

parties mutually agree to submit the dispute to the State Employment Relations Board for resolution."

The Grievant, who is also a teacher at MVDC, filed the grievance because she felt that the new classification of Vocational Habilitation Specialist 2 was work that could be within the job description of her bargaining unit. She referred to an MVDC work sheet, which outlines goals, objectives, client staffing, assessment tools for various levels of mental retardation, progress reports, and yearly assessments. This form is used by her as a teacher. It is also in use by Vocational Habilitation Specialists. The Grievant states that 95% of the work done by the Grievant is contained in that work sheet.

The Grievant pointed out nine teachers who have left MVDC or were promoted and are out of her bargaining unit. Of the nine who have left, only two have been replaced by teachers. Three Vocational Habilitation Specialists have been hired. The Grievant states that these Vocational Habilitation Specialists are doing the same or similar jobs as teachers. Prior to this grievance, MVDC did not meet with the Grievant, a union site representative, to discuss this matter.

On cross-examination, the Grievant acknowledged that none of the nine teachers in question were laid off. She further stated that she was not aware of teacher recruiting efforts by MVDC. Grievant, however, cited a teacher who was a swimming instructor. When the pool was closed, this teacher was given another caseload. Now that the pool is reopened, the position went to a Vocational Habilitation Specialist. It should be noted that Vocational

Habilitation Specialists are represented by the Ohio Health Care Employees Union, District 1199.

The Grievant is certified in MSPR English, elementary school aged children from one to eight years of age, and Social Studies. She is certified to teach the mentally retarded from ages five to twenty-two years. The Grievant is currently not teaching this age group. She says that she teaches adults. During the Grievant's tenure at MVDC, there have been as many as eighteen teachers. Now there are approximately thirteen. She acknowledged, that there are fewer clients between the ages of five and twenty-two years at the present time than there were several years ago. The total number of clients exceeds three hundred.

In sum, the Grievant states that she filed her grievance in April of 1990, when she first became aware of the new classification for Vocational Habilitation Specialist 2, which would have placed such hires in a different bargaining unit from that of her Union. Therefore, it is required by MVDC to allow for a meeting to resolve the dispute, since, in the Grievant's view, this classification is arguably within the Grievant's bargaining unit.

POSITION OF MVDC

Dennis Luna, program director at MVDC since 1975, stated that he supervises 400 employees, including the professional staff there. He is involved with programatic approaches reflecting the change of the client population at MVDC. He is also charged with the responsibility of meeting standards set by Medicaid and other federal and state guidelines.

Mr. Luna testified that MVDC has a client population of 358 residents. Only eleven of such clients are between the five to twenty-two years of age group. He stated that MVDC's mission is to train residents so that they can return to their communities. The population ranges from severely and profoundly mentally retarded to borderline retarded. Training programs exist at MVDC, as well as psychological services for the residents. Job training and recreation are also part of the programs available.

Mr. Luna stated that the Federal Government mandates that the gamut of living experiences must be covered in order to insure federal funding. Because of the change of demographics, the average age of the residents of MVDC is thirty-four years. In 1973, there were 465 residents, 145 of whom were between five and twenty-two years. Now, there are only 11 school-aged residents and there are 347 adults. The school-aged residents are under the jurisdiction of the 169 Board. There are no school units currently on the grounds at MVDC.

Because of the change of demographics, Mr. Luna stated that MVDC must adapt its philosophy of "age-appropriateness." This means that "because the population is overwhelmingly adult, MVDC must engage in training these adults to do adult things." Thus, the vocational aspect of MVDC's training takes primacy. One-fourth of MVDC's residents are fifty years of age or older. The Center is developing a retirement community as a further aspect of the living experience mandated by the government.

Mr. Luna stated that MVDC began to look at other classifications in order to train the adult population. The

classification of Vocational Habilitation Specialist 1 already existed on the grounds. MVDC looked at the state's specifications to determine what job training had to be done. Mr. Luna matched the duties at MVDC with appropriate duties for existing state classifications. A position description was developed by Mr. Luna, which was posted. This position description was submitted to the Department of Administrative Services, which determines the classification. DAS classified this position as Vocational Habilitation Specialist 2.

Mr. Luna acknowledged that the union was not consulted; however, he stated that he was not aware of any requirement to consult with the union on a matter such as this.

Meryl Price, Chief of Administration Support at the Office of Collective Bargaining, is a liason with DAS. She testified that the classification specifics for Vocational Habilitation Specialist 2 sets forth a general description of duties for that position specific to mental retardation and developmental disabilities. She stated that the contract between the state of Ohio and 1199 includes the classification for Vocational Habilitation Specialist 2. This description was in effect since March 29, 1987.

Ms. Price noted that the posting of the position description is not a "new classification" because the position of Vocational Habilitation Specialist 2 was in existence since March of 1987. Therefore, no contact with the union was required, inasmuch as this classification was within the jurisdiction of District 1199.

To summarize, MVDC argues that no violation of the contract between the state of Ohio and the Union occurred. Article 3 of the

contract gives MVDC the right to create a position within an existing classification. Specifically, Section 3.01 of the contract states, in pertinent part, that ". . . 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"

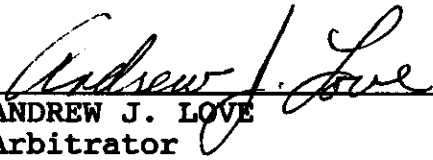
This "inherent right" of management, it is alleged, enables MVDC to take the action it felt to accommodate the changing demographics and age grouping of its resident clients.

DECISION

From the evidence adduced from the witnesses and exhibits, as well as the contract between the state of Ohio and the union, this arbitrator rules that MVDC did not violate the contract. The existence of the Vocational Habilitation Specialist 2 position at MVDC began in 1987. If the description of those duties was arguably within the bargaining unit of the union, a meeting should have been called by the union with MVDC in 1987. It was not. It was a bargaining unit classification of District 1199. Furthermore, this arbitrator is of the opinion that MVDC's mission has been altered to accommodate an aging population. As such, the number of teachers of school aged residents (five to twenty-two year of age) has dwindled. The necessity of providing job training and social skills for an older, adult population within MVDC is important, not only from the standpoint of its philosophy, but also from the standpoint of maintaining compliance with state and

federal government. This compliance by MVDC, in order to meet the needs of its population, are clearly in accord with Section 3.01 of the contract between MVDC and the Union. Moreover, as the Grievant testified, no teachers were laid off. Rather, they either left MVDC or were promoted.

Accordingly, the Grievance is DENIED.



ANDREW J. LOVE
Arbitrator

ARBITRATION DECISION

In the Matter of:


Susan May,

No. 24-09-890425-0200-06-10

ADDENDUM

In preparing the above decision denying the grievance, this arbitrator inadvertently omitted the following language:

The classification of Vocational Habilitation Specialist II should therefore be subject to resolution between the Grievant and MVDC through the State Employee Relations Board. The decision to deny the grievance should be construed only as to the evidence presented related to this specific grievance.


ARBITRATOR