

IN THE MATTER OF ARBITRATION
BETWEEN THE
STATE COUNCIL OF PROFESSIONAL EDUCATORS,
OHIO EDUCATION ASSOCIATION
AND
THE STATE OF OHIO
DEPARTMENT OF REHABILITATION AND CORRECTION

Grievance No:

27-16-(8/22/89)-155-06-10

27-16-(8/22/89)-156-06-10

27-16-(8/24/88)-41-06-10

Hearing Dates:

March 16, 1990 (Day 1)

June 6, 1990 (Day 2)

Briefs Received: July 19, 1990

Award Date: August 27, 1990

#484

Advocate for the Union: Henry L. Stevens

Advocate for the Employer: Nick Menedis

2nd Chair - Lou

Present at the hearings in addition to the Advocates named above were the following persons: Dean Millhone, Labor Relations Officer (MCI), Larry Temple, Training Officer (MCI) (witness), James Fogle, Major (Chief-of-Security, MCI) (witness), James Pence, Major (Chief-of-Security, RCT) (witness), Bob Conrad, Training Officer 2 (RCI) (witness), Lou Kitchen, Labor Relations Specialist (OCB 2nd chair), Gary Mohr, Warden Ross Correctional Institution (witness), Janice Lane, Super at Training Area, Carrie

Smolik, Association Representative Grievance Chairperson
(witness), Herman Crabtree, Grievant (witness), Connie Malott
(witness), James A. Claytor, Grievant (witness), Ray Perdue,
Grievant (witness).

Preliminary Matters

The Arbitrator asked permission to record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

Joint Stipulations

1. The 22 correctional institutions within the Department of Rehabilitation and Correction vary in physical structure, inmate population, staff size, and geographic location.
2. Not all Department of Rehabilitation and Correction correctional institutions are located in geographic sites conducive to fog conditions.
3. Not all Department of Rehabilitation and Correction

correctional institutions assign teachers to fog watch duties.

4. Ross Correctional Institution started hiring staff April 28, 1986 and received inmates May 6, 1987.
5. For any loss of planning time or lunch period there are contractual remedies for compensation.
6. There are no procedural issues outstanding.

Joint Exhibits

1. The Contract, July 1, 1986 - June 30, 1989.
2. Grievance Trails

Issue

The parties submitted issues separately.

Union's

Does Management at certain Rehabilitation & Correction facilities violate the 1986-89 Agreement between the State Council of Professional Educators and the State of Ohio when they directed teachers to work out of their job classification specification during non-emergency situations?

If so, what shall be the appropriate remedy?

Employer's

Did the Department of Rehabilitation and Correction management at certain institutions violate the 1986-1989 agreement

between the State Council of Professional Educators OEA/NEA and the State of Ohio when members of the bargaining unit were assigned to participate in "fog watch duties?"

If so, what shall the remedy be?

Cited Contract Sections (1986-1989)

§ 1.01 - Recognition

The Agreement is made and entered into pursuant to the provisions of Chapter 4117 of the Ohio Revised Code by and between the State of Ohio, represented by the Office of Collective Bargaining, hereinafter referred to as "Employer" and the State Council of Professional Educators, Ohio Education Association (OEA) and National Education Association (NEA), hereinafter referred to as the "Association."

This Agreement is made for the purpose of promoting cooperation and harmonious labor relations among the Employer, employing agencies, employees of the bargaining unit, and the Association, establishing an equitable and peaceful procedure for the resolution of differences, and protecting the public interest by assuring the orderly operations of state government.

§ 1.02 - Bargaining Unit

The Employer hereby recognizes the Association as the sole and exclusive bargaining representative for the purpose of collective bargaining on all matters pertaining to wages, hours, or terms and other conditions of employment, and continuation, modification, or deletion of an existing provision of the Agreement for employees within the bargaining unit, State Unit 10, in the classifications listed in Section 1.03.

The bargaining unit shall be composed of all full-time and part-time employees within the classifications listed in Section 1.03. A full-time employee is a bargaining unit member who is regularly scheduled to work a work week as defined in Article 23.

A part-time employee is a bargaining unit member who is regularly scheduled to work less than the work week for full-time employees. Also included in the bargaining unit are interim employees within the classifications listed in Section 1.03 whose employment exceeds eighty-nine (89) days from date of hire, whether on a full-time or part-time basis.

Excluded from the bargaining unit are interim employees whose employment is less than ninety (90) days, and intermittent employees within the classifications listed in Section 1.03. An intermittent employee is an individual who works an irregular work schedule which is determined by the fluctuating demands of the work and which is generally characterized as requiring less than one-thousand (1,000) hours per year.

