

#198

IN THE MATTER OF ARBITRATION

BETWEEN

OHIO DEPARTMENT OF ^{R & C} ~~ADMINISTRATIVE SERVICES~~

AND

THE STATE COUNCIL OF PROFESSIONAL EDUCATORS

ARBITRATION AWARD

CASE NUMBER: OCB G87-2884 (MCI 87-005 & 029)
HEARING: May 18, 1988
ARBITRATOR: John E. Drotning

I. HEARING

The undersigned arbitrator conducted a Hearing on May 18, 1988 in the OEA offices, 5026 Pine Creek Drive, Westerville, Ohio. Appearing for the Union were: Henry Stevens, Robert W. Sauter, Esq., Carrie Smolik, Steve Sunker, Charles Hartwell, and the grievants, Wayne R. Green and James Johnson. Appearing on behalf of the State were: E. J. Morales, Jack Burgess, Thomas E. Durkee, Merrill Williams, Granville Potter, John Morgan, Dean Millhone.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. Post hearing briefs were filed on or about 6/18/88. The Union submitted as part of its brief an intra-departmental reference memo dated July 7, 1987. Mr. Morales noted in his letter which accompanied his brief that the State had heard this document was to be submitted and objected to the admission of a document not introduced at the Hearing. He stated that the State had no opportunity to verify its authenticity and requested that the document not be considered in the decision. Normally, such a document would be set aside and not considered, but the Union's brief discusses the impact of that document and it is difficult for a neutral not to read a particular page. Thus, the record was not closed until the briefs were exchanged and the State given a chance to reply. The discussion and award are based solely on the record described above.

II. ISSUES

The parties did not agree on a mutual submission. The

Employer asked:

Did Management of the Department of Rehabilitation and Correction deprive the grievants of planning time in violation of Section 23.04 of the Agreement? If so, what should the remedy be?

Is the assignment of institutional security duties to vocational teachers by the Department of Rehabilitation and Correction a violation of Sections 1.02 and 1.03 of the Agreement?

The Union put the issue as follows:

Did Management and/or any of its agencies at the Marion Correctional Institute violate, misinterpret, or misapply specific provisions of the 1986-89 Agreement between the State Council of Professional Educators and the State of Ohio when they failed to compensate Mr. Wayne Green and Mr. James Johnson, communications/electronic instructors, for work done during their meal period and their planning time? The Union specifies the issues as Articles 1.02, 1.03, 23.02, and 23.04. If the Contract was violated, what shall be the remedy?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 and #2.

The parties also agreed that it is necessary to search electronic equipment when it is received from external sources.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. UNION

1. TESTIMONY AND EVIDENCE

Attorney Robert W. Sauter of the law firm of Cloppert, Portman, Sauter, et al., testified that he was a labor relations specialist and that he had worked for the Ohio Department of the Public Welfare which is now called the Ohio Department of Human Resources and in that capacity, he had dealt with classifications during the period 1973 through 1976. Sauter went on to say that he was in-house counsel for OCSEA from 1977 through 1978 and he handled re-classifications appeals.

Sauter testified that Union Exhibit #1 was a job description and it identifies the format for the Ohio Department of Administrative Services. Sauter went on to say that the phrase, "performs related duties as required", refers to duties which are related to the duties listed under the major worker characteristics label as noted on Union Exhibit #1.

Union Exhibit #2, noted Attorney Sauter, is a letter to him from Edward H. Seidler in which the latter said that the Employer can assign employees to perform related duties as noted on Union Exhibit #2. Sauter went on to assert that some teachers were being asked duties which were not related to teaching and Seidler's letter, said Sauter, indicates that the State would not assign teachers to unrelated duties.

Sauter went on to say that the teachers involved had operated under the old civil service system and the Union wanted teachers to be treated in the same fashion as those in the public school system. Sauter went on to say that there was factfinding in May of 1986 and all the issues except salary were resolved by the parties as noted on Union Exhibit #2 and Article 23 of the Contract. He went on to say that Article 23 talks about the length of the work day and the forty-five minute planning period plus a paid lunch in some State institutions. He went on to say that a six hour of student contact plus forty-five minutes planning period and a paid lunch equals eight hours.

