

Howard D. Silver
Arbitrator

In the Matter of the Arbitration
Between

The State of Ohio

and

The Ohio Health Care Employees Union
District 1199, WV/KY/OH
National Union of Hospital and
Health Care Employees, AFL-CIO

Grievants:
Helen Leeper
Michael Adams
Kenneth Clinton

687-1444

APPEARANCES

For The State of Ohio

Joseph B. Shaver, Management Representative

For The Ohio Health Care Employees Union,
District 1199, WV/KY/OH
National Union of Hospital and
Health Care Employees, AFL-CIO

Robert Callahan, Labor Representative

The hearing in this matter was held on January 31, 1989, within the offices of the Ohio Department of Administrative Services's Office of Collective Bargaining, 65 East State Street, Columbus, Ohio. The parties were afforded a full and fair opportunity to present testimonial and documentary evidence, examine and cross-examine witnesses, and make arguments supporting their positions. The record in this matter was closed on January 31, 1989.

ISSUE

Were the changes in the caseloads/assignments of the grievants made by the Employer in violation of the collective bargaining agreement, and, if so, what should the remedy be?

STATEMENT OF THE CASE

The arbitration of this dispute proceeds under a collective bargaining agreement between the Ohio Health Care Employees Union, District 1199, WV/KY/OH, National Union of Hospital and Health Care Employees, AFL-CIO, and the State of Ohio. This agreement took effect June 12, 1986 and is to terminate June 11, 1989.

The Employer is the Adult Parole Authority of the State of Ohio, an agency of the Ohio Department of Rehabilitation and Correction responsible for administering supervision to probationers and parolees, completion of pre-sentence investigations, and preparation of background reports used by parole officials in determining whether parole should be granted. The management of these duties by Ohio's Adult Parole Authority is exercised through six regions which cover the State of Ohio.

One of the six regions is the Akron Region of the Adult Parole Authority which was reorganized in November, 1987. In an attempt to balance caseloads within units within the Akron Region the Employer created new positions; deleted positions;

reconfigured existing positions as to office location, supervisors, and home county status; leaving other positions unchanged in the midst of this regional reorganization.

At the conclusion of the reorganization three grievances were filed by Helen Leeper, Michael Adams and Kenneth Clinton. For purposes of these proceedings the parties have agreed that these grievances be combined, as issues to be addressed in resolving this dispute are identical in all three grievances.

The grievants, through their Union representatives, complained that new assignments were created as a result of the reorganization of the Akron Region and such new assignments are to be filled in accordance with the provisions of Article 26.04 of the collective bargaining agreement between the parties. Article 26.04 reads as follows:

SHIFT AND ASSIGNMENT OPENINGS

Shift and assignment openings shall be filled by the qualified employee within the classification at the work site having the greatest state seniority who desires the opening.

Joint Exhibit 4 is a map of the eighty-eight counties of the State of Ohio. This map reflects that prior to the reorganization in November, 1987, the Akron Region contained seventeen counties located in northeastern Ohio. These counties, Medina, Summit, Portage, Trumbull, Wayne, Stark, Mahoning, Columbiana, Coshocton, Holmes, Tuscarawas, Carroll, Harrison, Jefferson, Belmont, Ashland and Richland Counties, were reduced

by two as a result of the reorganization of the Akron Region as Ashland and Richland Counties were removed from the Akron Region and assigned elsewhere. Major cities within the Akron Region prior to the reorganization included Akron, Canton, New Philadelphia, Youngstown and Mansfield. Subsequent to the reorganization Mansfield was transferred to another region.

