

Andrew J. Love
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

#571
Grievants:
Sandra Price
Sally Yacher

28-01-90026-0002-0272

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

Rick Kepler, Labor Representative

The hearing in this matter was held on November 14, 1990, at the Office of Collective Bargaining, 65 E. State Street, Columbus, Ohio. The parties were afforded a full and fair opportunity to present evidence, examine and cross-examine witnesses, and make arguments supporting their respective positions.

ISSUE

Did the employer violate the collective bargaining agreement when it reassigned Parole Services Coordinator Sally Yacher to work for a supervisor in Canton, Ohio Unit I of the Adult Parole Authority?

STATEMENT OF THE CASE

The arbitration of this dispute proceeds pursuant to the collective bargaining agreement between the parties, which took effect on June 12, 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 and post-sentence investigations. The Adult Parole Authority is divided into six regions throughout the State of Ohio, and there are 49 Units in the State of Ohio which are overseen by a parole services supervisor. In each unit there is a parole services coordinator who coordinates the work over the other parole officers within the unit.

Prior to Autumn, 1987, the Canton District Office had three work units located there. Unit 1 had a parole services supervisor, a parole services coordinator and four parole officers. Canton Unit 2 had a parole services supervisor, two parole services coordinators and eight parole officers. The reason for the numerical disparity of Units I and II was because Unit II

supervised officers of a satellite unit in New Philadelphia, Ohio. Canton Unit III included a parole services supervisor and a parole services coordinator, and four parole officers. Canton Unit 3 operated out of both Canton and Akron, Ohio. These three Units were part of the Akron region.

In November, 1987, the Adult Parole Authority reorganized the Akron Region in an effort to balance unit assignments and distribute the workload among the units in the region more equitably. One effect of the reorganization was the renaming of Canton Unit III to New Philadelphia Unit I. The supervisor of the former Canton Unit III, Stan Krawson, assumed the supervision of the parole officers in New Philadelphia. Evelyn Cooper, Krawson's senior officer remained as his lead worker. Ms. Cooper's headquarters remained in Stark County. From there, she performed duties both in Stark and Tuscarawas Counties. Canton Unit II was therefore reduced from eight parole officers to four parole officers, but it still had two senior officers. An imbalance was created because too few senior officers were working for too many parole services supervisors.

In December, 1989, however, senior officer Evelyn Cooper retired. At about the same time, the Adult Parole Authority had recently created a work unit in Richland County. This unit did not have a senior officer position assigned to it. After Ms. Cooper's retirement, her position (with the same position control number, 9208.0) was moved to Richland County. This left three senior officers in Stark County and three unit supervisors.

At this point, David Slater, the senior officer for Canton

Unit I, and also the most senior person in his classification at that work site, expressed an interest in working for New Philadelphia Unit I, whereupon he was reassigned to work for Mr. Krawson in the latter unit. There remained, however, two senior officers in Canton Unit II, and the Adult Parole Authority felt that one of them needed to be assigned to Canton Unit I to create a proper balance of senior officers vis-à-vis parole officers. Neither of these senior officers in Canton Unit II wished to be reassigned to Canton Unit I. The grievant, Sally Yacher, was assigned to Canton Unit I, because she was the least senior of the two. Her position control number of 7342.0 and her office and headquarters remained at the Canton District Office in Stark County.

POSITIONS OF THE PARTIES

Union Position

The Union argues that Article 30 of the Collective Bargaining Agreement (Vacancies) is the controlling language of the contract which should have been applied to the filling of the Senior Officer's position in New Philadelphia Unit I. Rather than reassigning grievant Yacher on the basis of her lack of seniority, the Union argues that this job should be posted at the level in the classification series of the employee who left the position. The Union argues that the Adult Parole Authority did not fill the vacated position of retired Senior Officer Evelyn Cooper in accordance with Article 30 of the contract.

Management Position

The Adult Parole Authority relies on Article 5 of the Contract, as well as R.C. Section 4117.08 (C)(1) as the basis for asserting management rights. Specifically, the Adult Parole Authority asserts that the need to maintain the standards of quality and work performance could be maintained only by the reassignment of the least senior person (Grievant Yacher) and protect her employment position while not relocating her. While admitting that a vacancy existed upon Evelyn Cooper's retirement, the Adult Parole Authority argues that it rightfully relocated the vacancy for the efficient and cost-conscious management of the workplace and posted and selected for the vacancy in accordance with the collective bargaining agreement. The Adult Parole Authority states that, although the three senior officers remaining in the Canton office were reassigned, said officers retained their position control numbers, their office location remained the same, and that seniority was one of the most important factors considered in making the reassignments.

TESTIMONY OF WITNESSES

The Grievant Sally Yacher testified that she has been employed by the Adult Parole Authority for sixteen years. She was promoted to Senior Office in 1986 in Canton Unit II. As a result of a person retiring in 1986, the position which the grievant attained was a posted position.

Ms. Yacher stated that the duties of the Senior Officer

includes mainly probation work with the courts. The Senior Officer is responsible to the staff and is also a case review analyst. In addition, the Senior Officer signs reports when the Supervisor is unavailable.

Ms. Yacher stated that the relocation of the Senior Officer in the Canton district left her concerned about "not knowing where to report to next," since she had no say in her transfer from Canton Unit II to Canton Unit I.

Sandra Price, a Probation Officer with the Adult Parole Authority in the Canton district, testified that she is a delegate for the Union. She stated that she was not informed by management of Grievant Yacher's transfer, except by memo. When Grievant Yacher was moved to Canton Unit I, her caseload was distributed to the remaining officers in Canton Unit II.