Sauter testified that "related duties" deal with conferences, curriculum, testing, and team assignments and the State did not object to that as noted on Union Exhibit #2.

Mr. Wayne R. Green, a teacher of vocational electronics at the Marion Correctional Institute since May of 1975 and prior to that at the Lebanon Correctional Institute from July 1962, testified that he had been assigned to the security vault as of May 12, 1975. He said that he lodged a grievance in July of 1986 over that assignment. Green said he was assigned to examine electronic TVs which might contain contraband and he had to do this work during his planning time and this task was assigned to him back as far as May 12, 1975.

Green said that he worked in a vault which was in an area where TVs were kept prior to being sent to the inmates. The TV's were gifts from outsiders and he had to examine those TV's for

contraband. The issue, said Green, was whether he had to work through his planning time.

Green testified that a Union representative told him he should not have to work through his planning time. He went on to say he was concerned about finishing his thirty years when he first saw the collective bargaining Agreement in January or February of 1987.

On redirect, Green said that he did screening work in the vault during mealtime and that he used to start work at 7:30, but it had been changed to 7:15.

Mr. James S. Johnson testified that he corroborates Green's testimony. He noted that he hired in the department in September of 1986 as a teacher of communication electronics. Johnson said that in addition to teaching, he would clock in at 7:15 and go to the communications electronics nook and then would unlock tool bins and check tools and get the books ready. Prior to February of 1987, said Johnson, his planning time was between 11:30 and 12:15 and now he works in the vault from 11:30 to 12:15, but from 7:15 to 8:15, he unlocks tool bins and checks tools and gets the books ready.

Johnson testified that he does not now have planning time since he has to work between 7:15 and 8:15 in unlocking tool bins and checking tools and, therefore, he does not have forty-five minutes of planning time.

Johnson said that he is treated differently than other vocational teachers because they have more planning time than he has.

Johnson said that he received Joint Exhibit #1, the Collective Bargaining Agreement, in January of 1987. He went on to say that he has asked Management to release him from the vault duties and that request has been denied. Johnson testified that he has worked in the vault through meals on many occasions.

Mr. Charles Hartwell testified that he worked at the Marion Correctional Institute for twelve and one-half years and is a site representative. He noted that he filed a grievance on behalf of Green and Johnson in January of 1987, just after he received the Collective Bargaining Agreement. That grievance, said Hartwell, alleged that Johnson and Green had to work through their planning periods and were doing work outside their job descriptions.

The Union also cross examined State witnesses. Mr. Merrill E. Williams testified on cross that he supervises nine teachers and that on occasions, auto mechanics are asked to repair State cars.

Williams said that welding is done outside the classroom because it is an hands on task done with the students. He said that vault work is also done with the students.

Williams said that a building maintenance teacher could do additional building work.

Williams said that Green and Johnson have planning time between 11:15 and 12:00 which existed in July of 1986 and Management changed that planning time and also altered the scheduled from 7:30 to 4:00 to 7:15 to 3:45 in order to give both Green and Johnson an uninterrupted free period from 7:15 to 8:00.

Between 7:30 and 8:15, other vocational teachers do some planning and tool inventory, said Williams, and either Johnson or Green could check the tools between 7:15 and 8:00 when they are not in the vault.

Williams testified he did not discuss the schedule change with Henry Stevens, Steve Sunker, or Charles Hartwell.

Williams said that vault work was part of the job for both Green and Johnson.

Mr. Granville Potter said that he thought that the Department of Rehabilitation and Correction had a representative at the table. He went on to say that he noted that the language noted under section 5.02 under Employer Exhibit #2 was withdrawn. He noted that bargaining unit members were aware that security duties were an issue and had to be carried out.

Mr. John Morgan, on cross, testified that he did not know who did the search of electronics equipment at other State facilities. He said that that task is not a full-time job.