Joint Exhibit 5 is also a map of the counties of the State of Ohio and reflects the reorganization's alteration of Akron Unit 1, a unit headquartered in Akron, Ohio. Prior to the reorganization, Akron Unit 1 was comprised of Portage, Summit, Medina, Wayne and Ashland Counties; and following the reorganization Akron Unit 1 was comprised of only Portage, Summit and Medina Counties. Akron Unit 1 shares headquarters in the City of Akron with Akron Unit 2, with the two units each headed by different supervisors and staffed by employees assigned to the Akron Office. The City of Canton also contains Units 1 and 2, and prior to the reorganization employed a third Canton unit. The reorganization of the Akron Region in November, 1987 resulted in the deletion of Canton Unit 3 and the creation of a unit headquartered in an office in New Philadelphia. Wayne County, which used to be administered by Akron Unit 1, was transferred to the responsibility of Canton Unit 1 as a result of the reorganization.

Joint Exhibit 6 reflects that Akron Unit 2 remained unchanged by the reorganization, as it had been and remained responsible solely for Summit County.

Joint Exhibit 7 reflects that Canton Unit 1, which is headquartered in the City of Canton in Stark County, prior to the reorganization contained Stark, Carroll, Tuscarawas, Coshocton and Holmes Counties; but after the reorganization remained headquartered in the City of Canton but covered Stark, Wayne, Holmes and Coshocton Counties. Tuscarawas County, which had formerly been in Canton Unit 1, and which was responsible solely for parole supervision, was transferred to the responsibility of New Philadelphia Unit 1. Carroll County, formerly in Canton Unit 1, was transferred to the responsibility of Canton Unit 2.

Joint Exhibit 8 reflects that Canton Unit 2 prior to the reorganization was responsible for Coshocton, Tuscarawas, Stark and Carroll Counties; and after the reorganization was responsible for Stark, Carroll, and Jefferson Counties. The responsibility for Coshocton County therefore was transferred from Canton Unit 2 to Canton Unit 1; and Canton Unit 2 had added to it Jefferson County.

Joint Exhibit 9 reflects Canton Unit 3 as it existed prior to the reorganization. Canton Unit 3 comprised Medina, Summit, Portage, Wayne, Stark, Holmes, Carroll and Coshocton Counties; but ceased to exist as a unit following the reorganization. The reorganization produced in its stead a new unit headquartered in New Philadelphia within Tuscarawas County, responsible for Tuscarawas, Harrison and Belmont Counties.

Joint Exhibit 10 reflects Youngstown Unit 1, headquartered in Mahoning County, which prior to the reorganization included

Trumbull, Mahoning, Columbiana, Jefferson, Harrison and Belmont Counties; and following the reorganization contained only Trumbull, Mahoning and Columbiana Counties.

Youngstown Unit 2 prior to the reorganization contained Trumbull, Mahoning, Columbiana, Jefferson, Harrison and Belmont Counties; and following the reorganization contained only Mahoning County.

The dispute herein arises from the changes caused by the reorganization of the Akron Region on the staffing of the region, and how changes in staffing resulting from the reorganization were implemented by the Employer under the collective bargaining agreement between the parties.

POSITIONS OF THE PARTIES

Union Position

The Union contends that wherever management creates new assignments, management is required under the terms of the contract between the parties, specifically under Article 26.04, to make available to staff members these new assignments based on seniority. The Union urges that Article 26.04 requires this result and that by implementing the intentions of Article 26.04, Employer favoritism in filling new assignments at the work site is avoided.

The Union points out that there are major differences between parole officer positions within the Akron Region. The different

positions, argues the Union, give rise to different travel requirements and also determine the type of clients to be supervised and the nature of the setting in which that supervision will be provided. The Union points out that certain positions within the Akron Region result in supervision provided in an urban setting, while other positions require supervisory and investigative activities in a rural setting. The Union points out that if seniority is not utilized under Article 26.04 to fill the new assignments created by the reorganization of the Akron Region, management will have the authority to act arbitrarily in staffing the new assignments.

The Union argues that assignment openings occur in two ways, an existing position loses its incumbent or a new position is created by the Employer. The Union pointed out, however, that its use of the term position is not intended in the same way that that term is used in the collective bargaining agreement between the parties. The Union argues that positions and assignments are not identical under the contract and therefore the creation of a formal position is not, under the language of Article 26.04, the only way a new assignment is created.

