OCB-OCSEA VOLUNTARY GRIEVANCE PROCEEDING
ARBITRATION OPINION AND AWARD

#583

In The Matter of Arbitration
Between:

THE STATE OF OHIO
Department of Mental Health
Oakwood Forensic Center

-and-

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, OSCEA/AFSCME
Local Union 11

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* Case No 23-12(90-02-23)0183-01-03
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* Decision Issued:
* April 21, 1991
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APPEARANCES

FOR THE STATE

Rodney Sampson	State Advocate
Rachel Livengood	Assistant State Advocate
Teri Decker	Labor Relations Officer
Rick Mawhorr	Labor Relations Officer
Jessica Byrd	Asst. Deputy Director
N. Eugene Brundige	Witness

FOR THE UNION

Linda Fiely	OCSEA General Counsel
Bruce Wyngaard	Arbitration Director
Marianne Steger	Deputy Director
Bob J. Rowland	Staff Representative
David Sloan	Grievant
Don Wasserman	Witness

ISSUE: Article 18: Protest against displaced supervisor bumping into Bargaining Unit.

Jonathan Dworkin, Arbitrator
P.O. Box 236, 9461 Vermilion Road
Amherst, Ohio 44001

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 583

OCB GRIEVANCE NUMBER: 23-12-900223-0183-01-03

GRIEVANT NAME: SLOAN, DAVID

UNION: OCSEA/AFSCME

DEPARTMENT: MENTAL HEALTH

ARBITRATOR: DWORKIN, JONATHAN

MANAGEMENT ADVOCATE: SAMPSON, RODNEY

2ND CHAIR: LIVENGOOD, RACHEL

UNION ADVOCATE: FIELY, LINDA

ARBITRATION DATE: DECEMBER 7 & 14, 1990

DECISION DATE: APRIL 21, 1991

DECISION: DENIED

CONTRACT SECTIONS AND/OR ISSUES: DOES THE COLLECTIVE BARGAINING AGREEMENT INSULATE COVERED EMPLOYEES AGAINST BUMPING BY DISPLACED SUPERVISORS?

HOLDING: "ART. 18.03 EXPANDS BUMPING RIGHTS TO "SIMILAR OR RELATED CLASS SERIES". SUPERVISORS CAN BUMP INTO THE B/U, BUT IT IS A TWO-STEP PROCESS. ONCE THEY CROSS THE LINE BETWEEN EXEMPT AND REPRESENTED EMPLOYMENT THEY STAND AS UNIT EMPLOYEES ON LAYOFF--WITHOUT POSITIONS. THEIR RIGHTS ARE THE SAME AS, AND NO GREATER THAN, ANY OTHER LAID OFF UNIT EMPLOYEE....IT DOES PROVIDE THEM ACCESS TO JOBS HELD BY LOWER-RATED INDIVIDUALS WITH LESS SENIORITY IN A SIMILAR OR RELATED CLASS SERIES. ORC 4117.10(A) INCORPORATES CIVIL SERVICE LAW INTO THE CONTRACT AND PERMITS LAID-OFF SUPERVISORS TO CROSS INTO THE UNIT. ONCE THEY CROSS THAT LINE, THEIR RIGHTS ARE DEFINED BY THE AGREEMENT. "

ARB COST: $1,401.92

SUMMARY OF DISPUTE;
THE ISSUE

The issue in this controversy is whether or not the Collective Bargaining Agreement insulates covered employees against bumping by displaced supervisors. It focuses on the efficacy of public-sector bargaining in Ohio and tests the Union's (OCSEA) provision of job security for those it represents.

In February, 1990, the Ohio Department of Mental Health abolished two Psychiatric Attendant Supervisor 1 positions at the Oakwood Forensic Center. The duties were reassigned to Psychiatric Nurse Supervisors, and the incumbents were laid off. The abolishments were consistent with Oakwood's goal to reduce staff. Formerly, the Center was a long-term treatment facility for mentally ill prison inmates. As individual correctional institutions developed their own psychiatric units and better therapies became available, long-term care was less needed. Oakwood's focus changed. It turned primarily to short-term treatment, serving acute cases which individual prisons were not equipped to handle. The Center's objective was to stabilize patients and return them to the prisons as quickly as possible. The result was a marked decrease of patient population, and there was a concomitant reduction in the number of staff required to operate the program.

