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CONTRACTUAL GRIEVANCE PROCEEDINGS
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration Between:	*	
THE STATE OF OHIO Department of Mental Health Oakwood Forensic Center Lima, Ohio	*	Case No. 23-12-900202-0184-06
-and-	*	
THE STATE COUNCIL OF PROFESSIONAL EDUCATORS, OEA/NEA State Unit 10	*	Decision Issued May 15, 1990

APPEARANCES

FOR THE AGENCY

Teri Decker	Labor Relations Officer
Rick Mawhorr	Labor Relations Officer
Rachel Livengood	Office of Collective Bargaining
John S. Allen	Oakwood Chief Executive Officer
Jessica W. Byrd	Witness

FOR SCOPE

Henry Stevens	SCOPE - UniServ Consultant
Carrie Smolik	Grievance Chair
Steve William Sellers	Site Representative
John M. Howe	Grievant
Mary J. Bice	Grievant

ISSUE: Article 18, Reduction In Force: Time limits for substantive review and validity of Agency rationale.

Jonathan Dworkin, Arbitrator
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SUMMARY OF GRIEVANCE;
STATEMENT OF ISSUES

Layoff is the subject of this dispute. In August, 1989, the Oakwood Forensic Center prepared a list of positions slated for permanent reduction. The list cut deeply into staffing; both represented and exempt personnel were affected. It encompassed twenty positions. Twelve were drawn from the Center's four bargaining units and eight of the positions were nonrepresented. The potential layoffs threatened vast erosion of the tiny Local Unit represented by the State Council of Professional Educators (SCOPE), a branch of the Ohio Education Association. The Unit consisted of only four employees -- three Education Specialists and a Librarian. It was proposed that the Librarian and one Specialist be laid off, but that a new, half-time Librarian position be created. The net reduction was to be one and one-half positions, leaving SCOPE's representation at two and one-half positions.

The Union and the individual employees grieved, challenging the Agency's substantive rationale for the reductions.

The Collective Bargaining Agreement between the State of Ohio and SCOPE contains comprehensive language dealing with reductions in force. It limits the grounds for layoff, and establishes a range

of obligations covering both the authority to lay off and the right to grieve. The contractual requirements begin with limitations on the Employer's authority to institute layoffs. The first paragraph in Article 18, Section 18.01 of the Agreement provides that reductions must be premised upon at least one of three stated reasons:

> ARTICLE 18 - REDUCTION IN THE WORK FORCE
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> 18.01 - Pre-Reduction in Force Action
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> A reduction in force of employees may only be effected by the employing agency when such action is based upon any of the following reasons: (1) a reorganization for the efficient operation of the employing agency; (2) for lack of funds or lack of work to sustain current staffing; (3) for reasons of economy; a reduction in force may be either of temporary (less than one year) or permanent (more than one year) duration.

The Agency's expressed reasons for the cutback ostensibly conformed to items (1) and (2) of the contractual provision. Oakwood is a residential psychiatric hospital which serves the State prison system. It receives inmates from the Ohio Department of Rehabilitation and Correction whose psychiatric illnesses are so severe as to render them unfit for inclusion in prison populations. The Center's mission is to provide acute care to stabilize patients and return them to prison. Patient stays at Oakwood are generally short.

Over the past ten years, Oakwood's patient population has declined markedly. In fiscal year 1979, the average daily resident

population was three hundred sixty-four. Ten years later, in 1989, it was one hundred twenty-five; and when this hearing convened in March 1990 it had dropped to forty-six. As SCOPE pointed out, the decline has not been regular and consistent. When the data is placed on a graph, large peaks and valleys appear. But the overall loss of patients is unmistakable.

There are two basic reasons for the decline. The first is that Oakwood's mission has changed. Previously, it operated as a State hospital, providing full-range treatment targeted towards "curing" patients. It now operates only as an acute-care facility for stabilizing and returning patients. The difference in functions has resulted in cutting average lengths of stay to a little more than one-third of what they were ten years ago. In 1979, the average patient remained at Oakwood two hundred seventy-three days. The figure went down steadily to its current level of one hundred seven days.

The second reason for the decrease in patient population is that most State prisons now have well developed internal psychiatric units capable of dealing with all but the most out-of-control problems. Referral to Oakwood is less needed and much less frequent than in the past.