The Union contends that in effecting the staffing changes within the Akron Region following the reorganization in late 1987, the Employer filled the new assignments without complying with the dictates of Article 26.04 in that decisions as to staffing these positions were not based on seniority, and the collective bargaining unit members within the region were not

given an opportunity to exercise their rights under the article, that is, they were not given the opportunity to express their desires to fill any of the new assignments created by the reorganization, and to have their bids evaluated on their qualifications and length of service.

Management Position

The Employer points out that the collective bargaining agreement cedes to the Employer broad powers in determining unilaterally the organizational structure of the Adult Parole Authority, including the structure of the Akron Region and the positions needed to efficiently carry out the work within the region. Management points to Article 5 in the collective bargaining agreement between the parties which reserves to the Employer, exclusively, except to the extent modified by specific language within the collective bargaining agreement, all of the inherent rights and authority to manage and operate its facilities and programs. Included in this article is specific language granting the Employer the authority to determine the bureaucratic structure of the bargaining unit. Management explained at hearing that it had wanted, through its reorganization, to balance caseloads within the Akron Region, standardizing to a greater degree the work distributed among the parole officers in the region.

The Employer admitted that the reorganization resulted in assigning staff members to different supervisors but pointed out

that these actions did not constitute assignment openings but rather the rearrangement of lines of supervisory accountability and responsibility. Management stressed that it was simply pursuing greater efficiency in its work place.

TESTIMONY OF WITNESSES

Helen Leeper testified at the arbitral hearing herein that she is a Parole Officer 1 and has been employed by the State of Ohio as such since July, 1978. Ms. Leeper was informed of the reorganization of the Akron Region in a meeting on November 20, 1987, wherein Harold L. Crew, Administrator of the Akron Region, informed Ms. Leeper and other staff members that a new unit had been created by the reorganization, entitled New Philadelphia Unit 1. Mr. Crew explained at the meeting that this unit was to be headquartered in Tuscarawas County. At this meeting Ms. Leeper was informed that her position had been transferred to Canton Unit 1. Ms. Leeper stated that Mr. Crew told the attendees of this meeting that there were no openings, and that while personnel were being shifted there would be no bids on assignments. Ms. Leeper identified Union Exhibit 1, a memorandum dated November 16, 1987, from Ronald W. Briggs, Unit Supervisor to the Canton 2 field staff, wherein the realignment of Canton Unit 2 is discussed.

Ms. Leeper explained that prior to the reorganization, since 1983, she had divided her time between Tuscarawas and Coshocton

Counties. Ms. Leeper stated that she had spent only one-half day per month in Canton and pointed out that during the six months prior to the reorganization she had spent 40% of her work time in Tuscarawas County and received clerical support from an office in New Philadelphia. The remainder of Ms. Leeper's work responsibilities were carried out in Coshocton County.

Joint Exhibit 12 reflects the composition of the units within the Akron Region both prior to the reorganization and subsequent to the reorganization. Prior to the reorganization Ms. Leeper was employed within Canton Unit 2, which reported to Supervisor Briggs and contained five Parole Officers 1, including Ms. Leeper. Two of these Parole Officers 1 were responsible for activities in Tuscarawas County, of whom Ms. Leeper was one, and only Ms. Leeper and a Mr. Dennison were responsible for Coshocton County within Canton Unit 2.

Following the reorganization and beginning around February, 1988, Ms. Leeper was formally employed within the new Canton Unit 1, still classified Parole Officer 1, but was responsible for Coshocton and Holmes Counties and was no longer responsible for activities in Tuscarawas County. Following the reorganization, Tuscarawas County became the responsibility of the newly formed New Philadelphia Unit 1. Following February, 1988, the New Philadelphia Unit 1 employed two Parole Officers 1 who were responsible for solely Tuscarawas County. These were the aforementioned Mr. Dennison, who had worked with Ms. Leeper in Canton Unit 2 prior to the reorganization, and a Mr. Sopher, a

Parole Officer 1 who was transferred from Canton Unit 1 who, prior to the reorganization, had been responsible for only parole cases in Tuscarawas, Coshocton and Holmes Counties.