Morgan testified that he did not know if other officers could carry out that search. He went on to say that only Green and Johnson do screening work without students.

On recross, Morgan said that all teachers carry out tool inspection duties if they use tools.

2. ARGUMENT

The Union asserts that Management admits in their opening statements that it violated Article 23.04; yet, it refuses to stop the violation and properly compensate the grievants. The Union goes on to say that grievants Green and Johnson have performed duties not in the classification of the bargaining unit and they were performed on a routine and daily basis not under any sort of an emergency. Green and Johnson were directed to go to the vault everyday and search for contraband items that might have been found in gifts and materials sent to all inmates.

The Union points out that at all of the rehabilitation and correction facilities in the state, such duties are carried out by a correction officer who belonged to another bargaining unit.

The Union points out that Union Exhibit #1 describes the job duties of a electronics teacher and Attorney Sauter, continued the Union, explained the development of this classification.

The Union also points out that Attorney Sauter testified about the letter written to him by Edward Seidler, which is also found on page '86 of the Master Agreement, and it outlines duties that can properly be assigned to teachers and teacher coordinators during the work day and this includes conferences, curriculum development, conduct testing, and treatment team assignments.

The Union goes on to say that both of the grievants testified that they had been assigned vault duties by Management on a regular basis and that each teacher would go to the vault after having spent less than thirty minutes for lunch. The Union goes on to say that while Management testified that it issued no direct order to work through the lunch period, it did instruct the grievants to do what was necessary to carry out the security assignment and, therefore, the grievants had to use a portion of their lunch to complete that work.

Section 1.02 of the Contract, asserts the Union, was violated by Management when it changed the start time for the grievants. The Union asserts that Management did not negotiate the modification of hours and the Union goes on to say that Article 23.04 mandates a daily forty-five minute consecutive planning period. The Union notes that vocational teachers are required to do an inventory of tools on a daily basis and several members of the unit have been disciplined for not reporting missing tools and equipment.

The Union goes on to say that vocational teachers complete their inventory between 7:30 and 8:15 a.m. and that is a critical task because the institution just purchased \$70,000 worth of electronic equipment. The Union goes on to argue that because of the nature of the work, the grievants had to use planning time to set up shop and this further violated Sections 14.01 and 14.02. In short, the Union asserts that the grievants do not have and

never had forty-five consecutive minutes of planning time on a daily basis.

The Union argues that Management has violated the time-lines and it finds support for that argument in an arbitral decision by Robert J. Asman as noted on page 13 of its brief.

For all these reasons, the Union asks that the grievance be sustained.

B. EMPLOYER

1. TESTIMONY AND EVIDENCE

Mr. Merrill E. Williams, unit manager at the Marion Correctional Institute and prior director of the vocational program, testified that he had supervised Green for eleven and one-half years and Johnson for a year and one-half. Williams said that the vocational teaching program trains entry-level students for jobs focusing on auto body work, building maintenance, and communication electronics. Both the grievants, said Williams, teach communication electronics and each of them teaches one class all day and that requires one lesson plan per day. They start, continued Williams, at 7:15 and end at 3:45 and have a thirty minute lunch (see Joint Exhibit #3). Williams went on to say that there is a preparation period between 7:15 and 8:00 a.m.. He noted that prior to the change in the start time, the grievants were scheduled from 7:30 a.m. to 4:00 p.m. and they had planning from 7:30 to 8:00 and from 3:30 to 4:00. He noted that

lunch runs from 11:00 to 11:30 and the employees carry out vault duties between 11:30 and 12:00.

Williams said that the grievants did not work in the vault every day but only when items had to be checked; that is, when the Institute received electrical equipment from the outside and there was a concern over what might be in that equipment. Williams noted that on some occasions, both grievants worked past noon and at other times, there would be no vault work at all.

Williams said that he never ordered the employees to carry out vault duty work during their lunch period. He noted that the grievants had additional planning time when there was a late lunch or when there are security checks.