According to undisputed evidence, staffing at Oakwood is much larger than required and far exceeds staffing at similar State in-

stitutions. Moreover, the educational services provided by Grievants is less essential to the operation of the Center than used to be the case. Oakwood patients are all in acute stages of mental illness and more in need of psychiatric intervention than anything else. They return to their "home environments" (prisons) as soon as they are stabilized and, according to the affidavit of an Assistant Director of the Department of Mental Health, "A person in acute stages of mental illness is less likely to receive benefits from educational services."

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The evidence of the population decline and overstaffing is not substantially controverted by SCOPE. As a preliminary conclusion, the Arbitrator finds that the decision to reduce the workforce was consistent with two of the criteria in Section 18.01. It was a reorganization for the efficient operation of the employing Agency and it was premised on lack of work to sustain current staffing.

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Paragraphs two through five of Section 18.01 establish a procedure for an employing agency to communicate and document its need for reductions. They also provide a formal opportunity for SCOPE input before layoffs are finalized. The procedures are coupled with strict time lines:

At least forty-five (45) days prior to the anticipated effective date of a reduction in force, the Association must be afforded an opportunity to meet with the Employer. At this meeting, the Association must be provided a written rationale, with supporting documentation if any has been prepared, setting forth the basis for the reduction in force. At this meeting, the Employer must also inform the Association of the anticipated classification(s) where reductions may occur, the particular position(s) and their appointment types which may be reduced, the names of employee(s) in the classification(s) where the reduction is anticipated with the seniority dates of employees within the classification(s) and series affected, the expected duration of the reduction in force, the facility or facilities to be affected and a listing of any vacancies which might be available for displacement.

Either at this meeting or within ten (10) days thereafter, the Association shall be provided an opportunity to challenge the rationale offered and/or to discuss the reduction in force with the Employer so as to offer suggestions as to how the reduction in force may be avoided or its impact lessened. Input from the Association shall be seriously considered before any final decision is made as to a reduction in force.

Within five (5) days after the Association provides its input, but no later than thirty (30) days prior to the proposed effective date of the reduction in force, the Employer shall make a final decision as to whether it will effect a reduction in force. Such final decision shall be communicated to the Association. If a reduction in force is to be effected, the Employer shall supply to the Association a written rationale, with supporting documentation if any, revised if necessary, setting forth the basis for the final decision.

The Association shall also be provided with a final listing of the classification(s) where reduction in force will occur, the particular position(s) and their appointment types, names of employees affected with their seniority and work facility or facilities, vacancies available, and the expected duration of the reduction in force. The Association shall also be provided a complete seniority list of all employees within each facility affected, and the facilities within the county and counties contiguous to each facility affected.

There is no need to burden this Decision with a detailed description of the pre-layoff procedures followed by the State and SCOPE. The evidence confirms beyond debate that the contractual requirements were either fully met or waived. The Agency gave timely notice of its intention, written descriptions of the employees and classifications to be affected, and statements of rationale. It consulted with the Association, listened to its input, and met the time limits for issuing a final listing of the classifications and positions it intended to cut back.

The finding that procedural prerequisites were fulfilled is critical to the determination of what these grievances encompass and what aspects of the reductions are proper subjects for arbitral review. The Agreement carves out a very important distinction between grievance rights of employees and those of the Association. It is to be observed that the Association grieved the Agency's final decision on substantive grounds. The employees also grieved individually, but the issues which could be raised by their grievances were strictly circumscribed by Article 18, Section 18.13 of the Agreement. That provision states that layoff grievances initiated by displaced employees can address only four matters:

1. Selection of the employee for reduction in force pursuant to Section 18.03;

2. Displacement of an employee as a result of a reduction in force;

3. Timeliness of the notice of reduction, displacement or recall; or

4. Failure of the employee to be placed on a recall list or to be properly recalled from reduction in force or displacement.

This provision literally renders the individual employee grievances moot. The selections of employees to be laid off were in accordance with Section 18.03. Displacement-bumping rights are not in question, nor is timeliness of notice or recall rights. In other words, if the employee grievances stood alone, an arbitrator would have no alternative but to deny or dismiss them. The only meaningful grievance presented to arbitration is that of the Association. It challenges the substantive validity of the Employer's rationale for the cutbacks; and the right to lodge that challenge is governed by rigid time constraints contained in the last paragraph in Section 18.01 and the single paragraph that forms Section 18.02. They provide:

18.01 - Pre-Reduction in Force Action

. . .

