- schedules must not be retroactive;

- the committee's mandate is limited to interpreting Articles 34.01 (h) (iv) and (v) — the articles describing its task and terms of reference, and not least, * the committee must consider "employee preferences, fairness, and equity".

Joint Committee Hearings: What Happens?

Once an appeal has been filed and the union is satisfied that it meets the criteria required under Article 34.01, the PEA arranges with the Public Service Agency (PSA) to schedule a hearing before the joint committee. Hearings are similar to formal arbitration hearings: sworn evidence is given by witnesses representing the appellants and the employer; witnesses are examined and cross-examined by committee representatives.

After all the evidence is submitted the committee goes into session, arguments are made by the partisan committee members, and the committee tries — often unsuccessfully — to reach a consensus decision. Frequently it is left to the neutral chairperson to cast the deciding vote. Outcomes run the gamut from outright rejection to complete acceptance of an appeal, but there are in-between results too: the committee has occasionally mediated compromise schedules. Committee decisions are final and binding on all the parties.

Article 13.02 is not a cure-all but it does provide some leverage to PEA members who have a good case for a modified work week, but are being unreasonably stonewalled by local management.

Disputes Go To Joint Union-Employer Committee

What happens when local management and the PEA members in a work unit are unable to reach an agreement on a work scheduling issue? When that occurs Article 13.02 (c) stipulates that the disagreement can be referred to a joint union-employer committee for a final and binding determination of the issue. The joint committee is established under Article 34.01 (h) and comprises one representative each from the employer and the union, and an independent chairperson who has authority to break a dead-

lock and make a decision.

Work scheduling issues can be instigated either by employees or management; they can address changes to an existing schedule or attempts to establish a new schedule. In any of these circumstances disputes can be referred to the joint committee and the parties assured of getting a final, conclusive determination.

Pending the joint committee's determination of a work schedule dispute, Article 13.02 (c) enables the employer to implement a revised work schedule.

What Factors Improve the Chances of a Successful Appeal?
Most work schedule disputes occur because local management refuses to entertain a request by a professional work unit to establish a new work schedule, typically a modified work week (MWW). Employer's objections usually boil down to these:

- Licensed professionals' functions are too specialized; when an employee is 'flexing' under a MWW, others cannot provide adequate backup;

- MWWs are counterproductive: 'flexdays' frustrate and alienate managers, clients and customers by decreasing employee availability. For these reasons MWWs reduce efficiency and service. The advantages of longer work days do not offset the disadvantages of fewer days.

Work schedule arguments succeed to the extent employees are able to persuade the employer — or the joint committee, as the case may be — that such management worries can be remedied. Members have succeeded where they could establish that adequate backup is available, that a MWW schedule can provide adequate coverage, that real efficiencies can be created, and that reasonable client or customer concerns can be accommodated.

To succeed, work schedule appeals must satisfy the employer — or the joint committee — that the schedule meets the seven criteria described above. Without answering bona fide management objections substantially and credibly, appeals will have no better prospects in a joint committee hearing than they do in the boss's office. It is not enough to simply reject employer concerns. To persuade the joint committee —

and particularly the chairperson — employees must be able to show that legitimate management issues can be addressed and accommodated consistent with the seven criteria.

Where members fail in an attempt to resolve a work schedule dispute by discussions with local management, the members can ask the PEA to take the dispute before the joint work schedule committee.

Ideally, appeals should reflect the unanimous views of all PEA members employed in the work unit seeking a ruling. The Article 13 language establishing the right to mutual determination of work schedules and to refer disputes to the joint committee invests these rights in the work unit — the work unit's PEA contingent as a group — rather than in individual employees. It is desirable not only that all PEA members are a party to the appeal but also that they agree that one schedule pattern should apply to the entire work unit. If members themselves are divided on the issue of what schedule should be established, or whether an appeal should be pursued at all, it is easy to speculate why the employer might have reservations too. Management typically — and not surprisingly — prefers to have a single schedule pattern, rather than a mix of two or more, because it is administratively easier.

The heart of any appeal is the ability to prove that the proposed schedule is consistent with the rules established in Article 34.01 (h) (v), the ability to demonstrate that the target schedule will not just suit employees, but also benefit the employer by enhancing the services produced in the work unit. Appeals do not succeed without showing that a new schedule is likely to improve service and productivity as well as employee morale.