Prior to February 23rd, said Williams, the grievants's planning time was from 7:30 a.m. to 8:00 a.m. and from 3:30 p.m. to 4:00 p.m. and there was a possibility of some planning time between 11:30 and 12:00. After 2/23/88, said Williams, the planning period ran from 7:15 a.m. to 8:00 a.m..

Williams said that both vocational teachers have been doing security work in the vault for twelve and one-half years and he went on to say that other teachers carry out some security duties such as shake-downs and tool checks, etc.

Williams said that Employer Exhibit #1 describes their job duties and the position description of the grievants' job and the security duties fall in the fourth box and occupy only about five percent of their time. Williams said that he discussed the position description with Johnson at the time he interviewed for

the job and he indicated to him that certain security duties were required.

Williams said that he received the grievance identified as Joint Exhibit #2 (see page 1), but neither Green nor Johnson signed that allegation.

On redirect, Williams said that the Institute has \$70,000 worth of tools and equipment which are used by the teachers to maintain the equipment but they are not used by the class. Williams said that the grievants do not carry out tool inventory between 7:15 and 8:00, but they do it at the close of the business day.

Williams testified that he never ordered the grievants to carry out tool inventory during their planning period.

Mr. Granville (Bud) Potter testified that he had been Superintendent of the Training Center for Youths since September of 1986 and that he was the spokesperson in bargaining for the Department of Youth Services. He said he was familiar with Union Exhibit #2 because he wrote the second paragraph. He went on to say that the last sentence of the second paragraph did not preclude security work. He said the issue was raised at the table and the State said it was the first duty of any correction officer at the institution.

Employer Exhibit #2, said Potter, was presented by the Union at the bargaining table and Management rejected the language dealing with bargaining unit work.

Potter testified that the State told the teachers they would have to perform security duties and he asserted that the language of Union Exhibit #2 does not prohibit security duties.

Mr. John Morgan, Deputy Superintendent of Programs, testified that he supervised institutional security and he went on to say that all in-coming objects are searched. He noted that electronic items have to be examined for contraband and that in such items, one finds pills and knives, etc.

The grievants are asked to search the electronic equipment, said Morgan, because the institution needs to have a qualified person search rather than unqualified people. In the latter case, said Morgan, an unqualified person searching equipment could contribute to liabilities for the institution. He went on to say that Green and Johnson are the only two staff members with the requisite experience to search electronic equipment.

Morgan went on to say that all electronic equipment awaits the availability of the grievants.

The State also cross examined Union witnesses. Mr. Wayne Green testified that he talked to Hartwell in 1986 about working through his planning time. He went on to say that he has been screening TV sets in the vault since May of 1975.

Mr. James S. Johnson testified that his scheduled planning time runs from 7:15 to 8:00 a.m.. Johnson went on to say that when he is unable to get through the gate in time, he loses four or five minutes of planning time, but that only happens infrequently. Johnson acknowledged that his superior attempted to

remedy the problem he had in getting through the gate earlier and since that effort, he has had no real problems.

Johnson said that Hartwell approached him about the grievance. He went on to say that he did not know whether other teachers carried out security duties.

Johnson testified that he had never been given a direct order by his supervisor to carry out security work in the vault during his lunch hour. He also noted he had never been disciplined for not working through a lunch period.

2. ARGUMENT

The Employer acknowledges that prior to 2/23/87, the grievants occasionally inspected in-coming electronic equipment during their planning period. Moreover, asserts the Employer, that practice was in effect for nine months before it was grieved and, therefore, the Union waived its right to grieve or receive remuneration. However, the Employer asserts that if the Arbitrator finds some liability, it should be limited far less than what the Union asked for.

The Employer states that the Contract requires that grievances be filed within seven days of the date the employees knew or could have known in reasonable fashion of the problem. In this case, the Employer notes, that site representative Charles Hartwell approached them at a date much earlier than the date on which the grievants filed. While their testimony was not exact, asserts the Employer, the grievants indicated that they had been

approached shortly after the effective date of the Collective Bargaining Agreement in July of 1986. Thus, there is no basis for liability extending to the effective date of the Agreement, asserts the Employer.