Should the Association disagree with the Employer's rationale to effect a reduction in force, it may grieve the final decision for a determination of its substantive validity, directly to expedited arbitration in Article 5, Section 5.09. Such a grievance shall be filed by the Association with the Office of Collective Bargaining at Step 4 of the Grievance Procedure within three (3) days of the date the Association receives the final decision from the employing agency. In expedited arbitration, the Employer bears the burden of proving by a preponderance of the evidence the substantive reason for the proposed reduction in force.

18.02 - Implementation

If no appeal is received by the Office of Collective Bargaining within the three (3) day time period specified above, the Association waives any and all rights it may possess to arbitrate or appeal the substantive validity of the Employer's final decision and the Employer shall proceed to implement the reduction in force. [All emphasis added.]

The Employer contends that the Association's grievance was initiated after the three-day limitation period expired. It argues, therefore, that the Association's right to a substantive appeal was waived by operation of Section 18.02; that it no longer exists, and that the Arbitrator must summarily dismiss the grievance. The Association denies the allegation, urging that its grievance is timely.

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The question of timeliness is the first issue to be decided. It may turn out to be the sole determinant issue. Despite the common arbitral leaning towards preserving grievances against technical divestitures, the contractual language is clear. It cannot be altered, amended, or ignored on the basis of an arbitrator's personal concept of justice. If the Association was late in submitting its grievance to Step 4 of the Expedited Procedure, the grievance will be dismissed. Moreover, since the individual grievances (which

the State admits were timely) do not raise procedural flaws, they too will be dismissed. The material substantive issue in these cases is whether or not the Employer's rationale was valid, and that issue cannot be reached unless the Association commenced its grievance within the contractual time lines.

TIMELINESS: FACTS, CONTENTIONS, AND CONCLUSIONS

The Agency sent its final decision to the Association on Wednesday, January 31, 1990. The State normally allows three days for delivery. The term, "days" is defined for Expedited Arbitration in Article 5, Section 5.02 of the Agreement. It means "calendar days," except, when the last day of a time-limitation period falls on a Saturday, Sunday, or holiday it is excluded from the computation. Section 5.02C provides:

> C. Day - refers to calendar day except where otherwise specified. Times shall be computed by excluding the first and including the last day, except that when the last day falls on a Saturday, a Sunday or a legal holiday, the act may be done on the next succeeding day which is not a Saturday, Sunday or legal holiday. "Work days" refers to Monday through Friday excluding legal holidays.

According to the Arbitrator's calculations, the third day after the Agency mailed the final decision to the Association was

Monday, February 5, 1990. The decision was sent on Wednesday, January 31, 1990. The third and the fourth calendar days were Saturday and Sunday and, therefore, excluded from consideration. That meant the Association had three days after February 5 to initiate its grievance.

The Employer produced evidence to confirm that the Association did not commence the grievance until after March 1, 1990. It presented a March 1 letter from the SCOPE Representative to the Director of the Office of Collective Bargaining, which stated:

> Pursuant to Article 18, Reduction in Force, Section 18.01, this letter will grieve to expedited arbitration, the final decision of the Department of Mental Health concerning the abolishment of two (2) positions at Oakwood Forensic Center.

It is obvious that the March 1 letter was received long after the contractual time limits for an Association grievance had expired. It follows, according to the State, that the grievance was waived by SCOPE's delay and is not entitled to arbitral consideration. As stated, if the Agency's contention is supported by the evidence, the Arbitrator will have no recourse other than to deny all grievances and issue a decision in favor of the Employer.

The SCOPE Representative insisted that the March 1 letter did not initiate the grievance -- that a duplicate letter was mailed to

the Office of Collective Bargaining on February 5, 1990. At first, the Representative's testimony did not appear credible. None of the State Representatives remembered receiving such a letter before March. But SCOPE was able to rectify its position when the Representative searched his files and uncovered not only a file copy of the February 5 letter, but a certified receipt confirming that the letter was delivered to the Office of Collective Bargaining on February 7, 1990.

According to the Arbitrator's calculations, delivery of the grievance notice to the Office of Collective Bargaining on February 7 met the contractual time limits. SCOPE's evidence significantly outweighed the Employer's contention that notice was not received until March. Accordingly, it is held that the grievance was timely and SCOPE is entitled to a decision on its merits.