Ms. Leeper explained at hearing that she would have preferred to have been employed within the New Philadelphia Unit as she had been functionally headquartered, if not administratively headquartered, in New Philadelphia for the past ten years. Ms. Leeper explained that she lives in Tuscarawas County, enjoys living there, and was originally hired to work within Tuscarawas County. Ms. Leeper testified that she desired the position into which Mr. Sopher was transferred and pointed out that Mr. Sopher had less seniority under the contract between the parties than Ms. Leeper. Ms. Leeper testified that as she was never given any opportunity to express her desire for the new assignment in New Philadelphia, she filed a grievance. Ms. Leeper pointed out that while she had transferred to another unit since her new assignment as a result of the reorganization, she believed she still should have had the right to bid on the New Philadelphia Unit 1 position and stated that if given the opportunity she still would bid on a New Philadelphia position.

Ms. Leeper pointed out that in December, 1987 she had had seventy-six cases in Coshocton County and twenty-one cases in Tuscarawas County. Ms. Leeper stated that she had also used an office in the Coshocton County Courthouse to see clients, but pointed out that all secretarial support services were received from the New Philadelphia office.

Ms. Leeper testified that following the reorganization she was told that she would receive all clerical support in Canton and was refused permission to receive clerical support from the New Philadelphia office. Ms. Leeper spends two to three days per week in Canton presently, though she continues to travel from her home in Tuscarawas County, her county of residence, and is paid expenses for the travel required to the Canton office. Ms. Leeper stated that she would have liked the position presently filled by Mr. Sopher but said she did not bid on it because she was then, she believed, already headquartered in Tuscarawas County and, at that time, did not think there was a need to register a bid for the position. Ms. Leeper testified that previous to the reorganization her supervisor was Mr. Briggs in the Canton office, and explained that she spent 40% of her work time in Tuscarawas County. Ms. Leeper testified that following the reorganization, 43% of her work time is spent in Stark County and was presently spending all of her work time in Stark County on a new work assignment for Mr. Briggs.

Ms. Leeper pointed out that while she was aware that Mr. Sopher had bid on a position for Canton Unit 2 headquartered in Tuscarawas County, she had not bid on the position because she was then already in Canton Unit 2 and, to her mind, headquartered in Tuscarawas County. Ms. Leeper pointed out she had never seen a posting on the New Philadelphia Unit 1 position within which Mr. Sopher is presently employed, but testified that if she had she would have bid on it.

Also testifying at hearing was Michael D. Adams, a grievant herein. Mr. Adams is a Parole Officer 1 who was trained in Akron Unit 1 and has spent most of his tenure with the Adult Parole Authority in Akron Unit 2. Mr. Adams provides parole and probation supervision, conducts investigations, and supervises some parolees from outside the State of Ohio. Prior to the reorganization in the fall of 1987, Mr. Adams was headquartered in the City of Akron within Akron Unit 2, which was headquartered in the same building as Akron Unit 1. Mr. Adams pointed out, however, that each Akron unit had its own supervisor, its own senior officers and its own stenographers. Mr. Adams explained that Akron Units 1 and 2 were separate units in terms of staffing and operation. He agreed, however, that the work within the units contained no basic differences. Mr. Adams pointed out that Akron Unit 2, the unit to which he was assigned, was responsible strictly for Summit County.

Following the reorganization Mr. Adams experienced no changes in his work assignments.

Mr. Adams explained that Akron Unit 1 absorbed two officers from the deleted Canton Unit 3. Mr. Adams said that one officer was assigned to Akron Unit 2.