Grievant Green testified that he did not file his grievance initially because he feared Management reprisal, yet there was no evidence presented to support that claim, argues the Employer.

The Employer also points out that Hartwell consulted the grievants about inspection work during planning time, but the Union never showed that the grievants made any attempt to alert Management of potential Contract violations. In short, the Union never documented the allegation of Green that he had to work through planning time and that this violation was brought to Management. What the record does show, asserts the Employer, is that as soon as Management was made aware of the possible violation, the grievants's schedules were changed to eliminate the error.

The Union's argument, notes the Employer, that the grievants failed to grieve until February of 1987 because they did not receive copies of the Agreement until that date is specious at best. The grievants and the Union were aware of the potential Contract violation soon after the effective date of the Agreement. In addition, Section 36.03 of the Contract outlines the Union's responsibility to print and distribute copies of the Agreement and, therefore, there is no basis to find the Employer guilty of the Union's failure to publish the Contract.

The Employer also points out that Section 5.04 of the Contract states in part that:

Should the grievant fail to comply with the time limits specified herein, that grievance shall be terminated and considered resolved in favor of the Employer.

The Employer goes on to say that this language is clear and unambiguous and should be implemented in this case. Therefore, the Employer argues that any liability found by the Arbitrator should be restricted to seven days prior to the grievants' filing of the second grievance under consideration identified as MCI-87-029 on 3/9/87. The Employer asserts that the first grievance should not be considered since it was not filed in compliance with the terms of Section 5.03. The initial grievance provided for a class action, yet no affected employee signed the grievance as is required by the Agreement.

The Employer notes that prior to 2/23/87, the grievants' planning time was from 7:30 a.m. to 8:00 a.m. and 11:30 to 12:15 when they were not in the vault and from 3:30 p.m. to 4:00 p.m.. Thus, the Employer points out that although there may have been days when the grievants did not receive forty-five consecutive minutes of planning time, they were not harmed because of the ample planning time provided throughout the rest of the day. The grievants, notes the Company, teach only one class per day and that only requires one lesson plan and there was time necessary to develop that plan. Moreover, on all days, the grievants had at least thirty consecutive minutes of planning time and the extent of the Employer's error was, therefore, to deny the grievants

forty-five consecutive minutes of planning time and this did not occur every day prior to 2/23/87. On all days that they did not carry out equipment inspection, the grievants received forty-five consecutive minutes of planning time.

Thus, continues the Employer, if the Arbitrator allows the initial improperly filed grievance, the liability should be held to fifteen minutes of additional compensation for the lost planning time during any of the seven days preceding January 17th. However, if the Arbitrator holds the Union to its responsibility of filing grievances according to the procedures, the liability should be restricted to the seven days preceding March 9th of 1987. But, continues the Employer, since the error was corrected effective 2/23/87, the Employer has no liability if the Arbitrator holds the Union responsible for filing the grievance dated 3/9/87.

The Employer also points out that the Association asserted that Management violated the Contract when it changed the grievants' schedules in February of 1987 on the grounds that Management must bargain with the Union before implementing schedule change. The Employer points out that Article 3.5 reserves Management sole and exclusive right to schedule employees and Section 23.01 recognizes Management's right to alter the work hours of its employees as noted by the language as follows:

An employee shall be given seven (7) days written notice of any change in his or her regularly scheduled work day, work hours, or work week.

Joint Exhibit #3, notes the Employer, supports its contention that it met its obligation.

The Employer also points out that the two grievants, vocational electronics teachers, have been performing the task of inspecting incoming inmate electronic equipment for many years. In Green's case, he had been carrying out this function for thirteen years, notes the Employer, and Johnson had assumed this duty from his first date of hire. Thus, there was a long-standing practice accepted by both Management and the vocational teachers.