THE MERITS

1. The Employer's Evidence and Arguments

The issue is whether or not the layoffs were contractually justified. The State has the burden of proof. Article 18, Section 18.01 of the Agreement charges the Employer with the "burden of proving by a preponderance of the evidence the substantive reason for the proposed reduction in force."

The Agency submitted a volume of statistics to fulfill its evidentiary obligation. As stated, the figures established beyond question that the Oakwood staff was too large and reductions were warranted. Having made that point, the Agency continued to produce data and other evidence to confirm the propriety of eliminating one of the three Education Specialists and half of the Librarian position.

A Job Abolishment Request, which was approved by the Office of Human Resources of the Department of Mental Health, set forth in decisive terms the rationale behind the Education Specialist cutback. The Request was on a standard form which required answers to two questions. The first inquired into the reasons for reducing the subject position. The second asked if the functions performed when the position existed would still be performed after it was eliminated and, if so, how the Agency proposed to continue providing the services. With respect to the first question -- the reasons for the cutback -- the Agency responded:

> Due to a need to reorganize Oakwood Forensic Center for more efficient operation and staff utilization because of the decrease in our average daily resident population, we no longer require this full-time, permanent position. Additionally, as Oakwood Forensic Center is an acute care facility, its primary focus is stabilizing the patient's psychiatric condition and returning him to Corrections for long-term care. Long-term traditional educational programming does not fit into this scope. The abolishment of this position, therefore, is requested due to a permanent lack of work and reorganization for more efficient and economical staff utilization.

In answer to the question of whether or not the functions of the position would be retained, Oakwood Management's response was affirmative. It explained:

> The Two remaining Educational Specialist 2's will address the the court-mandated educational programs, and continue with non-traditional programming geared to the acute care population (i.e., Substance Abuse; Competency; Daily Living Program).

The State's most convincing evidence in support of reducing the Education Specialist position was its documented comparison of class enrollments in the years 1985 through 1989. As expected from the loss in patient population, there has been a huge reduction in educational services. Total enrollment in all classes offered by the facility dropped from 516 in 1985 to 476 in 1989; and the decline would have been much greater were it not for new programs instituted in 1988 and 1989. Of the current 476 enrollment, newly created special courses in Life Persisting Problems, Chemical Dependency, and Community Skills account for 272. Course offerings have fluctuated, some were added and some eliminated since 1985. A most revealing illustration of the enrollment decline derives from comparing courses that existed throughout the five-year period. There are three: Adjusted Curriculum, Young Adult Program, and

Adult Basic Education. Enrollment in Adjusted Curriculum stood at 89 in 1985; dropped to 50 in 1986; rose to 53 in 1987; declined again to 16 in 1988; and stood at only 1 in 1989. Enrollment in the Young Adult Program was 50 in 1985; 25 in 1986 and 1987; 4 in 1988; and 0 in 1989. All levels of Adult Basic Education totaled 278 in 1985; 251 in 1986; 208 in 1987; and 283 in 1988. The current level is 151.

The enrollment decline in educational programs stems from a combination of diminished patient population and the change in the Center's focus. It is a fact, asserted by the Employer and not refuted by the Association, that acute-care mental patients subject to brief hospitalization are less likely to benefit from ongoing classes than long-term patients, institutional residents, or prison inmates. The Employer urges that the two Specialists whose positions will not be reduced will provide more than adequate coverage of Oakwood's educational needs.

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The Employer's rationale for reducing the Librarian position to half-time is somewhat less decisive than its rationale relative to the Education Specialist. One of the reasons is that Oakwood employs three Education Specialists but only one Librarian. As in the case of the Education Specialist, the Job Abolishment Request

indicated that the reduction would not diminish the services provided by the Librarian. The Request stated:

> Work can be distributed among remaining education staff and activities employees.

That explanation contained an apparent flaw which the Association seized upon. The Agency was not free to distribute Librarian duties among other classifications. Article 18, Section 18.01 sets forth this restriction on Management Rights:

> When the Employer makes its final decision to effect a reduction in force, it may not move employees into or out of affected classifications within the affected facility and facilities in the county of or counties contiguous to the affected facility by means of promotions, transfers, voluntary reductions (as per Article 17), classification changes, or reassignments, except that transfers out of a classification or implementation of the findings of a position audit commenced prior to the employing agency's final decision may be implemented. [Emphasis added.]

