

CONTRACTUAL GRIEVANCE PROCEEDINGS  
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration  
Between:

STATE OF OHIO  
Department of Mental Retardation  
and Developmental Disabilities

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION  
OCSEA/AFSCME, AFL-CIO  
Local 11, Broadview Chapter

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\* Case No. AFSCME JD 87-1  
\* Grievance Nos. G86-0020  
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\* Decision Issued  
\* March 11, 1987  
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REPRESENTATIVES

FOR THE EMPLOYER

Barbara A. Serve  
John Alexander

Assistant Attorney General  
Assistant Attorney General

FOR THE ASSOCIATION

Daniel Scott Smith  
Marc Myers

OSCEA Legal Counsel  
Attorney for the Association

ISSUE: Article 18 -- Layoffs

Jonathan Dworkin, Arbitrator  
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APPEARANCESFOR THE EMPLOYER

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 Deputy Director, Labor Relations  
 Superintendent  
 Assistant Superintendent  
 Assistant Superintendent  
 Chief, Labor Relations  
 Medical Director  
 Personnel Officer  
 Personnel Officer  
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FOR THE ASSOCIATION

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 Maurice Phillips  
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Executive Director  
 Staff Representative  
 Local President  
 Local Vice President  
 Grievant  
 Grievant  
 Grievant  
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 Grievant  
 Witness  
 Witness

BACKGROUND OF DISPUTE

On July 20, 1986, the Ohio Department of Mental Retardation and Developmental Disabilities permanently laid off several entire classifications of employees at the Broadview Developmental Center in Broadview Heights, Ohio. A grievance was initiated on behalf of the affected members of the Bargaining Unit. It was processed through the contractual dispute resolution procedures and appealed to arbitration. A hearing convened on February 18, 1987 in Broadview Heights. Testimony and evidence were partially received, and the hearing was adjourned before completion. It reconvened in Columbus, Ohio on March 6, 1987.

Two basic issues are in dispute. The first relates to the necessity for the layoffs. Article 18, Section 18.01 of the Agreement incorporates certain Civil Service statutes and rules, placing a burden upon the Employer to demonstrate rationale for the layoff decisions. According to the Association, the reasons supporting the layoffs were inadequate.

The second issue relates to the fact that the layoff encompassed only employees of Broadview. It did not affect similarly situated employees in the contractual geographic grouping which, according to Appendix J of the Agreement, includes Broadview Developmental Center, Cleveland Developmental Center, and Warrensville

Developmental Center. Prior to ratification of the Agreement, Broadview encompassed a layoff jurisdiction. Arguably, the scope of this layoff would have been legally defensible prior to the contractual undertaking. However, the new Agreement enacted a fundamental change. Article 18 established broader geographic districts for layoff and bumping. Sections 18.04 and 18.06 provide:

**§18.04 - Bumping in the Agency Geographic Jurisdiction**

If the affected employee is unable to bump within the office, institution or county, then the affected employee shall have the option to bump a less senior employee in accordance with Section 18.03 within the appropriate geographic jurisdiction of their Agency (see Appendix J).

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**§18.06 - Geographic Divisions**

The jurisdictional layoff areas shall not be utilized. Instead, the geographic divisions of each agency shall be used (see Appendix J).

The difficulty in applying Sections 18.04 and 18.06 is that Appendix J was not yet crystallized when the layoff was announced on July 3, 1986. The precise geographical districts were added to the Agreement later. Coincidentally, negotiations on Appendix J were completed after the layoffs were announced but before they were implemented. However, the particulars were not timely communicated to the Deputy Director of the Department who made the

decision. Because Appendix J was not known to be in existence, the Department determined it was appropriate and in compliance with Article 18, Section 18.01 of the Agreement to follow pre-existing Civil Service layoff jurisdiction. According to the Association, this decision was extra-contractual and in violation of bargaining intent. While some of the districts were not fully identified on July 3, it is contended that the district covering Broadview Developmental Center was fully recognized before formalization of Appendix J.

At the outset of the arbitration, the Representatives of the parties stipulated that the issues were properly joined, the appeal to arbitration was procedurally correct, and the Arbitrator was authorized to issue a conclusive award on the merits. Arbitral jurisdiction is more specifically defined and limited by the following language in Article 25, Section 25.03 of the Agreement:

Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement.

POST-HEARING MEDIATION ATTEMPTS

At the conclusion of the second hearing the Arbitrator directed the Representatives and Principals of both parties to meet with him and informally discuss the potential decision. This case was extraordinarily complex and involved the possibility of awards which could cause undesirable intrusions on the bargaining relationship. These factors were fully explored. The Arbitrator shared his view of the facts and announced a range of possible awards, several of which threatened unnecessary disruptions in both job security and administrative policies.

The discussions included earnest attempts to induce the parties to fashion their own settlement. It was hoped that the parties could devise remedies (such as reinstating employees to positions other than those from which they were laid off) which could not be imposed in an arm's-length award. The Representatives of the parties rejected these attempts. They did, however, agree to expand the Arbitrator's authority to include technically unorthodox remedies. In accordance with this stipulation, the following Award is issued as a full and final determination of the merits of the grievance.

AWARD

1. The parties recognize that job security under this Award may be temporary. During discussions, the Deputy Director informed the Association that more extensive layoffs in the geographical district are contemplated.

2. The Department is directed to reinstate the seven laid-off individuals who previously held positions as Teacher Aide 1 to available Hospital Aide positions in the geographical district.

3. The Department is directed to reinstate the laid-off Teacher Aide 2 to an available Therapy Program Worker position.

4. The Department is directed to reinstate the laid off Therapy Aide to an available Hospital Aide position.

5. With regard to Kevin Byrd, a laid off Stationary Engineer 1, the Department is directed to exercise one of two options:

- a. honor the Employee's bumping rights as if Appendix J had been part of the Agreement on the day he was laid off; or
- b. without displacing any individual currently employed, place Kevin Byrd in an appropriate position in the geographical district carrying a pay rate not lower than Grade 6.

6. The remaining Stationary Engineer is not entitled to a remedy. He lacked sufficient seniority to bump or otherwise retain active employment.

7. The laid-off Auto Body Repair person forfeited his right to an Award by declining an opportunity to bump.

8. All reinstatements shall include wage restorations equivalent to fifty percent (50%) of the straight-time wages the

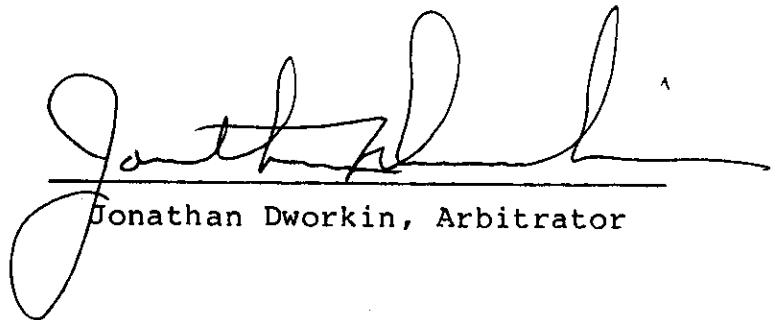
reinstated employees would have received had they been placed in the positions awarded on July 23, 1986.

9. All Grievants reinstated by this Award shall retain their full seniority in the same manner as would have been the case had they not been laid off and continued working without break in employment.

10. In all respects not specifically addressed, the grievance is denied.

Decision Issued:

March 11, 1987



Jonathan Dworkin, Arbitrator