The Employer points out that during negotiations, the Union asserted that the issue of teachers performing non-teaching duties was discussed and while Management agreed that the ideal for teachers at these institutions would be to treat them in the same manner as "regular public school teachers", this would be a long range goal and could not be done overnight as was attested to by Mr. Sauter, noted the Employer. Thus, while Management may have agreed with the Union with respect to the ideal, it had to deal with current reality and vocational teachers at this penal institution are faced with a myriad of environmental problems which are much different from those faced by the ordinary public school teacher. In this case, Mr. Merrill Williams made Mr. Johnson aware that he would be required to inspect incoming inmate electronics equipment when Johnson was interviewed for his position, yet he certainly accepted the job and, therefore, accepted that task.

The Collective Bargaining Agreement, continues the Employer, does not limit Management's right to assign vocational teachers the duties which provoked this grievance. Nothing in Sections 1.02 and 1.03 of the Contract can be construed to limit Management's right to assign job duties. Section 1.02, continues the Employer, recognizes the Association as the exclusive representative of employees in State bargaining unit 10 and Section 1.03 simply lists the classifications included in that unit. The Union appears to be arguing that the duties do not fall under the classification specifications. Section 15.03 of the Agreement, as attested to by Mr. Sauter, notes the Employer, was that the classification specifications were to be incorporated into the Agreement. That does not allow the conclusion that the section was violated. The classification specification for vocational teachers has not been changed and these teachers have performed equipment inspection duties for at least thirteen years.

The Union also contended that the assignment of electronic equipment inspection duties violated the Letter of Understanding identified as Union Exhibit #2, but the Employer asserts that this Letter did not prevent Management from occasionally assigning equipment inspection duties to vocational teachers. The last sentence of that Letter, argues the Employer, allowed Management to reserve right to assign certain duties rather than prohibiting Management from assigning inspection work. The language of that letter was written by Management and the phrase, "related duties" was not intended to limit Management right to assign duties

unrelated to conference, curriculum and development, testing, and treatment team inspection. Clearly, the language which states, "but not limited to" supports Management's contention that the language of this Letter did not prohibit Management from assigning inspection duties to the vocational electronic teachers. If Management had agreed to restrict itself in such a manner, there would have been language in the Contract itself to that end, but none exists, notes the Employer, as can be seen by a reading of Article 3.

Thus, continues the Employer, absent clear and unambiguous contractual restrictions, Management has wide authority to assign job duties even across qualifications as long as the employees meet minimum qualifications and the Employer finds support for this position in a number of arbitration awards as noted on page 15 of the Employer Brief.

Moreover, there is no question that the inspection of incoming inmate electronics equipment is related to the grievants' job since both of them are electronics instructors and were chosen to perform the inspections because of their unique qualifications. There simply is no basis, asserts the Employer, to find that electronic equipment inspection duties are beyond the scope of the classification specifications for vocational teachers. It is necessary, continues the Employer, to assign qualified personnel to perform these inspections and they are necessary in order to insure the security of the institution. There was no testimony or evidence to the effect that other

employees could perform the duties and, therefore, the assignment of these inspection duties to the grievants is totally reasonable. Moreover, argues the Employer, it only takes about five percent of their total work time. Thus, to hire new employees to fill this task makes no economic sense.

The Employer also points out that the Union argued that Management required the grievants to carry out equipment inspection during their lunch period. However, this issue was never raised by either of the grievants and is clearly extraneous and such an allegation should be dismissed.

For all these reasons, the Employer asks that the grievance be denied.

V. DISCUSSION AND AWARD

The parties did not agree on the precise question for the arbitrator to answer, but the essential issue is whether, given the assigned duties and schedule of the grievants, the Contract was violated and, if so, what, if any, compensatory remedy is appropriate.