When it abolished their positions, the Department sent the Supervisors notice of their "rights." Included was an offer to permit them to bump into a lower position in their legal classification series. The letter stated in part:

> Because there are no available vacancies in your classification you may have the right to displace into an available Psychiatric Attendant vacancy or an employee with fewer retention points, in a same or similar class, as defined in the Department of Administrative Services Administrative Rule 123:1-24. If you cannot displace into a same or similar class, you may elect to displace an employee, with fewer retention points in your previous position held if you:
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> (1) held the class within the last five (5) years;
> (2) were certified in the classification;
> (3) still meet the minimum qualifications of the classification; and
> (4) have completed original probation period.

The "rights" outlined in the notice were consistent with Ohio's Civil Service Law as set forth in the OHIO REVISED CODE and OHIO ADMINISTRATIVE CODE.[1] The problem was that they implicitly

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[1] The statutes are long and complex. In essence, they establish a bumping chain bumping rights based on "retention points" (determined by a formula combining length of service and evaluation scores. The bumping succession is illustrated by the following language in OHIO REVISED CODE §124.324:

> (1) Each laid-off employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series; except that a laid-off provisional employee shall not have the right to displace a certified employee;
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> (2) Any employee displaced by an employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series; except that a displaced provisional employee shall not displace a certified employee. This process shall continue, if necessary, until the employee with the fewest retention points in the lowest classification of the classification series of the same appointing authority or independent institution has been reached and, if necessary, laid off.

authorized exempt employees to enter the Bargaining Unit and bump covered employees into lower-rated jobs, or out of work entirely. One of the displaced Supervisors exercised his statutory prerogative. He elected to take a position as Psychiatric Attendant Coordinator. The job belonged to a member of the Bargaining Unit, who was forced to move down into a Psychiatric Attendant position at a wage reduction of $.78 per hour. He commenced this grievance which was appealed to arbitration.

The Union contends that its Agreement with the State does not permit the Unit to be invaded by displaced exempt employees. Article 18 of the Agreement determines layoff-bumping rights and, according to the Union, its provisions are intended to apply to members of this Unit exclusively. The Union maintains that neither members of other bargaining units, nor supervisors, nor exempt employees can seize OCSEA-represented jobs, regardless of Civil Service Law. Article 18 states in pertinent part:

ARTICLE 18 - LAYOFFS

§18.01 - Layoffs

Layoffs of employees *covered by this Agreement* shall be made pursuant to Ohio Revised Code Sections 124.321-.327 and Administrative Rule 123:1-04-01 through 22, except for the modifications enumerated in this Article.

§18.02 - Guidelines

Retention points shall not be considered or utilized in layoffs. Performance evaluations shall not be a factor in layoffs. Layoffs shall be on the basis of inverse order of state seniority.

§18.03 - Bumping in the Same Office, Institution, or County

The affected employee may bump any less senior employee in an equal or lower position in the same, similar or related class series within the same office, institution or county (see Appendix I) provided that the affected employee is qualified to perform the duties.

. . .

§18.05 - Limits

There shall be no bumping for Bargaining Unit 3 employees in the Department of Rehabilitation and Corrections. There shall be no inter-agency bumping. There shall be no inter-unit bumping except in those cases allowed by current administrative rule or where a class series overlaps more than one unit.

Does Article 18 exclude bumping from outside the Unit? In order to answer this question, the Arbitrator must look to specific provisions of State law as well as to the Agreement. While he generally concurs with the Union's contention that his role is restricted to interpreting contract language,[2] two portions of OHIO REVISED CODE, Chapter 4117 are incorporated into and inextricable from the parties' contractual undertakings. They literally cannot be ignored in this dispute. Chapter 4117 is the Ohio Public Employee Collective Bargaining Law. It was enacted in 1983 and

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[2] This view is reinforced by Article 25, §25.03 of the Agreement which states:

> Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement.

became effective in 1984. It required recognition of the Union as exclusive representative of this Unit, and led to the parties' first Agreement in 1986. REVISED CODE §4117.10(A) contains two clauses which are fundamental to the positions of both the Union and Employer. The first supports the Union's principal contention that the Agreement supersedes conflicting State law. It provides:

> An agreement between a public employer and an exclusive representative entered into pursuant to Chapter 4117. of the Revised Code governs the wages, hours, and terms and conditions of public employment covered by the agreement.
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> * * *
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> . . . Chapter 4117. of the Revised Code prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in Chapter 4117. of the Revised Code or as otherwise specified by the general assembly.[3]

The second clause is critical to the Employer's viewpoint that Civil Service statutes control this dispute. It is contended that the Agreement contains no language on whether or not laid-off supervisors can bump into Bargaining Unit jobs and, therefore, the question is governed by law. The argument comports with REVISED CODE §4117.10(A) which provides that statutes continue to regulate employment terms that have not been negotiated:

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[3] The statute lists exceptions such as civil rights, affirmative action, unemployment compensation, workers' compensation, residency, and educational laws, none of which are relevant to this case.

> Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to wages, hours, and terms and conditions of employment for public employees.

These statutory provisions refine and narrow the issue. The parties recognize that the pivotal question is whether or not the Union obtained contractual language restricting bumping to covered employees. If it did, the grievance will be sustained. If, on the other hand, State negotiators preserved Civil Service bumping rights for displaced supervisors, or the Agreement is silent on the matter, the grievance will be denied.

THE UNION'S ARGUMENTS

All of the testimony and evidence submitted in arbitration confirm that bumping rights were in the forefront of the parties' first negotiations in 1986. The Union's Chief Spokesperson was Don Wasserman, Bargaining Director of OCSEA's affiliate, the American Federation of State, County, and Municipal Employees (AFSCME). He appeared as a witness in the hearing and stated that Article 18 posed issues of momentous importance to both negotiating teams. It was the subject of lengthy discussions at the "main table" and at "side bar." Bargaining on layoffs and bumping was pointed and precise at times, involving exchanges by both sides. Wasserman characterized Article 18 as the "central piece" in discussions. When the tentative agreements were executed, he and

the members of his team felt assured that they had achieved several crucial goals. Among them was the reorganization of old Civil Service classification series into employment groups consisting of only OCSEA job titles.

Civil Service law refers to "class series," "related class series," and "similar class series." These are cryptic terms, too close in meaning to encumber this decision with discrete definitions. It is sufficient to observe that the displacement which generated this grievance met statutory guidelines. As contractual guidelines, on the other hand, the various class series included in the Bargaining Unit are set forth with precision in Appendix I of the Agreement. Appendix I is incorporated by reference in several Sections of Article 18.[4] It lists each covered job, and organizes the list by State units, position numbers, and class groupings. The positions at issue are listed in unit 3, group 1, as follows:

APPENDIX I

Classification Groupings - Bargaining Unit 3

1.	30211	Security Technician 1
	30212	Security Technician 2
	46111	Security Officer 1
	46112	Security Officer 2
	46113	Security Officer 3
	44141	**Psych Attendant**
	44142	**Psych Attendant Coordinator**

[4] Sections 18.03, 18.07, 18.08 (Recall).

The essence of Appendix I is that it limits bumping rights. It states who may bump whom and, coupled with §§18.03 and 18.05, restricts bumping among or between groups. The most important and critical support for the Union's position is that, unlike Civil Service class series, *Appendix I lists no supervisory positions.* Wasserman emphasized this fact, stating that the omission was intentional: "We made no pretense of speaking for supervisors or members of other bargaining units." He called attention to the fact §18.05 states that there shall be no inter-unit bumping. In other words, displaced members of other bargaining units were excluded from OCSEA jobs, regardless of their seniority or retention points. It makes no sense, according to Wasserman and the Union, that individuals represented by other unions would be denied bumping rights to OCSEA positions, but supervisors would not be subject to the same restriction.

Wasserman described Article 18 negotiations as "give-and-take." Concessions were made on both sides. He admitted that the Union lost some of its objectives, but asserted that it achieved others. For example, Union negotiators vigorously argued for inter-agency bumping rights. The State resisted and the proposal was withdrawn. But Wasserman claims he and his team were successful in erecting barriers to protect members against job encroachments from outside -- from other unions and exempt personnel. One of the reasons it was successful on this issue, according to Wasserman, was that the State had a compatible purpose. It wanted to put an end to the kind of "domino bumping" sanctioned under Civil Service regulations. He described the Union's bargaining stand on the question as follows:

> We certainly weren't going to permit members of other bargaining units [to bump] into our unit, and we certainly weren't going to let exempt people do it. There was discussion of it. The specific question was raised at the table -- about supervisors bumping into the unit. Our response was a flat "NO." We would never agree to it!

The Union strengthened Wasserman's testimony by submitting 1986 bargaining notes into evidence. They disclose a continuing pattern of statements by the Chief Negotiator making it clear that the Union would never accept anything less than the highest level of job protection for represented employees. Under no circumstance would it consent to even a return of supervisors to the Unit if Union-occupied positions would be jeopardized.