Should the Employer propose to create a new classification or a new appointment type which arguably may be within the bargaining unit, the Office of Collective Bargaining and the Association shall meet within thirty (30) days after notice of such creation is given to the Association in the event the Association disputes the Employer's proposal. If the parties are unable to reach agreement as to whether such classifications or appointment types are within the bargaining unit, the parties mutually agree to submit the dispute to the State Employment Relations Board for Resolution.

§ 1.03 - Classifications

The following classifications are included within the bargaining unit:

- 30121 - Teaching Coordinator
- 64311 - Librarian 1 (including parenthetical subtitles)
- 64312 - Librarian 2 (including parenthetical subtitles)
- 64315 - Library Consultant
- 69621 - Teacher (including parenthetical subtitles)
- 69651 - Education Specialist 1
- 69652 - Education Specialist 2
- 69681 - Peripatologist 1
- 69682 - Peripatologist 2
- 69751 - Student Services Counselor
- 69761 - Guidance Counselor
- 99200 - Teacher, Deaf or Blind School

§ 3.01 - Management Rights

Except to the extent expressly abridged only by specific articles and sections of this Agreement, the Employer reserves, retains, and possesses, solely and exclusively, all of the inherent rights and authority to manage and operate its facilities and programs. The sole and exclusive rights and authority of management include specifically, but are not limited to the following:

- (1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public Employer, standards of services, its overall budget, utilization of technology, and organizational structure;
- (2) Direct, supervise, evaluate, or hire employees;
- (3) Maintain and improve the efficiency and effectiveness of governmental operations;
- (4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- (5) Suspend, discipline, demote, or discharge for just cause, reduce in force, transfer, assign, schedule, promote, or retain employees;
- (6) Determine the adequacy of the work force;
- (7) Determine the overall mission of the Employer as a unit of government;
- (8) Effectively manage the work force;
- (9) Take actions to carry out the mission of the public Employer as a governmental unit;
- (10) Determine the location and number of facilities;
- (11) Determine and manage its facilities, equipment, operations, programs and services;
- (12) Determine and promulgate the standards of quality and quantity and work performance to be maintained; and

- (13) Determine the management organization, including selection, retention, and promotion to positions not within the scope of this Agreement.

§ 6.06 - Issues

Prior to the start of an arbitration hearing, the representatives of the Employer and the Association shall attempt to reduce to writing the issue(s) to be placed before the arbitrator. Where such a statement is submitted, the arbitrator's decision shall address itself solely to the issue(s) presented and shall not impose upon either party any restriction or obligation pertaining to any matter raised in the dispute which is not specifically related to the submitted issue(s).

§ 7.04 - Weather Emergencies

The Employer retains the right to designate employees as essential who are required to report to work during weather emergencies. The Employer agrees to furnish the Association with a list of essential employees and to notify all employees designated essential.

The Employer shall adhere to the provisions outlined in the Weather Emergency memos from the Director, Department of Administrative Services, as dated January 10, 1985, and February 15, 1985.

It is recognized that both parties wish to discuss the continued applicability and scope of the Weather Emergency memos of January 10, 1985, and February 15, 1985. Towards this end, the parties agree to engage in discussions with each other and with any other exclusive representative(s) interested in such discussions. These discussions shall take place as soon as practicable after the implementation of this Agreement, provided that the Employer shall not unilaterally revise these memos without discussions with, and input from, the Association. Notwithstanding the foregoing, should the Employer, during the term of this Agreement, propose to decrease any compensation which an employee is entitled to in a weather emergency, the Employer shall first negotiate such proposal with the Association.

§ 14.01 - Work Rules

Work rules shall be all those written policies, regulations, procedures, and directives which regulate conduct of employees in the performance of the

Employer's services and programs.

Work rules shall not conflict with any provision of the Agreement. The Association will be furnished with a copy of the work rules in advance of their effective date. The Association shall designate an address for receipt of this communication.

Work rules shall be made available to affected employees prior to their effective date.

In emergency situations, as defined by the Employer or the employing agency, the provisions of this Section may not apply. The Association and affected employees will be notified promptly of such declared emergencies and their duration.

§ 14.02 - Uniformity

It is the intent of the Employer that work rules shall be interpreted and applied uniformly to all affected employees.

§ 15.03 - Classification Status

Except through this study or by mutual agreement of the parties, no changes shall be made in classifications or compensation levels assigned to classifications in the bargaining unit.