Grievant Price expressed concern that, without posting positions, Probation Officers do not have a say as to whether they wish to apply for such positions. With posting, she stated, an officer has the option to bid on that position. She did state, however, that the duties of David Slater were unchanged, although he was reassigned.

On cross-examination, Grievant Price acknowledged that there was a realignment of the Akron Region in 1987, which was designed to overcome certain imbalances in respect to the handling of probationers and the courts in region. However, she stated further that this realignment resulted in a class action grievance.

Jay Denton, a Deputy Superintendent of the Adult Parole Authority, Probation Development Section, described his duties as

investigation involving pre- and post- sentence investigations. He covers six regions throughout the state, which constitute fifty-three units.

Mr. Denton stated that he was familiar with the reassignment of Senior Officers in Canton, Ohio. Prior to this reassignment, Canton Unit III handled all post-sentence investigations in the Canton and Akron area. Meanwhile, Canton Unit II's responsibilities had grown to Stark and Tuscarawas Counties. There was a subsequent reclassification of an additional senior office, as indicated in the Memorandum to the Adult Parole Authority, as exhibited by Employee Exhibit 1. This added another Senior Office in Canton Unit 2, because there were nine parole officers in the unit and the unit cannot have more than eight parole officers under the supervision of one senior officer. Approximately five years later (1985), officers' duties changed from investigation to investigation and supervision. Mr. Denton stated that the effort of reorganizing the Akron region was to correct the imbalance as identified in Employer Exhibit 1. The effect, after several years, however, cut the number of Parole Officers in Canton Unit II from eight to four in number. There were still two Senior Officers in Canton Unit II supervising only four officers. When Evelyn Cooper announced her retirement, her vacant position was transferred to Mansfield, which needed a Senior Officer. The Position Control Roster, as identified by Employer's Exhibit 2, shows that that Position Control Number was transferred to Mansfield upon Ms. Cooper's retirement and subsequently occupied by Lee Sampson in Richland County, the point of transfer of the Position Control

Number. Mr. Denton further stated that the Ohio Department of Administrative Services approved the reassignment of the position to Richland County from Stark County, and this position was posted. Mr. Denton stated that David Slater advised him that he wanted to work in the New Philadelphia Unit which was approved. Mr. Slater's Position Control Number and office location (Canton) remained the same. Although Mr. Slater provides services in Stark and Tuscarawas Counties, he remains headquartered in the same Canton office. Mr. Denton stated that Grievant Yacher took Mr. Slater's place, because she was the least senior officer.

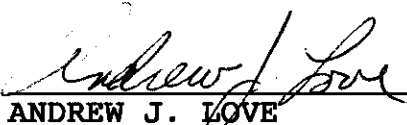
In Mr. Denton's view, the transfer of Grievant Yacher from Canton Unit II to Canton Unit I does not violate the contract. He stated that there would be a contract violation if the Grievant were headquartered outside of the Canton office without her approval, because it would violate Civil Service laws. In this case, Grievant Yacher was not transferred from the Canton office and kept her position control number. Mr. Denton further stated that the Adult Parole Authority asserted its management rights as a basis of the reorganization. He further testified that, had the Adult Parole Authority not done what it did, Ms. Yacher would have been laid off, because she was the least senior officer.

Grievant Yacher was recalled and testified that, as a result of her transfer to Canton Unit I, she is now doing more parole work rather than the probation investigation work she had done in Canton Unit II.

DECISION AND AWARD

From the evidence adduced, this arbitrator is persuaded by the argument of the Adult Parole Authority. In this instance, the reorganization, as previously discussed, created an imbalance in Canton Unit II, which left the Adult Parole in an untenable position. The only option available, short of laying off Grievant Yacher, was to reassign the least senior officer (Grievant Yacher) to Canton Unit I. In so doing, the Adult Parole Authority did not (and could not) relocate Grievant Yacher from the Canton office or change her position control number. Nor did it change her duties as defined within that position control number. The only difference is that Grievant Yacher's client base is more in the area of parole work than probation work. Nevertheless, it is still inclusive of her duties under her position control number and her position as a senior officer. Moreover, this Arbitrator finds the Adult Parole Authority has the "inherent rights and authority to manage and operate its facilities and programs" in accordance with Article 5. This is a unique circumstance, insofar as a vacancy was created upon the retirement of Evelyn Cooper. Again, however, this vacancy was relocated for purposes of efficiency and cost-conscious management of the workplace, in that case, Richland County. The position was posted for Richland County, and one Senior Officer requested that position out of the Canton Area into Mansfield. The resultant imbalance essentially left Grievant Yacher and a Senior Officer with greater seniority to be reassigned to Canton Unit I. Neither of these Senior Officers wanted to be reassigned to Canton

Unit I. The uniqueness of this situation is that there were too many Senior Officers in Canton Unit II and that, without reassigning one of the two such senior officers to Canton Unit I, the least senior of the two officers would be without a job. Therefore, posting the position, pursuant to Article 30 of the Contract, would not solve the problem of efficiency of work performance and job protection of the Grievant Yacher. As this Arbitrator stated earlier, this is an unusual circumstance where the evidence shows that the Adult Parole Authority was protecting the job of Grievant Yacher without changing her position control number of duties or office location. Thus, under these circumstances, management rights, as defined by Article 5 of the Contract and R.C. Section 4117.08 takes primacy. Accordingly, the Grievance is DENIED.



ANDREW J. LOVE (LOV04)
Arbitrator

DATE: March 6, 1991