The Union also refers to Article 17 of the Agreement which establishes bidding procedures and rights to vacancies. The Article grants priority to Bargaining Unit members. Based on this Article, the Union contends that there is only one way for an exempt employee to enter the Unit, and it is definitely not through bumping:

> The Union submits that it does not argue that a non-bargaining unit person can never move to the bargaining unit position, it just argues that an exempt employee can never make such movement at the expense of the contractual rights of the bargaining unit employees. If after Article 18 and Article 17 have been exhausted for the bargaining unit employees and a vacancy continues to exist, the non-bargaining unit employee has the option of filling the position.[5]

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[5] Union brief, 8.

Obviously, the Union's theory that a displaced supervisor is entitled only to leftover Bargaining Unit jobs that no represented employee wants offers little to no relief for exempt employees caught in the Oakwood reductions. But the Union insists that it conceded no more in 1986 negotiations. It urges that the Agreement is not silent on the issue; it creates a bumping procedure making it impossible for exempt employees to intervene and take jobs away from Unit members. Accordingly, the Union requests that the grievance be sustained, and it asks for an unusual remedy:

> As a remedy, the Union requests that the non-bargaining unit employee improperly placed in the bargaining unit position be removed from the position and the bargaining unit employee . . . be reinstated to his position and be made whole with respect to all back pay, benefits, and seniority. Before such remedy goes into effect it is respectfully requested that the parties have an opportunity to meet and negotiate regarding the implementation of the appropriate remedy in this case in an effort to alleviate any great hardship to [the former Supervisor].[6]

THE STATE'S ARGUMENTS

The State's only witness was N. Eugene Brundige, former Deputy Director of the Ohio Department of Administrative Services and Chief of the Office of Collective Bargaining. He led the Employer's negotiating team in both 1986 and 1989. He agreed with Wasserman's

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[6] Union brief, 8-9.

statement that the layoff and bumping provisions were mutually recognized from the start as critical. He stated that the initial positions were so far apart as to create justifiable apprehension over whether or not an Agreement could be attained. The issues were many and intricate, and it was virtually impossible for all the permutations of layoff and recall to be predicted and dealt with in advance. The best the parties could expect to achieve was an outline sufficiently expandable to reach whatever the future might hold.

Brundige testified that Article 18 was fashioned in a "twelfth-hour" settlement during the last week of bargaining. The resolution took place away from the main table, in private discussions between him and Wasserman. Both Chief Negotiators were experienced in state government and thoroughly familiar with classification systems. They were knowledgeable of applicable Ohio laws and administrative statutes governing layoff rights. According to the Employer, "They were aware of the role the Code would play as they framed and drafted the article."[7]

Brundige agreed that some of the language of Article 18 reflected mutual goals. Both sides were intent on doing away with arcane, obsolete concepts which continued to plague Civil Service laws, rules and procedures. Neither saw value in preserving retention points or artificial geographical districts. Those were purged by the Agreement, as specifically set forth in §18.05.

A surprise (and relief) to the State's team was that no specific language was proposed by either side on the question of

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[7] State brief, 4.

whether or not supervisors would continue to have bumping rights into what would become represented positions. As indicated, the issue was profound and very much on the minds of both Negotiators. It was the subject of several heated discussions in which the Union insisted on job security, while the State took an unwavering position that it would not relinquish benefits on behalf of supervisors. The Employer could not afford to lose sight of the fact that supervisors, who were not parties or beneficiaries of the Agreement, would still retain legal rights which might be enforced on appeal to the State Personnel Board of Review or the courts. That was the main reason the State resisted a tentative agreement on Article 18; its negotiators demanded certainty that the very dilemma posed by this grievance would not occur.

Brundige testified that the impasse was broken at the end when Wasserman made a vital concession. The Employer's bargaining notes disclose what was said:

> **Wasserman**: . . . With respect to lay-off demotions with respect to Supervisors classes not jeopardize members of Bargaining Unit by bumping back into.
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> **Brundige:** Are you saying to us in cases where employee becomes supervisor from bargaining unit that he can never become a member of the bargaining unit again?
>
> **Wasserman:** Certainly not - for purposes of layoff, employees bump down into bargaining unit.

