

Arbitration Decision and Award

Arbitrator: Jack Buettner
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In the Matter of Arbitration:

SEIU District 1199 WV/KY/OH

and

Ohio Deaf and Blind Education Services

Grievance #: OSB-2023-02866-11

Grievant: Myriam Emanuel

Date of Hearing: March 6, 2025

Date of Briefs: April 20, 2025

Date Decision Issued: May 12, 2025

Advocate for the Union:

Joshua D. Norris
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Advocate for the Employer:

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Witness for the Union:

Myriam Emanuel

Grievant

Witnesses for the Employer:

Cedar Well

Chief of Staff, Ohio Deaf and Blind
Education Services

Joint Exhibits:

- #1 – Contract between SEIU District 1199 and the State of Ohio 2021-2024
- #2 – Grievance Trail (Grievance and Step 2 response)
- #3 – EHOc of Grievant Myriam Emmanuel
- #4 – School year and summer schedule for nurses
- #5 – ODBES Nurse Shift Differential Chart – 2020-2025

Employer Exhibits:

- #1 – ODBES Student Numbers

Joint Stipulations:

- #1 – The grievance is properly before the Arbitrator.
- #2 – There are three shifts of nurses that provide coverage from 4 p.m. on Sunday to 2 p.m. on Friday during the school year.

Background:

SEIU District 1199 WV/KY/OH (hereafter known as the “Union”) represents the employees in Nurse classifications at the Ohio School for the Deaf and Blind. The agency was renamed Ohio Deaf and Blind Education Services (hereafter known as “ODBES” or the “Employer”) in 2023. The ODBES operates under the control and supervision of the Ohio Department of Education and Workforce.

The grievance arose over contract language interpretation of Article 43.08(B) of the

current Collective Bargaining Agreement (CBA). The CBA is between SEIU District 1199 and the State of Ohio and is in effect from 2021 through 2024.

Issue:

Did the Employer violate Article 43.08(B) of the SEIU/District 1199 contract and, if so, what shall the remedy be?

Union's Position and Rationale:

The Union argues that the Grievant, Nurse Myriam Emmanuel, is entitled to the shift differential under Article 43.08(B) which provides for an extra one dollar and twenty-five cents (\$1.25) for all hours worked on second or third shift. Article 43.08(B) specifies that the shift differential is for employees in the Nurse classifications working in institutions. The Parties have not defined "institutions" in their contract. The Union argues that ODBES is, indeed, an institution and that the Grievant should be paid accordingly.

The Union contends that while ODBES is a public school, it is also a residential facility in which students are housed over 24-hour periods of time. The students live and learn in an educational institution. As such ODBES, should be classified as an institution.

The Union further argues that the CBA supports their position in Appendix C, Occupational Injury Leave (OIL) Guidelines. The language recognizes the ODBES as an institution for the purposes of eligibility for OIL benefits which are a specific and negotiated benefit for anyone injured by a ward of the State. The CBA defines "ward" as: "h. Ward: an inmate, patient, resident, client, youth offender or student." (Joint Exhibit 1, pp.171-172) Thus, the students at ODBES are wards of the State. The CBA further states which agencies are eligible for the OIL benefit.

II. Eligibility for Occupational Injury Leave (OIL)

A permanent employee of the ... and Schools for the Deaf and Blind...who sustains an allowed physical condition inflicted by a ward in the above agencies in the course of, and arising out of, the injured employee's employment... (Joint Exhibit #1, p. 172)

ODBES is clearly grouped with five (5) other agencies, and employees receive the same OIL benefit. Individuals who work at these institutions will be provided a monetary benefit if they are injured during a specific interaction with a ward of the state, such as a student. The Union contends that this language recognizes ODBES as an institution for the purposes of eligibility for OIL benefits. The State cannot recognize ODBES as an institution for one part of the CBA and not another.

The Union contends that just because ODBES is considered a “school” does not mean it is not an institution. Other state agencies considered to be institutions are not labeled as such. ODBES operates, functions, and exists like an institution. Therefore, the Grievant should be paid the shift differential as delineated in Section 43.05(B).

Employer’s Position and Rationale:

The Employer contends that the language of Article 43.05 is clear in regards to shift differential rates that 1199 employees will receive. Article 43.05(A) states:

- A. An employee who works a shift where the majority of the hours are after 3:00 p.m., or before 7:00 a.m. will be paid a shift differential of seventy-five cents (\$.75) an hour for all hours after 5:00 p.m. (Joint Exhibit #1)

The Grievant, Nurse Myriam Emanuel, was paid under this provision.

The Union argues that the Grievant should be paid under Section B of Article 43.05 which states:

- B. Shift differential for employees in Nurse classifications working in institutions shall be one dollar and twenty-five cents (\$1.25) an hour for all hours worked on second or third shift. Such employees are not eligible for the shift differential in Section A above.

This language refers specifically to nurses working in institutions and the Employer argues that ODBES is not an institution.

The Employer contends that the Union presented no evidence to show that ODBES is

similar to institutional state agencies such as the Department of Rehabilitation and Correction (DCR), Department of Youth Services (DYS), or Department of Mental Health and Addiction Services (MHAS). Each of these institutional agencies operates twenty-four (24) hours a day and seven (7) days a week. ODBES does not. There are no students or staff present on weekends or during school breaks.

The individuals in state agencies classified as institutions generally are required to be there, often by court order, and generally are not able to leave the facilities of their own volition. Individuals at DRC and DYS are there because they have been sentenced to prison. Residents at MHAS and the Department of Developmental Disabilities (DODD) are there due to significant mental health issues or developmental disabilities that require intensive care and render them unable to function in society. By contrast, only 37% of the students at ODBES are residential (Employer Exhibit #1), and all residents leave on Friday and return after the weekend. Those individuals remaining on campus during the week are not locked in or prevented from leaving.