§ 17.01 - Definitions (of transfers and promotions)

As used in this Agreement, the following definitions shall apply:

(A) Vacancy

A vacancy is a new or existing position in the bargaining unit which the Appointing Authority has determined to fill by transfer, promotion or original appointment. A position for which a recall list exists is not a vacant position.

(B) Assignment

An assignment is the particular job to be performed within a work facility as determined by the classification specification and position description.

(C) Reassignment

A reassignment is a change of assignment of an employee within either the same classification

title or parenthetical subtitle within the same work facility which may be temporary or permanent effected upon the Appointing Authority's initiative. The Appointing Authority will first attempt to effectuate reassignments by seeking volunteers. If the employee's reassignment is temporary, the employee will be allowed to return to his or her prior position at the end of the temporary period.

Side Letter (page 86)

May 19, 1986

Robert W. Sauter, Esq.
Cloppert, Portman, Sauter,
Latanick & Foley
225 East Broad Street, Third Floor
Columbus, OH 43215

Dear Mr. Sauter:

This letter is intended to express the understanding of the Office of Collective Bargaining, as agent for the State of Ohio, regarding recent discussions which were held between the State and the State Council of Professional Educators, OEN/NEA, during collective bargaining negotiation sessions between these two parties for State Unit 10 (Education and Library Sciences).

The Employer guarantees that assignment of student contact time for employees in the Teacher and Teacher Coordinator classification titles shall be no more than six (6) hours per day. Student contact time is defined as time spent in classroom instructional activity or group instructional activity. The Employer reserves the right during remaining portions of the work day to assign employees to perform related duties such as but not limited to conferences, curriculum development, testing and treatment team assignment.

Sincerely,

Edward Seidler
Deputy Director

EHS:sm

Contract Section (1989-1992)

§ 23.13 - Student Contact Time

Student contact time for employees in the Teacher 1-4 and Teaching Coordinator classifications shall be no more than six (6) hours per day. Student contact time is defined as time spent in classroom instructional activity or group instructional activity. The Employer reserves the right during the remaining portions of the workday to assign employees to perform related duties, such as, but not limited to conferences, curriculum development, testing and treatment team assignments.

Procedural History of the Grievances

9/21/88. Grievant Crabtree, a teacher at Ross Correctional Institution, filed the following grievance:

Teachers being worked out of their specific job classification. On Wednesday, 9-14-88, a call came from the majors office; all teachers were told to report for an assignment regarding fog duty. When we arrived, a captain was handing out whistles and assigning teachers to various posts on the compound. It's important to note that none of the teachers knew what they were supposed to do, nor did any of them ever have any training in fog duty assignments. Further, not all teachers were called or assigned to a post.

He cited the following contract provisions:

14.02 and all other pertinent articles that apply.

9/23/88. Larry Brown, Labor Relations Officer, wrote to Grievant Crabtree as follows:

You allege violation of Article 14, Section 14.02, work rules shall be applied uniformly to all affected employees, not all teachers were called or assigned to a post regarding fog duty.

Remedy sought: refrain from this practice.

Management's position: all Department of Rehabilitation and Correction employees have "security" responsibilities, therefore, there is no contractual violation.

In the future fog duty assignments will be uniform and training shall be provided.

Your grievance is denied.

9/28/88. John Gray, representing the Union wrote to Mark White, Teaching Supervisor, as follows:

Concerning the fog plan, we believe that an organized plan with a roster of all employees should be used on a rotational basis so that everyone at this institution can do their fair share.

Presently, only one or two groups of employees from two departments are doing all of the fog plan duty. As part of the team at R.C.I., we believe that it takes the entire team to make teamwork succeed.

10/5/88. Supervisor White wrote Dr. S.D. Davis, as (in part) follows:

Over the last week we have been fogged in many days, or parts of them. My staff, or at least part of them have served on fog watch each time. This is our duty and I believe my staff will agree. However, we seem to be among the few who are consistently called upon for this vigilance.

My staff have filed one (1) grievance prior to this week based on fog duty. It was denied with specifications:

- 1). All must serve.
- 2). They must be trained.

This seemed fair. However, when we were the only ones over on interior watch they became irritated. They wanted to file another grievance, however, after my talking with you, then talking with them, we were able to strike a compromise that they would submit to.

10/6/88. Supervisor White sent the following memo to L. Brown, L.R.O.

Please be advised that in the future, every reasonable effort should be made to applied fog duty assignments, uniform to all affected employees within bargaining unit 10. This is per grievance #27-23-(9-21-88)46-06-10, step two response.