Mr. Adams testified that the two officers who transferred into Akron Unit 1 did so without advance notice of any kind to Mr. Adams, and Mr. Adams pointed out that no bid postings of any kind were posted for what Mr. Adams termed "the new positions" in Akron Unit 1. Mr. Adams stated that had he been aware that new

positions had been created for Akron Unit 1, he would have bid on one of the new positions. Mr. Adams pointed out that he has more seniority than either of the two employees who were transferred into Akron Unit 1 from Canton Unit 3, and pointed out that had he been given the opportunity to bid on a position in Akron Unit 1 he would have been responsible for an area centered around the City of Medina. Mr. Adams stated that the caseload in Medina is known to him to be less dangerous than the individuals who are to be supervised within the City of Akron's inner city. Mr. Adams stated that he was never given the opportunity to bid on what he termed the new positions in Akron Unit 1 and therefore filed the grievance in this matter.

Mr. Adams testified that Mr. Cox and Mr. Martin, the two employees who transferred to Akron Unit 1 from Canton Unit 3, had worked the previous five years out of an Akron Region office. Mr. Adams stressed, however, that the job assignments directed to Messrs. Cox and Martin were not simply reassignments to new supervision, but claimed that new positions had been created for these two employees.

Also testifying at hearing was a third grievant, Kenneth J. Clinton, a Parole Officer 2 who worked within Akron Unit 1 prior to the reorganization. Mr. Clinton has been a parole officer for seventeen years and prior to the reorganization was responsible for Ashland and Wayne Counties. Mr. Clinton worked out of the Akron office and was within the office one or two days per week.

The reorganization reassigned Ashland County to a Mansfield

unit and within a few months following the reorganization Mr. Clinton was informed that Wayne County would be assigned to the Canton office. Mr. Clinton wanted to follow his caseload to the Canton office but instead, following the reorganization, got a new caseload in Summit County. Mr. Clinton stated that the Wayne County caseload was directed to Canton Unit 1, for administrative purposes, and assigned to a new employee, Rhonda Heimberger. In this regard Mr. Clinton identified Union Exhibit 5, an interoffice communication dated February 11, 1988, under the authority of Harold L. Crew to Kenneth J. Clinton. This memorandum informed Mr. Clinton that Wayne County was to be assigned, effective March 15, 1988, to Canton Unit 1; that Ms. Heimberger should travel with Mr. Clinton during the first week in March to familiarize herself with the caseload which had formerly been handled by Mr. Clinton; and that Mr. Clinton should be prepared to turn over his cases by March 15, 1988.

Mr. Clinton testified that he would have liked to have bid on the Wayne County caseload but there had been nothing posted on the position which became responsible for Wayne County. Mr. Clinton stated that instead he was assigned approximately forty parole board investigations, investigations he had never conducted before, and also received cases from other officers. Mr. Clinton has been a Parole Officer 2 since January 18, 1986 or 1987, and during the entire time he was responsible for Wayne County cases was classified Parole Officer 2.

Mr. Clinton testified that his headquarters county is presently Summit County but he would have to change his work site to Stark County if he were to follow the caseload formerly performed. Mr. Clinton stated that his new caseload is now primarily a parole caseload. Mr. Clinton said he released all his Wayne County cases to the Canton office on April 1, 1988. Mr. Clinton explained that he received parole cases from Senior Officer Fenor and from fellow Parole Officer 2 Meers.

Mr. Clinton also pointed out that Ms. Heimberger was a Parole Officer 1, and stated that the caseload in Wayne County had always been handled by a Parole Officer 2 in the past. He stated that he has more seniority than Ms. Heimberger.

Also testifying at hearing was Harold L. Crew, a Regional Administrator for the Akron Region of the Adult Parole Authority of Ohio. Mr. Crew manages agency services and staff in the Akron Region and has been an employee of the Adult Parole Authority for more than twenty-one years.

Mr. Crew testified at hearing that he is familiar with the reorganization effected by the Employer in the fall of 1987, and identified himself as an active participant in the planning of the reorganization. Mr. Crew pointed out that the reorganization had been effected because of a serious imbalance in workloads within the Akron Region, caused by unnecessary overlapping of responsibilities and an imbalance in unit sizes.