The Employer argues that ODBES is not a medical facility as with other institutions. The Grievant even admitted that many forms of medical care including serious injuries and mental health issues are outsourced to outside medical providers.

The Grievant argues the level of security should classify ODBES as an institution. The campus has a fence, a guard gate, and an Ohio Highway Patrol officer who patrols campus. The Employer counters that the perimeter fence does not encircle the entire campus but merely borders the busy roadways. There is a front gate where visitors have to check in, but there is no security checkpoint or requirement to leave the campus. Further, the Patrol Officer, who patrols Monday through Thursday, has limited authority. His main duty is to ensure that outside individuals are not coming on campus. These types of security are more akin to what can be found in any public school.

Thus, the Employer argues that ODBES is not an institution, and the Grievant is not entitled to the shift differential pay as outlined in Section 43.05(B) of the CBA.

Arbitrator's Decision and Award

Both Parties have put forth numerous definitions of the word "institution" from numerous sources that support their respective position. The contract is silent on the definition of "institution" so this Arbitrator must interpret the meaning from the contract.

Article 43.08 – Shift Differential – clearly states the pay differential for those working a shift where the majority of the hours are after 3:00 p.m. or before 7:00 a.m. The Grievant was being paid under this provision. It reads:

A. An employee who works a shift where the majority of the hours are after 3:00 p.m. or before 7:00 a.m. will be paid a shift differential of seventy-five cents (\$.75) an hour for all hours worked after 5:00 p.m. (Joint Exhibit #1)

Part B of the Article puts forth a condition whereby eligible employees receive a higher per hour wage. It states:

B. Shift differential for Employees in Nurse classifications working in **Institutions** (emphasis added) shall be one dollar and twenty-five cents (\$1.25) an hour for all hours worked on second or third shift. Such employees are not eligible for the shift differential in Section A above. (Joint Exhibit #1)

Some factor(s) must have contributed to the fact that Nurses in Institutions are paid more than Nurses in other facilities.

One significant factor is that each of the agencies which are generally considered to be institutions operate 24/7. This includes weekends and holidays. At ODBES there are no students present on weekends, during school breaks, or holidays. A majority of the students at ODBES arrive by school bus in the morning or are dropped off by their parents and are picked up at the end of the day. 37% of the students are residential (Employer Exhibit #1) and that is only during the week. This happens because ODBES has state wide jurisdiction. Some students are traveling further from across the state and cannot get to and from the facility every day. During the summer, programming is offered but students are not required to attend. ODBES does not operate 24/7, and this is a significant difference between it and an institution.

The clientele differs between the agencies generally classified as institutions and ODBES. The residents at institutions such as DRC, DYS, and MHAS are generally required to be there and generally do not have the ability to leave the facilities of their own accord. Some are there by court order. Others have significant mental health issues or developmental disabilities that prevent them from functioning on their own. Such is not the case with ODBES. While they may fit under the classification of “wards” and some of the clientele may have medical, mental, and/or developmental issues, they are not required to be there. They are able to come and go from the facility at will and can choose to participate in summer programming or not.

The environment for ODBES is also different from that of other cited institutions. While the Union mentioned the security, guard gate, and Patrol Officer as making ODBES similar to an institution, these factors are more like what one would see in any public school. Schools often have Resource Officers patrolling, have some sort of security check-in system to vet all people coming in, and allow students to leave with parental permission as needed. Even the Union, in their closing argument, stated that ODBES is a public school.

The Union cited Appendix C of the CBA to support their position that ODBES is an institution. This Arbitrator does not concur. In closing arguments, the Union only cited part of the Appendix. The full text reads:

II. Eligibility for Occupational Injury Leave (OIL)

A permanent employee of the Department of Mental Health and Addiction Services, the Department of Developmental Disabilities, the Department of Veterans Services, and Schools for the Deaf and Blind, Department of Rehabilitation and Correction, and the Department of Youth services who sustains an allowed physical condition inflicted by a ward in the above **agencies** (emphasis added) in the course of, and arising out of, the injured employee’s employment shall be eligible to request occupational injury leave (OIL) benefits in addition to his/her claim for workers’

Compensation. (Joint Exhibit #1, p. 172)

The five (5) other departments listed may be considered institutions, but the CBA does not label them as such. In fact, they are referred to as “agencies” and not institutions. They all have “wards” as their clientele, but that does not define an institution. There are approximately twenty-two (22) state agencies according to the Union’s closing statement. Only six (6) were included in the OIL provisions. Would one then interpret that to mean none of the other agencies is an institution? That is a conclusion to which this Arbitrator cannot jump. The CBA language, at its face value, suggests that in these agencies there is the potential for an occupational injury. It’s inherent intent was not to categorize agencies.

The Employer rightly points out that the language of Article 43.08 has been applied to ODBES without issue or complaint for decades. No change in circumstances, no triggering event, and no contractual revision have taken place that would warrant the reinterpretation of Article 43.08 and the shift differential. The application of the shift differential to ODBES personnel is an established past practice. As stated in Elkouri & Elkouri, “...when a company responds to a recurring situation in the same way over an extended period of time and its response is mutually accepted by the company and union, either explicitly or implicitly, as the appropriate response, then an enforceable practice is established.” [*How Arbitration Works* (8th ed.). (2017) Bloomberg BNA, p. 12-5]

Based on the information provided and testimony of the Parties, this Arbitrator denies the Union’s grievance for the reasons stated above.

CERTIFICATE OF SERVICE

The foregoing report was delivered via email on this the
12th day of May, 2025, to

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and

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Respectfully submitted,
John (Jack) Buettner
Arbitrator