12/7/88. James C. Spain issued a Step 3 response for Step 3 hearing held on 11/4/88. That response said in part:

Your representatives cite alleged contractual differences with Article 14.02.

Facts

Ross Correctional Institution does use teachers to supplement correctional officers to perform security related tasks during "fog watch" and "shake down".

Union's Position

Your representatives feel a teacher is not a custody officer and should not be used at any time to do custody work. You also feel that your job description does not include custody functions.

In remedy you ask that this practice of using teachers for custody work stop.

Discussion

Ross Correctional Institution explains that in a paramilitary setting such as a correctional facility

everyone's main concern is security. Everyone's job description includes other related duties as required.

Finding

All employees of the Department of Rehabilitation and Correction may at some time be asked to do custody work. This fact is a condition of employment.

Your grievance is denied at Step 3.

12/30/88. The Union requested Step 4.

1/20/89. Step 4 denied the Grievance.

1/26/89. Arbitration was requested.

8/15/89. Ross Correctional issued an IOC on Fog Procedure:

310-1500-16

Monday through Friday, available qualified employees, the majority of whose normal duties involve working with inmates who will not be available during fog procedure will be utilized by the Fog Commander to staff fog posts.

As far as practicable, all employees will be assigned on a rotation basis to eliminate repetitious fog duty, and dates assigned will be logged on the R.C.I. fog roster. Both exempt and bargaining unit employees from the following departments will be utilized for fog duty:

- School (Academic and Vocational)
- Psychological Services
- Recovery Services
- *OPI
- Recreation
- Maintenance
- Commissary
- Laundry
- Quartermaster

*When they do not have an approved out-count.

When fog procedure is in effect, these employees will be required to report to the fog commander in the Employee

Break Room in B-Building for possible post assignment prior to reporting to their regular assigned work area.

8/22/89. Grievants Sean Barbey and Herman Clark, et al., of Marion Correctional Institution, filed the following grievance:

We were ordered by management to patrol the outer perimeter fence and relieve CO2's who were on patrol of the perimeter fence at the time, this incident occurred on Wednesday, the 16th of August 1989 at 7:30 AM and violates the teachers' contract with the State of Ohio.

Articles cited were as follows:

1.01, 1.02, 1.03, and any other pertinent articles or contract language and not to exclude the right of employee's to grieve arbitrary changes in working conditions.

The Remedy sought was stated as follows:

That affected employees be granted pay at two times the normal rate and that they be paid for loss of plan time and any other entitlement by contract (to be made whole). And that management desist in any and all contract violations.

8/31/89. Dean Millhone, Labor Relations Coordinator, issued a Step Two (2) response which awarded pay for missed planning time but denied the rest of the Grievance.

10/23/89. Hearing officer James C. Spain issued a Step 3 response to the Step 3 hearing held 10/11/89 which read in pertinent part as follows:

Union's position

You present that teachers are not security officers and performing fog watch is outside your classification.

In remedy you request double time for two and one half hours of fog watch and that teachers no longer be required to work outside their classification.

Discussion

Management does concede that due to the fog watch Mr. Green did not have his 45 minutes planning time. The step 3 hearing officer has awarded Mr. Green this 45 minutes straight time reimbursement.

Management does maintain that security is everyone's first priority. When fog watch is implemented students are locked down and teachers are idle. Management requested teachers to stand security fog watch as is provided in their position description under security.

Finding

A recent settlement between OEA/SCOPE and the state of Ohio reads as follows:

- a. Security duties are every employees responsibility within the institution.
- b. Correction officers will be utilized first for fog watch duty.
- c. If it becomes necessary to utilize any other classifications, assignments will be made on a rotating basis.
- d. Employees covered by SCOPE/OEA negotiated agreement will not be the only classification used for fog watch duty.
- e. Any issue surrounding fog watch i.e., assignment, training, equipment is a subject for discussion at Labor/Management Committee.

Your grievance is granted to the above terms, but is denied the double pay as requested in your remedy.

12/7/89. Arbitration requested by Union.