This was exactly what Brundige was waiting for -- assurance of the Union's understanding that nothing in the Agreement would be viewed as excluding bargaining unit jobs from lawful bumping by

laid-off supervisors. Wasserman had given him that assurance and he was then comfortable executing tentative agreement to Article 18. He felt that no additional language was needed, because the Preservation of Benefits Clause,[8] the law [4117.10(A)] and the broad Management Rights Clause protected the State's position. Additionally, the phrase in §18.05, "except in those cases allowed by current administrative rule," was viewed as verification that the rights of exempt employees would be safeguarded.

After hearing the State's witness, the Arbitrator was puzzled by the fact that the classifications and job groupings in Appendix I -- the guidelines indicating who could bump whom -- contained no reference to exempt employees. The list for unit 3, group 1, for example, included the two Psych Attendant Bargaining Unit positions, but no supervisory positions. With the parties' consent, the Arbitrator questioned the witness on this matter. If the Appendix was a guideline of permissible bumps, how could the State justify an argument that an individual whose job was not listed had bumping rights into unit 3, job group 1? The question was answered with an explanation that the Appendix was added after the Agreement was written. It was designed only to describe the scope and limitations of Bargaining Unit bumping rights, not to

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[8] Article 43, §43.02:

> To the extent that State statutes, regulations or rules promulgated pursuant to Ohio Revised Code Chapter 119 or Appointing Authority directives provide benefits to state employees in areas where this Agreement is silent, such benefits shall continue and be determined by those statutes, regulations, rules or directives.

detract from previous understandings about the rights of laid-off exempt employees.

In its post-hearing brief, the Employer argued that Article 18, §18.01 also supported its theory. The Section states that layoffs "of employees covered by this Agreement shall be made pursuant to Ohio Revised Code Section 124.321-.327 and Administrative Rule 123:1-41-01 through 22, except for the modifications enumerated in this Article." The Employer maintains that this provision makes the statutory process *and substance* contractual. It contends:

> There is no dispute . . .that the basis of Article 18 was pre-existing Civil Service Law and its incorporation by reference in Section 18.01 (emphasis added). There is no disagreement that Article 18 covers employees under the Contract. Therefore, the Ohio Revised Code serves as the basis of how layoffs would occur and what displacement rights would be for employees in [the] bargaining unit.[9]

The State argues that §18.01 manifests an intention to follow legal precedents and, therefore, to permit bumping exactly the same as permitted at law. Accordingly, it is argued, the parties contemplated and approved a class-series bumping concept which made no distinction between supervisors and represented employees.[10]

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[9] State brief, 5.

[10] The argument has been included to flesh out the Employer's stated position. In the Arbitrator's opinion, it is unwarranted. The contractual reference to the code explicitly applies only to Bargaining Unit members. Moreover, it is clearly procedural, not substantive.

OPINION

The Union's post-hearing brief cites several private-sector arbitral decisions which reflect a decided inclination to protect bargaining unit jobs against intrusions by supervisory employees. The decisions struck a cord of agreement. They are sound pronouncements for the private sector where "seniority" usually means "bargaining unit seniority," and arbitrators tend to recognize a clear-cut distinction between the rights of covered employees and the rights of management. Indeed, the Arbitrator frankly admits he experienced an involuntary preference for the Union's position while hearing this dispute; a preference derived from twenty years of private-sector experience.

While public-sector bargaining concepts resemble private-sector doctrines, it is a mistake to view them as identical. They are sharply different in major respects. Their roots and the reasons they came into existence are distinct. Bargaining in private industry grew out of a perceived need of employees to carve protections out of management's absolute authority. Bargaining in the State of Ohio did not have the same need, at least not to the same degree. When it came on the scene, protections were already in place in the form of long-standing Civil Service legislation. Admittedly, the laws were anachronistic and paternal, but they did provide essential insulation of employment.

More to the point, Ohio did not abandon Civil Service regulations when it enacted the Public Employee Collective Bargaining Law. The old law was too firmly entrenched in the State

system for that, and it was still the only shelter for classified employees who were not clothed with bargaining rights. The General Assembly permitted bargaining to amend the law for covered employees only to the extent that their representatives were successful in negotiating for amendments. It stated clearly in §4117.10(A) that any aspects of hours, wages, and/or employment terms not addressed in contracts would continue to be governed by "all applicable state or local laws or ordinances pertaining to wages, hours, and terms and conditions of employment for public employees." That provision necessarily altered some of the assumptions of experienced arbitrators. In the private sector, contractual silence might be presumed to insure bargaining unit seniority against outside encroachment. In Ohio, the opposite conclusion is required; where a contract makes no reference to a subject, it incorporates preexisting law.