The articles of the Contract in contention are 1.02, 1.03, 23.02, and 23.04. Article 1.02 recognizes and defines the bargaining unit and Article 1.03 lists the classifications included in the unit. Article 23 deals with Hours of Work and section 23.02 details the meal period. Section 23.04 is as follows:

The work day for each employee working in a full-time teacher, teaching coordinator or teacher, Deaf or Blind School position shall include a minimum of forty-five (45) consecutive minutes of planning/conference time daily. Said employees who are required to utilize such plan time by the employing agency to perform duties other than planning or conferences shall receive additional compensation for the time they are required to perform non-planning duties during the scheduled forty-five (45) minute period at their regular rate of pay. When an employee's daily plan time exceeds forty-five (45) consecutive minutes, said employee may be required to perform duties other than planning or conferences with no additional compensation.

The first question is whether the Collective Bargaining Agreement effective 7/1/86 dictated that the grievants should no longer be assigned the task of examining electronic gear sent by outsiders to inmates and searching it for contraband items. The grievants are vocational teachers of communication and electronics and the Union claims that the work done by them in the vault is

not included in their job description and is not teaching, but security work, and should be covered by the AFSCME contract, not by SCOPE's. In assigning this task to the grievants, the Union argues that the contract is violated.

The work of checking incoming electronic devices for contraband has been done by Green for at least twelve years and was explained to Johnson before he was hired that this task was part of the job. However, the main task for these teachers is to teach students in the fundamentals and basic theories of electronics and time performing vault duties ranged from none per day to up to thirty minutes per day depending on the items needed to be examined. The testimony indicated that there was no prescribed time frame for checking equipment but only that a piece of equipment would not be sent on to the inmate until a security check is performed. The task is clearly minimal and assigned on a as needed and as time permits basis.

The task was included as part of the job description for Teacher-Vocational-Electronics (see Employer Exhibit #1) dated in late 1982. The Union asserts that the Contract and later job classification specification (see Union Exhibit #1) intended that teachers perform teaching duties where students are present, have a planning time and a lunch period, and are assigned other duties only if the tasks are related to teaching such as "conferences, curriculum development, testing and treatment team assignment" (see Union Exhibit #2). Thus, the Union claims Management is

prohibited from assigning tasks, such as Green and Johnson's vault duty, which are unrelated to teaching.

The Union's claim is not totally convincing. Although it may be true that examining incoming electronic gear for contraband is not specifically related to teaching, it is not clear that the Contract negotiations eliminated all non-teaching related tasks. ✓ As Management argued, the environment of a correctional institute is different than a public school and although the long term ideal goal would be to treat teachers in these facilities in the same manner as public school teachers, this is not always possible. ✓ Security measures are always going to be part of the job and the vault duties of vocational electronics teachers, which were included in their job duties for a long period of time, fit their skills and qualifications, and were a minimal part of the total job, were not specifically eliminated by contractual language or by the intent of Union Exhibit #2. Seidler's letter of understanding (Union Exhibit #2) which was an addendum to the contract gives the Employer the right to assign employees to "perform related duties" such as "but not limited to" conferences, curriculum development, testing and treatment team assignment. Management testified that they did not agree they would not assign security tasks to teachers.

There is not sufficient evidence to conclude that the Contract was violated by Management's expectation that the grievants check out incoming electronic items for the inmates for contraband.

In any event, the Union's question before the arbitrator and the testimony of the grievants did not focus specifically on whether the contract was violated by assigning the vault duty. The Union asked whether the contract was violated..."when they (management) failed to compensate Mr. Wayne Green and Mr. James Johnson, communications/electronic instructors, for work done during their meal period and their planning time? Although, the issue of bargaining unit work and classifications were discussed somewhat in the hearing and briefs, the main aspect of the grievance and the testimony was that Green and Johnson were upset not so much with performing the vault assignment, but that in performing the task, they were deprived for a period of time of a consecutive forty-five minute planning period as specified in the Contract and of a full lunch period.

Thus, the second and more significant question deals with whether or not Article 23 was violated in that the grievants were not provided a consecutive forty-five minute planning time and used meal time and planning time to perform the vault task and were not compensated for that time.