Facts

The contract between State Council of Professional Educators (SCOPE) OEA and the State of Ohio covers teachers and librarians working in various state agencies. These grievances arise from teachers working for the Ohio Department of Rehabilitation and Corrections (ODRC). ODRC operates 22 penal institutions. These grievances arose from Ross Correctional Institution (RCI), a medium security prison, and Marion Correctional Institution (MCI), a close security prison (Union Exhibit #1). RCI is a relatively new facility which opened subsequent to the signing of the 86-89 contract; MCI is an older institution, operating for many years prior to the 1986-89 contract. Teachers at both institutions are hired to teach inmates (Union Exhibit #13). "Teach English . . . to inmates in approved institutional programs." All employees of ODRC are required to attend three weeks of consecutive training at the Corrections Training Academy (Union Exhibit #12). Further training is done within each institution on a regular basis. All Grievants attended the Training Academy or its equivalent (Employer Exhibit #2). Training included unarmed defense and numerous less specific security matters. Inservices also covered unarmed defense and security issues (Employer Exhibit #2). Classification Specification 69621-69624 (Union Exhibit #4) covers Teachers 1-4 in rehabilitation and Corrections; the Specification makes no mention of security issues or work.

Fog watch is stood at those ODRC institutions which, because of their geographic location, experience fogs sufficient to jeopardize security. Some institutions because of location and type of buildings do not have security problems because of fog. During a fog, an institution with Fog Watch is in a lock-down phase. Inmates are confined, and a count is conducted every 2 hours. Fog posts are maintained both inside the perimeter and outside the perimeter. During a Fog Watch, inmates are confined to their quarters and therefore, may not attend class. Teachers may not and do not conduct classes during that time (Union Exhibit 3). Testimony by Grievant Perdue indicated that teachers at Marion had stood fog watch prior to the implementation of the 86-89 contract.

Union's Position

1. The Classification Specification makes no mention of security-related duties. Therefore, to assign a teacher to Fog Watch, works the teacher out-of-classification.

2. The position description which does mention "other related duties" (Employer Exhibit) must stay within the classification specification. Therefore, the Classification Specification controls.

3. "Other related duties" can only be interpreted as "educational" duties.

4. The side letter of May 19, 1988, page 86 of the

contract, defines "related duties" to mean "conferences, curriculum developments, testing and treatment team assignments." Therefore, "related duties" only includes educational duties.

5. Job postings for Teachers at ODRC do not mention security duties. Therefore, no security duties are involved in a teacher's job.

6. Article 1.02 provides for Union to be the sole negotiator. Assigning teachers to Fog Watch out of their classification is a modification of Article 7.04 on Weather Emergencies. Such a modification was not bargained and hence is invalid.

7. Fog plans are work rules under Article 14.01. Such work rules were not furnished to the Union nor applied uniformly.

8. Assignment of teachers to Fog Watch does not promote cooperation and harmonious labor relations and violates Section 1.01.

Employer's Position

1. The Union should not be permitted at arbitration to raise Articles of the contract which were not previously cited as violated. Specifically, Articles 7.04, 15.03, and 17.01 were not raised below.

2. The Union is seeking to gain through arbitration that which the Union was unable to achieve at the bargaining table.

The use of teachers on Fog Watch is a long standing practice at institutions location and institutional structure require such a procedure. Nowhere in the contract is such a procedure forbidden. In fact, at negotiations the Union introduced a section which would have forbidden use of teachers in Fog Watch. (See Employer's exhibit E-5 and Testimony of C. Mallot, Union Officer.) The section was not obtained.

3. Prior arbitrations have settled the issue of the meaning of the Side Letter and the relationship of security work to the jobs of correction's employees not directly involved in security. To re-arbitrate these issues unnecessarily has caused the Employer expense in both time and money.

4. Standing Fog Watch does not subtract from the planning time of teachers.

5. Teachers may be assigned to Fog Watch. All employees of ODRC have security responsibilities inherent in their positions. All employees, regardless of their classifications, are trained and inserviced on security issues. A Fog Watch is an unpredictable non-routine occurrence which necessitates enhanced security procedures for the duration of that time period. Teachers are not routinely assigned to security duties; however, teachers may be assigned to assist with security when an unpredictable event, such as fog, occurs.

Discussion

The Employer raises the procedural issue of fairness with regard to allegations of new contract violations for the first time at the Arbitration hearing. For reasons of fairness encompassed by the due process concept embodied in "just cause," neither party may raise new issues (allegations) at an Arbitration. However, raising new contract sections is not forbidden unless such sections are used to raise new issues. In the original Grievances, the grievance form listed certain specific contract Articles plus such other sections as may be pertinent. A contract must be read as a whole. Sections to be interpreted must be read consistently, where possible, with all other sections. Therefore, raising other contract sections is permissible where relevant. The Employer alleges that sections 7.04, 15.03 and 17.01 were improperly raised.