Oakwood's Chief Executive Officer appeared in the arbitration hearing and testified that he never intended to redistribute the Librarian's functions. It is his belief that the duties of the Classification can be carried out completely by a twenty-hour-per-week employee. He is firmly convinced that continuing the position

full-time is inefficient and significantly beyond the needs of the few patients that the facility now serves. The only duty he intends to redistribute is the one which is common to all classifications -- monitoring patients. His plan is to keep the library open the same hours as before and install a class in the space. That way, an Education Specialist could monitor patients who use the library while the Librarian is off-duty. In his opinion, the patient decline makes this arrangement feasible, warranted, and substantively valid.

In closing argument, the Employer urged that it had met its burden of proof. Its evidence was sufficient to firmly establish that the cutback decision was rationally grounded -- based on the obvious fact that an institution serving fewer than fifty patients does not require the staffing it employed to serve more than three hundred. In view of the undisputed statistics, the Agency contends that the grievance is groundless and should be denied.

2. The Association's Evidence and Arguments

SCOPE vigorously denies the implication that the four members of its Bargaining Unit are all that were needed in 1979 to service more than three hundred patients. The fact is, in 1979 Oakwood employed twenty-eight Education Specialists, not three.

The workforce also included four Librarians. For a good many years, the single Librarian has been performing the work that used to be distributed among herself and three others. It is a rank fallacy, in the Association's judgment, for Management to believe that the Librarian can continue to carry out her overload of work in half the time.

The Association asks the Arbitrator to look to the duties of the positions in making his decision, not just to the Agency's generalized need for reductions. As the SCOPE Representative argued, "You can't just pool staff in a reduction; you've got to consider functions as well." According to the Association, this principle is well illustrated by the positions at issue. Education Specialists at Oakwood teach mainly in the tutorial mode -- one student at a time. There are only a few classes, such as sessions of Alcoholics Anonymous, that are designed for several patients at once. Even with the decline in students, the three Specialists have all they can do to keep up with their workloads. Moreover, as the following Position Description indicates, they do more than just teach:

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Assist in developing Adult Basic Education Program for the patients in our Adult Program. Assist in establishing a curriculum of education for individuals' or groups of patients. Surveys & evaluates the patient population to determine those requiring education. Will instruct & teach individual patients or small numbered classes in ABE & Bachelor Basics

5	Maintains all necessary records of each individual patient in the adult education program. Continually evaluates the adult education program.
19	Responsible to the Team Coordinator for: a) Treatment issues, b) Participating regularly in weekly team meetings, ITP meetings & TRP meetings as needed, c) Completes educational assessments, makes recommendations for education on newly admitted patients, fills out comprehensive treatment plan worksheets and submits to team coordinator one day before comprehensive treatment plan is to be done, d) May be asked by the team coordinator to do abstractions on assigned patients and to be responsible for the quality of the patient's chart and to evaluate the chart.

It should be obvious, according to the Association, that three Education Specialists are barely enough to meet the Agency's expectations. Reducing the Classification by one-third will most certainly erode services and diminish the Center's efficacy. Since the Employer failed to prove otherwise, the Association contends that the grievance on behalf of the Education Specialist should be sustained.

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The Association is even more adamant regarding the proposal to reduce the Librarian position. The Librarian serves professional staff as well as patients. She testified that, despite the decline

in patients, library usage has actually risen. Curiously, her statement was confirmed by something the Employer introduced into evidence. A document was presented by Management setting forth the number of employees and patients utilizing the library in 1988, 1989, and 1990. The statistics, which were broken down into monthly usage, disclose the following:

1988 monthly average - 65.1
1989 monthly average - 128.7
1990 monthly average - 168.3 (based on first three months)

The aggrieved Employee testified at length concerning the duties she is expected to carry out in a forty-hour week. The following list is representative of the functions she described. It is by no means exhaustive:

> Clerical work, including approximately two hours each day photocopying for patients and staff, recording department meetings, correspondence, and typing orders for all three library divisions -- the patient library, the staff library, and the law library.
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> Maintaining all three libraries and assisting patients and staff to find information. This is especially time consuming when requested information is in the 1300 volume law-library division.
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> Managing three separate budgets, one for each library division.
>
> Posting newspapers and magazines.

