
In the Matter of Arbitration

Between

District 1199/SEIU

and

The State of Ohio, Department of
Mental Retardation and Developmental
Disabilities

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Case Number:

24-03(92392)520-02-12

Before: Harry Graham

Appearances: For District 1199/SEIU:

Maria Margevicius
Staff Representative
District 1199/SEIU
475 East Mound St.
Columbus, OH. 43215

For The State of Ohio:

Mike Duco
Office of Collective Bargaining
106 North High St., 6th & 7th floors
Columbus, OH. 43215

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on June 14, 1993 before Harry Graham. At that hearing the parties were given complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer violate Article 29.02 of the Collective Bargaining Agreement when it did not permit the four laid off Vocational Habilitation Specialist 1's to bump less senior Vocational Habilitation Specialist 2's in the bumping jurisdiction? If so, what should the remedy be?

Background: There is no dispute between the parties over the events giving rise to this proceeding. For many years the Employer operated a facility in the Cleveland metropolitan area known as the Broadview Developmental Center. In December, 1992 the Department of Mental Retardation and Developmental Disabilities closed the Broadview Center. Among those who were laid off were the Grievants, Michael Lipford, Barbara Key, Patricia Young and Betty Williams. All of the Grievants were classified as Vocational Habilitation Specialist 1. Each of them had accumulated many, many years of service as Habilitation Specialists. In total, they had among them more than 75 years of service at Broadview. At the time the Grievants were laid off other employees, specifically Vocational Habilitation Specialist 2's, were retained in State service. It was the opinion of the Grievants that their greater service with the State should have permitted them to bump into Vocational Habilitation Specialist 2 positions which were occupied by less senior employees. The State did not agree with that view. Accordingly, a grievance protesting the failure of the State to permit the Grievants to bump was filed. It was processed through the procedures of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points to the language of

the Agreement at Article 29, Section 29.02 and asserts that the Employer violated the provisions of that Section. The disputed language reads as follows:

A laid off employee shall have the right to displace an employee of another work site within the classification series within the agency bumping jurisdiction who has less state seniority. No promotions shall result from this action.

As the Union interprets this language it permits a more senior employee to bump a less senior employee in the same or similar classification series. In this situation that is precisely what failed to occur. The State retained junior employees and laid off senior employees in the same classification series. This cannot occur in the Union's view.

The Union is not unmindful of the provision in Section 29.02 that indicates that no promotion should result as a result of a bump. As interpreted by the Union the presence of the language in the Agreement indicates that people may bump upwards as well as laterally or downwards in event of a lay off. This was the intent of the Union when it initially agreed to the language in 1986. As people may bump upwards and their rights to do so were not honored in this situation the Union urges the Grievance be sustained. It seeks an award directing the reinstatement of the Grievants together with back pay as appropriate.

Position of the Employer: As does the Union, the State points to the language of the Agreement at Section 29.02 in support

of its actions in this instance. Specifically, it relies upon the sentence, "No promotions shall result from this action." That sentence is not susceptible to any interpretation but that people who bump cannot bump into a higher classification. Employees have lateral or downward bumping rights. They do not have bumping rights upward.

The Agreement does not define the concept of "promotion." Section 123:1-47-01 (65) of the Ohio Administrative Code sets forth the definition of a promotion. It provides that a promotion involves placement of an employee into a classification which carries a higher salary range than the previously held position. If the Employer were to place the laid off Vocational Habilitation Specialist 1's into the Vocational Habilitation Specialist 2 position that is precisely what would occur. They would be entitled to a salary increase as a result of a lay off. They would be promoted. Such an action is explicitly prohibited by the Agreement at Section 29.02.

Prior to the advent of collective bargaining in State service in 1986 the State operated on the premise enunciated by Section 124.324 of the Ohio Revised Code. The Code at that Section prohibits displacement of employees in a higher classification. The parties agreed in the Agreement that such an event could not occur yet that is what is urged to be appropriate by the Union in this sceniario.

Discussion: It requires no great amount of discussion to elaborate on the sanctity of the use of seniority in collective bargaining agreements. If the economic package negotiated by the parties is their first concern, the multiple uses of seniority are a close second. The Union seeks in seniority an objective, easily measurable standard by which to determine such employment conditions as eligibility for promotion, overtime, vacation selection, and retention on the payroll in the event of layoff. The Employer may seek to limit the use of seniority in order to secure flexibility in the utilization of its workforce. Obviously, the results of their bargain are reflected in the Agreement.

In this situation the parties negotiated a lengthy and detailed layoff and recall procedure at Article 29. The terminology of Article 29 reflects the precise manner in which the Employer is permitted to layoff. Section 29.02 of the Agreement prescribes the order in which employees must be laid off. Included in Section 29.02 is the provision that more senior employees shall have the right to displace a less senior employee of another worksite. That right is not unlimited. It is restricted by the provision in Section 29.02 providing that "No promotions shall result from this action." That sentence is not ambiguous nor susceptible of interpretation. It indicates that in order to displace a less senior employee the more senior employee must move laterally

or downward in the hierarchy of jobs within the jurisdiction available for bumping. It is prohibited for employees to bump upward. That is what is urged upon the Arbitrator by the Union in this dispute: that an upward bump is permitted by the Agreement. That is not the case. The Agreement specifically references an upward bump or promotion and indicates that such an action is not to occur. If the Union were to prevail in this situation the sort of promotion prohibited by the Agreement would take place. This is true notwithstanding the fact that the Union has explicitly disclaimed interest in the increased pay associated with the position of Vocational Habilitation Specialist 2.

In its argument the Union asserted that the prohibition on promotions resulting from a bump was included in the Agreement to incorporate the right of employees to bump upward. This assertion is an ex-post-facto rationalization designed to deflect attention from the plain language of the Agreement which prohibits precisely the sort of activity the Union now urges to be appropriate. Given the clear agreement of the parties expressed in Section 29.02 of the Contract the personnel movement desired by the Union and the Grievants in this case cannot occur.

Award: The grievance is denied.

Signed and dated this 28th day of June, 1993 at South Russell, OH.

Harry Graham

Harry Graham
Arbitrator