Section 4117.10(A) brings the issues of this controversy into clear focus. Does Article 18 exclude bumping by laid-off supervisors? Section §18.05 is the fundamental provision. It sets forth the negotiated restrictions on bumping and stands as a measure of the extent to which the Union was able to reach its targets at the bargaining table. It is appropriate for the Arbitrator to dissect and examine it piece-by-piece.

The Union's principal witness stated that one of the mutual aims was to do away with "domino" bumping. The second sentence of the Section does that, at least partially, by forbidding interagency bumping. It states concisely, "There shall be no interagency bumping." Another goal was specific to employees of the Department of Rehabilitation and Corrections. They gave a directive

to the bargaining team that they wished to be shielded against shuffling and displacements. They got what they wanted in the first sentence of §18.05 -- "There shall be no bumping for Bargaining Unit 3 employees in the Department of Rehabilitation and Corrections." The Union was not as successful in its resistance to inter-unit bumping, although it did receive part of what it sought. The concluding sentence of the Section is conditional: "There shall be no inter-unit bumping except in those cases allowed by current administrative rule or where a class series overlaps more than one unit."

All of this raises substantial doubts concerning the accuracy of the Union's testimony on whether or not it was able to protect its membership from bumping by laid-off supervisors and/or other exempt personnel. According to evidence which is not in dispute, both parties were acutely aware of the fact that Ohio law on the subject permitted such bumping and that the law was contrary to important Union interests. The negotiators did not forget or overlook the conflict; they discussed it and carefully voiced their positions on it. If, as the Union insists, it stood steadfast against continuing the status quo in this regard, why is §18.05 silent on the subject? Why was the issue permitted to remain clouded by ambiguity? Why was it left for resolution by an arbitrator who was not a witness to their negotiations and must learn what happened second-hand? It is incredible that the Union won the point yet permitted the Agreement to remain mute. A simple sentence in §18.05, "Non-Unit personnel shall not bump into Bargaining Unit positions," or a memorandum of understanding to that effect, would have put this issue to rest.

The Arbitrator has frequently written that contract language does not always reflect true bargaining intent; sometimes it does not accurately express the meeting of minds which is the real substance of an agreement. From that perspective, the records of negotiations (bargaining notes) were of significant value. The Union's notes reveal strong statements by its Chief Negotiator. He indicated repeatedly that an Agreement could not be ratified unless it provided absolute protection of Union jobs against supervisory bumping. But no language was proposed to gel his purpose and, more importantly, the notes reveal no stated concurrence by the State's negotiators. The Employer's notes do show a contrary concurrence. The statement of the Union's Spokesperson that his position did not include layoffs was perhaps the most compelling evidence presented by either party.

The Arbitrator sees only one potential barrier to upholding the State's position -- Appendix I. It does not list supervisory positions within the contractual bumping scheme. The State's Spokesperson testified that Appendix I was added after the Agreement was drafted, and his unrebutted testimony was significant. But the question remained: How can a supervisor claim bumping rights if s/he is not in an Appendix I position, especially in view of the fact that the Agreement does away with traditional classification series? The answer is in §18.03 which expands bumping rights to "similar or related class series." Supervisors can bump into the Bargaining Unit, but it is a two-step process. Once they cross the line between exempt and represented employment they stand as Unit employees on layoff -- without positions. They are subject to all contractual rules and procedures, which means they are

divested of retention points. Their rights are the same as, and no greater than, any other laid off Unit employee with whatever State seniority they possess. Obviously, they cannot use that seniority to bump into an equal (exempt) position, but it does provide them access to jobs held by lower-rated individuals with less seniority in a similar or related class series.

According to unrefuted evidence, the bump in question met these standards. Therefore, the grievance will be denied.

AWARD

The Agreement is held to be silent on the right of displaced exempt employees to bump into Bargaining Unit positions. Accordingly, OHIO REVISED CODE §4117.10(A) incorporates Civil Service Law into the Contract and permits laid-off supervisors to cross into the Unit. Once they cross that line, their rights are defined by the Agreement. Their privileges are the same as, and no greater than those of any other laid-off represented employee. If their State seniority is sufficient, they may bump into a class series similar or related to the one they previously held.

The evidence confirms that these standards were followed. Accordingly, the grievance is denied.

Decision issued at Lorain County, Ohio, April 21, 1991.

Jonathan Dworkin, Arbitrator