Purchasing and inspecting approximately thirty new volumes per month. These have to be hand-cataloged by the Librarian as the facility is not on a database.

Working an hour per day with patients who come into the library with attendants. This function incorporates patient monitoring and, according to the Association, cannot be redistributed to a teacher with the library as his/her classroom.

Assisting unattended patients in the library one and one-half hours per day.

Taking book cart to floors for patients restricted to rooms and not permitted to use the library either attended or unattended.

Checking books in and out; monitoring loans and overdues, borrowing books from other libraries. According to undisputed testimony, the number of volumes is the same as it was when Oakwood employed four Librarians.

Showing films to patients twice per week, and administering the book club (receiving verbal book reports from patients).

Attending professional library meetings.

It is noteworthy that the instrument used by Management to evaluate the Employee's performance contains functions in addition to those listed.

The Association contends that the Librarian Classification cannot be cut in half without diminishing service below the Center's accreditation requirements, and if the Center loses its accreditation, it will violate a standing court order. In 1989, Oakwood and the Ohio Department of Mental Health were defendants in a law suit

in the United States District Court for the Northern District of Ohio (Western Division). The action, which was brought in the names of representative patients, was sponsored by an organization known as Advocates for Basic Legal Equality, Inc. (ABLE). ABLE is dedicated to obtaining uniform accreditation of public health-care institutions, and Oakwood was the target of the suit because it was not accredited. The suit ended when the Court adjudicated a consent decree which provided in pertinent part:

> The defendants hereby agree to maintain accreditation with the Joint Commission on the Accreditation of Health Care Organizations (JCAHCO) or similar national hospital credentialing agency . . .

The Association introduced the portion of accreditation manual of JCAHCO pertaining to libraries. It seems to indicate that in order to meet minimum criteria, Oakwood needs to employ a full-time Librarian.

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In summary, SCOPE reminds the Arbitrator that the burden of proof was upon the Employer. It contends that the burden was not met and, therefore, the grievance should be sustained in its entirety.

OPINION

As indicated, the first paragraph of Article 18, Section 18.01 sets forth the permissible reasons for layoffs. There is no question but that two of those reasons exist. The Oakwood Center is not efficient; the staff is much larger than needed to serve the diminished patient population. The Agency's rationale for the general layoff was thoroughly proven to be correct and justified. Given these facts, what was left for SCOPE to grieve?

The answer is found in other clauses of Section 18.01. Most critical is the Section's concluding paragraph which states that, if the Association disagrees with the Employer's rationale, "it may grieve the final decision for a determination of its substantive validity." When this language is read in conjunction with the portions of Section 18.01 which call for Association input at the pre-reduction stages and require the Employer to explain its proposal on a position-by-position basis, the extent of the grievance and of the Arbitrator's jurisdiction become clearer. The grievance may properly protest the elimination of each position, and each layoff may be challenged on the grounds that it lacks substantive validity.

The contractual term, "substantive validity," is not a model of clarity. It does not easily disclose what the negotiators meant or envisioned when they adopted it in their Agreement. According

to one of the many dictionary definitions, "validity" refers to something which is firmly grounded and justifiable. The Arbitrator can imagine two distinct causes for challenging layoffs on the premise that they are not firmly grounded or justifiable. The first is a cutback stemming from an abuse of Management Rights. If a reduction in force is arbitrary, discriminatory, or instituted in order to undermine the Bargaining Unit and erode contractual commitments, it may be held invalid.

The second cause exists when Management expresses its reasons in terms of its post-layoff goals, and the cutback is so extensive that the goals cannot be achieved. In such situation, the rationale may properly be held not to be firmly grounded and, therefore, substantively invalid. An arbitrator reviewing a layoff decision of this kind must be extremely cautious not to unduly invade managerial authority. The pivotal standard is what the Employer defines as its goals, not what ought to be its goals. This is an important distinction and may need further clarification. Suppose, for example, the Oakwood Center decided to eliminate all educational services and permanently shut down the library. Assuming that the decision was not arbitrary, discriminatory, or premised on anti-union animus, the Association would have little cause for grieving the layoffs. The reason is that such layoffs would have resulted from the Agency's Management Right to define its mission and its

goals. A neutral revision of goals would justify the cutbacks and make them substantively valid. Educational Specialists and Librarians would be in excess of staff needs if the facility decided not to provide educational or library services. Such decision might be imprudent or even illegal, but legislators and courts, not arbitrators, decide proprieties and legalities.