Mr. Crew testified that Ms. Leeper's caseload, following the reorganization, retained the majority of her cases, and remained

responsible for 65% to 70% of her caseload in Coshocton County. Mr. Crew stated that supervision for Ms. Leeper did change from Mr. Briggs to Mr. Mickley, but pointed out that the supervision emanated from the same office it had prior to the reorganization.

Mr. Crew pointed out that Messrs. Cox and Martin of the formerly constituted Canton Unit 3 were transferred to Akron Unit 1. He stated that Mr. Cox and Mr. Martin continued to conduct parole board investigations in Summit County and other counties, and were also given supervisory cases to perform as well. Mr. Crew agreed that the caseloads handled by Mr. Cox and Mr. Martin in Akron Unit 1 were newly developed.

Mr. Crew testified that Mr. Clinton had made it known that he wished to stay with the work load assigned to his position prior to the reorganization. Mr. Crew stated that Mr. Clinton's headquarters county had always been Summit County and if Mr. Clinton wished to retain his former caseload he would be required to change his work site. Mr. Crew pointed out that while Mr. Clinton had formerly been traveling to Wayne and Ashland Counties, attaching Wayne County to Canton Unit 1 provided greater balance in the region. Mr. Crew stressed that prior to the reorganization Mr. Clinton had been headquartered in Summit County, and following the reorganization he remained headquartered in Summit County.

Mr. Crew testified that the Akron and Canton district offices prior to the reorganization employed approximately twenty-two Parole Officers 1 and 2. Mr. Crew testified that the

reorganization changed, in some way, fourteen of these twenty-two positions. Mr. Crew explained that the majority of the changes to positions in the Akron and Canton offices were changes in day-to-day work, and stated that in some circumstances significant changes occurred. Mr. Crew agreed that Mr. Clinton's prior caseload, which had been rural in nature in Wayne and Ashland Counties, had changed to a very urban caseload centered in Summit County and the City of Akron. Mr. Crew admitted that Mr. Clinton had undergone a significant change in working conditions but pointed out that there was now less travel required of Mr. Clinton.

Mr. Crew testified that in some cases the reorganization resulted in great changes in assignments and caseloads. Mr. Crew stated that none of the changes caused by the reorganization gave rise to job postings by the Employer for any of the positions in place following the reorganization.

Mr. Crew stated that Ms. Leeper kept the majority of her cases within Coshocton County and pointed out that Mr. Clinton's working conditions changed because of the need for a realignment of caseloads within the region with the least amount of disruption. Mr. Crew pointed out that Mr. Clinton was needed in the Akron area to service a caseload, and stated that Mr. Clinton's former counties were directed to new units, two of which were out of the region. Mr. Crew also stressed that Ms. Leeper's supervisory headquarters were the same before and after the reorganization and testified that prior to the reorganization

there had been a satellite office in New Philadelphia which provided clerical support. He stated, however, that the administration of this office had emanated from the Canton office.

Mr. Crew testified that it had been the Employer's intention that the reorganization, to the greatest possible degree, retain within positions major portions of caseloads formerly handled. Mr. Crew was asked whether new assignments were new openings within the region, to which he answered, "No". Mr. Crew pointed out that changes to caseloads occur every day and that it is a right reserved to management to assign and reassign caseloads within the region as needed. Mr. Crew also pointed out that if Mr. Clinton were to wish to follow his former caseload he would be required to change his work site and his present supervisor.

ANALYSIS

Article 26.04 is within an article on seniority. This is significant as it is the seniority of members within the collective bargaining unit which is agreed by the parties to the contract to be one of the rare exceptions to the general broad range of management rights reserved to the Employer by Article 5 of the contract. Article 5 reads, in pertinent part:

Except to the extent modified by this agreement, the Employer reserves, exclusively, all of the inherent rights and authority to manage and operate its facilities and programs.