It is clear that prior to the change in schedules in February of 1987, the grievants did not have a consecutive forty-five minutes designated as planning. The testimony indicated that their daily schedule started at 7:30 a.m. with planning and set up until 8:00 a.m., lunch from 11:00 - 11:30 a.m., vault duty if needed and/or planning from 11:30 to 12:00 and then from 3:30 to 4:00, planning time and inventory checks. When Management

responded to the initial grievance, dated January 17, 1987 and indicating that the grievants did not have a guaranteed planning time, by changing the grievants schedules. Effective 2/23/87, the starting time was changed to 7:15 a.m. and the forty-five minutes until 8:00 a.m. was designated as planning time. Apparently, lunch continued to be from 11:00 to 11:30, vault time if necessary from 11:30 to 12:00, and inventory checks from 3:30 p.m. to the new quitting time of 3:45 p.m..

From February 23, 1987 on, the grievants have had forty-five consecutive minutes designated as planning time. There is some suggestion that this is in name only because the grievants must use this time for tasks other than planning such as setting up, checking and taking an inventory of tools, and such, but it is pretty clear that tool inventory must be conducted at the end of a day rather than at the beginning and there is no reason to think that setting up and getting ready for students is not part of planning.

The Union argued that this non-negotiated, unilateral decision to change the grievants' schedule violated the contract, but Management points to parts of the contract which provide it the right to schedule employees and to change their work hours. That debate, however, is not before this arbitrator and provides no basis to sustain this grievance.

The grievants' claim that they performed security screening vault work during their lunch hour is not supported by the testimony or evidence. They may on occasion do so, but they did

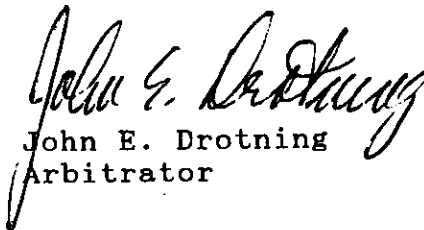
not testify that this was done because of a directive of management. As far as the record goes, working during lunch time remains only a claim.

Thus, Section 23.04 of the Contract was violated because the grievants were not provided the specified daily uninterrupted, consecutive forty-five minutes for planning from July 1, 1986, the effective date of the new contract, and February 23, 1987. This violation however, it not quite the same as that put forth in the Union's question and it is not clear whether this violation requires that the grievants be compensated. Prior to February 23rd, their planning time could be summed to 45 minutes (30 minutes from 7:30 - 8:00 in the morning plus 15 minutes of the time from 3:30 to 4:00 at the close of class). Presumably, vault duties were performed between 11:30 to 12:00 and perhaps some during the lunch - but were not performed during the periods before or after classes. Strictly speaking the compensation referred to in 23.04 is for giving up some of the 45 minute planning time in order to perform duties other than planning or conferences. Since the grievants had forty-five minutes, although not consecutive, and it was not shown that they had to perform duties other than planning or conferencing during that time, ✓ compensation is not strictly required on the basis of using planning time for other assignments.

However, the lack of a forty-five consecutive minutes for planning and conferencing purposes violates the contract, may have created an injustice as far as the difficulty in carrying out planning and conferencing duties, and could have been corrected

earlier. The initial grievance filed on January 17th is somewhat discounted by management because it views it as being filed incorrectly since a class action grievance must be signed by at least one employee. However, it signifies the point in time when management was alerted to the contract violation regarding 23.04 and could have taken action at least within a week. Thus, it is ruled that because the lack of a forty-five minute consecutive planning period may have created difficulties and an extra burden or amount of work, that the grievants receive monetary compensation at their normal hourly rate for 15 minutes per day for each working day from January 24, 1986 through February 23, 1986.

In summary, it cannot be concluded that the Contract was violated by management's continuing to assign minimal vault duties to the grievants. It cannot be found that the grievants were required to work during their lunch period. It is concluded that Article 23.04 was violated as the grievants were not provided with the contractual forty-five consecutive minute planning/conference period. Although not specifically required under the language of 23.04, the Arbitrator has awarded the above noted compensation.


John E. Drotning
Arbitrator

July 15, 1988