The evidence in this dispute contains no indication that the layoffs were arbitrary, discriminatory, or fostered by union-busting motives. It follows, therefore, that all the Employer was required to prove was that the cutbacks were reasonably consistent with its avowed goals.

In its closing arguments, the State contended that the Arbitrator should pay no attention to the consent decree on accreditation because it is not included in the Agreement. Ordinarily, the Arbitrator would agree that external court decisions, including consent decrees, are not relevant to contractual disputes unless they define contractual rights and obligations. But this dispute is different in that the Agency itself made the decree part of its expressed goals. It is to be recalled that in one of the Job Abolishment Requests referred to the Department of Mental Health for approval, Management certified that the cutback would reserve enough positions "to address court-mandated educational programs." That statement was pregnant with the admission that adherence to the

consent decree was one of the Center's expressed goals. It was, therefore, a relevant measuring stick to assess the substantive validity of at least the cutback of the Educational Specialist.

Having stated that the decree was relevant to the Association's case on behalf of the Educational Specialist, the Arbitrator will not address it further in this ruling for two reasons. First, there is no evidence that the reduction of one Specialist position will violate the court order. Second, the State's statistical evidence that an Education Specialist reduction was substantively valid and consistent with the Center's mission far outweighed the Association's assertions of opinion that it was not. With regard to the cutback in the Specialist Classification, the Employer met its burden of proof.

The Employer's case seems not as well grounded with respect to the Librarian. When one adds up the duties she performs, it appears improbable that they can all be carried out in a twenty-hour week. That means the Center possibly will have to do one of two things if the layoff is approved -- cut back library services or reassign Librarian functions to a different classification. The first option would make the layoff substantively invalid from the perspective of the Agency's goal of maintaining service levels. That goal was not only expressed in the Job Abolishment Request Form, it was a commitment the Chief Executive Officer made to the Oakwood Patient Humanization Committee.

In the foregoing examination of the case for laying off the Librarian, the Arbitrator has used equivocal language. The analysis is replete with such phrases such as, "The Employer's case seems not . . . well grounded;" "the Center possibly will have to do one of two things;" it appears improbable that they [Librarian duties] can all be performed in a twenty-hour week." The uncertainty manifested by the language was intentional. The Arbitrator has no firm conviction of whether the rationale for the Librarian's half-time layoff is substantively valid or invalid. The evidence is evenly balanced. In an ordinary dispute, the lack of convincing evidence would result in an award denying the grievance. The reason would be that the Association had failed to meet its burden of proof. But this is not an "ordinary dispute," and the burden of proof is not the Association's. Article 18, Section 18.01 places the evidentiary duty on the Employer. The Employer's evidence did not outweigh the Association's on the issue of whether or not the rationale for laying off the Librarian was substantively valid. The Arbitrator's responsibility, therefore, is to sustain that portion of the grievance.

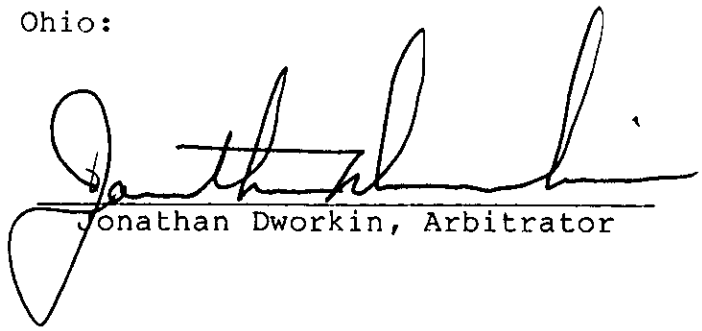
AWARD

The grievance is sustained in part and denied in part.

The State failed to prove the substantive validity of its rationale for reducing the Oakwood Librarian position from forty hours to twenty hours per week. Therefore, the grievance protesting the Librarian reduction proposal is sustained. The proposal is set aside, and the Agency is directed to retain the Librarian in a full-time position.

With regard to the Education Specialist, the grievance is denied. The State proved by a preponderance of the evidence that the rationale for laying off one of the three Education Specialists was substantively valid. Accordingly, the Agency is authorized to implement that layoff proposal.

Decision Issued at Lorain County Ohio:
May 15, 1990



Jonathan Dworkin, Arbitrator