This language reserves to the Employer the right to organize and reorganize the staffing structure within its organizational structure. There was no dispute at hearing as to the right of management herein to effect the reorganization of the Akron Region of the Adult Parole Authority in the fall of 1987. The Union readily agreed at hearing that the restructuring of the Akron Region, whether for greater efficiency or for some other purpose, is a subject solely within the province of management's discretion. However, it is the view of the arbitrator that when such a reorganization results in "shift and assignment openings" which were not present previous to the reorganization, Article 26.04 requires that the collective bargaining unit members who are to fill the new shift and assignment openings be chosen under a selection process that comports with the language of Article 26.04.

Article 26.04, which is within Article 26 of the contract on seniority, reads as follows:

Shift and assignment openings shall be filled by the qualified employee within the classification of the work site having the greatest state seniority who desires the opening.

The term "assignment openings" denotes new vacancies of some configuration. A newly created position would create such an "assignment opening", as would an existing position which is vacated.

In this matter, the Akron Region underwent significant change. Positions were created, positions were deleted, and geographic and substantive duties attached to positions have, in certain circumstances, been significantly altered.

The New Philadelphia office and the positions within it did not exist prior to the reorganization and those positions are viewed by the arbitrator as assignment openings subject to Article 26.04. The two positions created by the reorganization within Akron Unit 1 are also positions that did not exist prior to the reorganization and therefore are "assignment openings" under the language of Article 26.04 of the contract.

It is important to remember, however, that any "assignment openings" to be filled under operation of Article 26.04 may only be filled by a certain class of collective bargaining unit member, that is, employees who are qualified and who work within the classification of the classification title attached to the "assignment opening". For example, a Parole Officer 1 could not invoke Article 26.04 to bid on an assignment opening which carries a classification of Parole Officer 2. It is also found herein that a Parole Officer 2 may not bid, under operation of Article 26.04, on an assignment opening classified Parole Officer 1. Management has the right to determine how work is to be distributed among classifications within its organizational structure and Article 26.04 is not an article which requires work, which has been determined appropriate for a Parole Officer 1, to be handled by a Parole Officer 2. Thus, it is the

determination of the arbitrator that in order to invoke the operation of Article 26.04, grievants must show that there are assignment openings which carry classifications under which the grievants are employed. Those bidding on an assignment opening must then show their entitlement to the opening on the basis of seniority.

Another factor bearing on whether a grievant is entitled to a desired position under Article 26.04 entails the definition of the term "work site". In this case if the "work site" is defined as a district office, Ms. Leeper, for example, would lose the opportunity to bid on a New Philadelphia Unit 1 position as her rights under Article 26.04 would be confined to the Canton office, the office which had supervised Ms. Leeper administratively both prior to and subsequent to the reorganization. Determining the rights of the grievants on a district by district work site basis would also affect the rights of Mr. Clinton, under Mr. Clinton's view of this matter, but would not impinge upon the rights of Mr. Adams as Mr. Adams desires a different position within his present district.

It is the decision of the arbitrator that on the particular facts within this arbitration, the "work site" in this dispute should be the Akron Region rather than individual districts. This decision is based upon the breadth of the reorganization in the fall of 1987, a reshuffling of work assignments within the entire region which showed little reluctance to rearrange positions across district lines, but with a few exceptions

respected the boundary of the Akron Region. It is also the view of this arbitrator that because administrative headquarters often did not correspond to the geographic area for which a bargaining union member was responsible, the regional definition of "work site" in this matter is more reasonable.

Joint Exhibit 12 is a five page document which reflects in detail the changes caused by the reorganization in the fall of 1987 on Akron Units 1 and 2; Canton Units 1, 2 and 3; and New Philadelphia Unit 1. On the right hand side of each page of this document is listed all unit changes resulting from the reorganization, a reorganization which extended from approximately September, 1987 through February, 1988.

On the first page of Joint Exhibit 12, Akron Unit 1 is listed as undergoing two unit changes in Akron Unit 1, reflecting that two positions not formerly present in Akron Unit 1 were created as a result of the reorganization.¹

Also appearing within this exhibit is a new position within Canton Unit 2 created by operation of the reorganization.