The Arbitrator finds that 7.04 was improperly raised because 7.04 is unrelated to the issues at hand. A Weather Emergency per 7.04 relates to the designation of employees as "essential" for call-in purposes during Weather Emergency. While a fog creates an emergency within the institution and fog is a weather condition, the issue in this case concerns the proper utilization of employees already within the institution when emergency (non-routine) security measures are needed.

Section 15.03 is also improperly raised. This section raises a different issue. The grievances did not allege below a reclassification or different pay rather they alleged that a particular task was "out of the classification."

Section 17.01 contains definitions which have some relevancy and which are necessary to contract interpretation.

This case requires contract interpretation. The task of the Arbitrator is to interpret the contract not to impose her own values or even preferable solutions (Articles 6.06 and 6.07). To allow evidence of prior negotiations to influence contract interpretation, ambiguity must be shown. The body of the contract does not speak specifically to the issue of whether teachers may be assigned to fog watch. In fact, the body of the contract through the management rights section 3.01 would lend credence to the Employer's position. However, the Side Letter (p. 86) speaks directly to the issue by discussing "related duties of teachers." The "related duties" section is ambiguous, and this Arbitrator could pursue her own independent analysis. The Arbitrator recognizes that prior arbitrations are not binding. However, when prior arbitrations have so thoroughly and persuasively dealt with an issue, independent analysis is unnecessary and duplicative. This Arbitrator adopts the interpretation of Arbitrator Gerhart of "related duties." Arbitrator Gerhart found that the Side Letter related solely to routine duty assignments. The restriction is clearly intended to govern time during the regular work day

when the teacher is not scheduled to be in the classroom.

The question in this case is duty during a fog, a non-routine event. Again, the words of Arbitrator Gerhart are directly applicable:

The situations with which the Arbitrator is here concerned are not normal or routine. Although they may occur with greater regularity than one would hope, they are not planned into the regular schedule, nor are teachers frequently or regularly assigned [such] . . . duties. Rather these assignments arise out of extraordinary . . . [events]. For these reasons, . . . the side letter of May 19, 1986, is not relevant to the case.

In another case, Arbitrator Gerhart dealt with a strikingly analogous issue for teachers in prisons. The Arbitrator found permissible unexpected security work (i.e. shake-downs) but found routine (non-security) work to be violative of the contract (i.e. mail room work).

This Arbitrator finds that requiring teachers to stand fog watch for security purposes does not violate the contract. Fogs are unpredictable security emergencies. While routinely teachers are assigned to teaching qua teaching, teachers in prisons inherently operate in a different situation than other teachers. Moreover, teachers hired by ODRC are clearly on notice about their security responsibilities. First, the job posting lists ODRC as the employer and "inmates" as the students. Second, the job posting explicitly requires three (3) weeks training for all employees prior to beginning work. This training is primarily

focused on issues specific to prisons with a majority of time going to security matters including unarmed defense. Moreover, once on the job, the teacher is inserviced on security issues. More importantly, a prison teacher does things in a prison classroom appropriate solely for security. The Greivants themselves admitted "monitoring" students, sitting on discipline boards, etc. The policy of ODRC is that all employees must be security minded. Security protects not just the public but the teachers as well. In the best of all worlds, teachers could focus solely on "teaching." However, teachers at ODRC institutions are clearly on notice that they are part of a security team, albeit not on the front line.

The Union has said that the Classification Specification does not mention specifically any security duties. This observation is correct. However, the teacher is hired for the Department of Rehabilitation and Correction which is specified on the Classification Specification. The teacher is on notice that he or she is not entering a public or private classroom for children. The primary mission of prisons is to hold criminals in custody. While in custody, rehabilitation through education is also mandated. Such education, of necessity, is carried out in a custodial context.

This decision does not decide questions of uniformity of application nor availability of training. The issue presented at Arbitration was narrowed to cover only the assignment issue. The

Arbitrator would comment that the plan as put forth on 8/15/89 appears to ensure uniformity. Moreover, the need for adequate training is crucial and important; lack of such training would fall under safety issues.

Lastly, the Arbitrator has not fully delineated the underlying rationale of this decision specifically because three (3) previous arbitrations directly on point cover all areas in depth and with clarity. (The grievances are (1) #G87-0549 and G87-2113 (Gerhart) (3-3-89), (2) G87-2884(5-18-88) (Drotning), and (3) G86-0931(9-8-87) (Gerhart). The discussion sections of these grievances are attached.)

Award

Grievances denied.

August 27, 1990
Date


Rhonda R. Rivera