Finally, Joint Exhibit 12 reflects that the New Philadelphia unit had all five of its positions created as a result of the reorganization. The positions in the New Philadelphia unit did not exist prior to the reorganization and they are viewed by this

¹ A position is also reflected within this exhibit as being deleted from Canton Unit 1 and transferred to Mansfield Unit 1. However, as the region has been determined to be the work site in this matter under operation of Article 26.04, the position transferred from Canton Unit 1 to outside the region is not viewed as a position which would come under the purview of Article 26.04 for the grievants within the Akron Region.

arbitrator as assignment openings covered by operation of Article 26.04. One position within the New Philadelphia Unit 1 is assigned to a Parole Officer 2, and this position is included within the arbitrator's view of the operation of Article 26.04.

As the aforementioned positions were created by the reorganization and qualify as assignment openings under operation of Article 26.04, the grievants herein, as well as all other bargaining unit members within the Akron Region, who can show that they work under an appropriate classification to fill one of the assignment openings within the Akron Region, must, under Article 26.04, be given the opportunity to express their desire to fill the new openings. Under operation of the article, those bargaining unit members who work under appropriate classifications and who bid on the assignment openings are to be grouped and compared on the basis of state seniority. The member of this sub-group with the greatest state seniority who desires a new opening within the region caused by the reorganization is to be the employee selected to fill the assignment opening.

As the grievants herein were denied the opportunity to make their desires known about the assignment openings caused by the reorganization in the Akron Region, and because the selections of employees for the new assignment openings were not made under operation of Article 26.04, the Employer must provide bargaining unit members within the region an opportunity to express their desires for these assignment openings through a bid process. While such a process could require the reassignment of employees

presently in positions within the Akron Region, the inconvenience visited upon employees within these positions and the operation of the region must be viewed as secondary in importance to the enforcement of the collective bargaining agreement between the parties. If, in enforcing the collective bargaining agreement between the parties, employees must be relocated and the efficient operation of the region affected, then that is the price that must be paid, as the collective bargaining agreement between the parties must be honored as the ultimate authority in such matters.

Accordingly, the two newly created Parole Officer 1 positions within Akron Unit 1; the newly created Parole Officer 1 position within Akron Unit 2; the newly created Parole Officer 1 position within Canton Unit 1; the newly created Parole Officer 1 position within Canton Unit 2; the three newly created Parole Officer 1 positions in New Philadelphia Unit 1; the newly created Parole Officer 2 position within New Philadelphia Unit 1; and the newly created Senior Officer position within New Philadelphia Unit 1 are to be the subject of bidding procedures under operation of Article 26.04. Among those Akron Region bargaining unit members bidding on the aforementioned positions, the employee with the appropriate classification within the region who has bid on a position and has the greatest state seniority shall be selected to fill the assignment opening.

AWARD

1. The changes in the caseloads/assignments of the grievants made by the Employer were in violation of the collective bargaining agreement.

2. The grievances are sustained.

3. The Employer, within a reasonable period of time shall, through postings giving reasonable notice, invite bids from bargaining unit members within the Akron Region on the following assignment openings which were newly created by the 1987 reorganization of the Akron Region:

- 2 Parole Officer 1 positions within Akron Unit 1
- 1 Parole Officer 1 position in Akron Unit 2
- 1 Parole Officer 1 position in Canton Unit 1
- 1 Parole Officer 1 position in Canton Unit 2
- 3 Parole Officer 1 positions in New Philadelphia Unit 1
- 1 Parole Officer 2 position in New Philadelphia Unit 1
- 1 Senior Officer position within New Philadelphia Unit 1

4. After receiving bids over a reasonable amount of time, the Employer shall select bidding employees to fill the assignment openings listed within paragraph 3 of this award, based upon who possesses the appropriate classifications and have the greatest state seniority.



Howard D. Silver
Arbitrator

March 3. 1989
Columbus, Ohio