

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 608

OCB GRIEVANCE NUMBER: 10-03-9003~~28~~²³-0023-06-10

GRIEVANT NAME: NORTHROP, PHILIP

UNION: SCOPE/NEA/OEA

DEPARTMENT: EDUCATION

ARBITRATOR: DROTNING, JOHN

MANAGEMENT ADVOCATE: PRICE, MERIL J.

2ND CHAIR: DUCO, MICHAEL P.

UNION ADVOCATE: STEVENS, HENRY

ARBITRATION DATE: MARCH 29, 1991 (BRIEF APRIL 22, 1991)

DECISION DATE: JUNE 2, 1991

DECISION: GRANTED

CONTRACT SECTIONS
AND/OR ISSUES:

WAS GRIEVANT DENIED A 4% INCREASE WHEN CLASS
MOD COMBINED THE CLASSIFICATIONS OF
PERIPATOLOGIST 1 AND 2?

HOLDING: ARBITRATOR DEEMS THAT "ONCE THE CLASS MOD STUDY WAS
IMPLEMENTED FOR SCOPE, NORTHROP WAS PROMOTED TO A
DIFFERENT CLASS TITLE AND ART. 21.08 LANGUAGE REGARDING
PROMOTIONS IS DETERMINATIVE. NORTHROP SHALL RECEIVE BACK
PAY AS IF HE HAD BEEN PLACED ON PAY RANGE 12, STEP 3 AS
OF THE DATE OF IMPLEMENTATION."

ARB COST: \$ 970.25



#608

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING
OHIO STATE SCHOOL FOR THE BLIND

AND

STATE COUNCIL OF PROFESSIONAL EDUCATORS
OEA/NEA

ARBITRATION AWARD

Grievance: 10-03-(3-33-90)-23-06-10
Arbitrator: John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on March 20, 1991 at the Office of Collective Bargaining, 65 East State Street, Columbus, Ohio. Appearing for the Union were: Henry L. Stevens (Labor Relations Consultant), Ellen Smith, and the grievant, Philip Northrop. Appearing for the Employer were: Meril J. Price, Esq., Michael Duco, Larry Cathell, Gail I. Lively, and Eugene Brundige.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. Post hearing briefs were filed on or about April 22, 1991 and the case was closed. The discussion and award are based solely on the record described above.

II. ISSUE

The parties did not agree on a joint submission. Management asked:

Did Management violate Article 21.04 of the Agreement?
If so, what shall the remedy be?

The Union put the question as:

Does Management at the Ohio State School for the Blind violate the 1989-92 Agreement between the State Council of Professional Educators and the State of Ohio when they fail to acknowledge a 4% promotional increase to Mr. Philip Northrop, a Peripatologist after moving him to a higher pay range? If so what shall be the appropriate remedy?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1, #2, #3, and #4.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. UNION

1. TESTIMONY AND EVIDENCE

Mr. Philip E. Northrop testified that he worked for the Ohio State School for the Blind and had been there for about four years and four months. He stated he was a Peripatologist which means that he looks at the visual problems of the children and tries to help them travel, etc.. He said he also tries to teach children how to increase their remaining vision or use their remaining vision effectively.

Northrop said that he received his contract and the Peripatologist was assigned to pay range 12 (see Joint Exhibit #2) and he was moved from pay range 11 at step 4 to pay range 12 at step 2. He said he did not think he would move back two steps.

Ms. Ellen Smith testified that she is currently the Grievance Chair and was the chief spokesperson for the Contract between 1989 and 1992.

Smith was asked whether a person loses steps when one is

moved from one pay range to another and she said no. She went on to say that if one moves from one class title to another classification title, that constitutes a promotion. She testified that moving from pay range 11 to pay range 12 is explained in Article 17 and is a promotion. Smith said that Northrop should have been placed in pay range 12 at step 3.

The Union also cross examined Management witnesses. Ms. Gail Lively of the Division of Personnel testified that she was involved in the SCOPE negotiations in 1988 along with Ellen Smith and Steve Sunker. She testified that some Union members got increases and other changes did not result in decreases. Lively said she did not think the class modernization study was equal or similar to the Contract.

Mr. Gene Brundige on cross testified he returned to talk to the parties about health care. He testified that a previous arbitrator indicated that the Ohio Education Association would not be affected much by the class modernization study.

Brundige testified that Northrop was a Peripatologist both before and after the Contract. He went on to say that an individual can move from one pay range to another without a pay increase. He testified that Joint Exhibit #1 superseded Joint Exhibit #4.

2. ARGUMENT

The Union argues that Article 21.04 says the Peripatologist shall be assigned to pay range 12 and Northrop got a promotion in moving from pay range 11 to pay range 12.

The Union says that Article 21.8 talks about promotions to a classification title. The Union points out that Northrop was essentially put in pay range 12 but he was moved backward from step 4 in pay range 11 to step 2 in pay range 12.

The Union cites Article 21.02(A) and claims Northrop should have been at pay range 12, step 3 at a rate of 14.30 as of July 1, 1989.

The Union argues that the grievance be sustained and guarantee Northrop an increase of at least 4%.

B. MANAGEMENT

1. TESTIMONY AND EVIDENCE

Ms. Gail Lively of the Department of Administrative Services, Division of Personnel, Compensation, and Administration, testified that she supervises the unit and oversees all amendments to the state classification system. She testified she examines job audit requests for both non-bargaining and bargaining unit positions. Lively said she gives expert testimony.

The classification modernization study was to set up existing classifications to make sure a classification fits the appropriate job, said Lively. She went on to say the class modernization began in December of 1987 and ended in March of 1989 and it was implemented in March of 1990 for exempt personnel covered by OEA, FOP Units #1 and #2, and it was implemented for 1199 on May 26th and for AFSCME on June 17th and for OCSEA and

CWA retroactive to March 26, 1990. She went on to say that the Union was involved and it met with Management and Booz Allen and Hamilton developed a point factor method.

Lively went on to say that Management expedited the classification study by random sampling rather than do a complete study.

Ms. Lively said that Ellen Smith, Henry Stevens, and Steve Sunker met with her over the study.

Lively went on to say that the parties created a job specialist and assigned a classification to all teachers and expanded the guidance counselor and they merged peripatologist 1 and 2 into pay range 12. She went on to say that the pay range increases was one up on the same classification.

Lively said that if Northrop was at step 4 on pay range 11, he would go to step 2 at pay range 12 and that is what occurred for all Union employees except for those in 1199. She went on to say that what they considered was the rate and they moved the employees to the identical rate held before or moved them up to a minimum. She went on to say that there were no funds attached to the class modernization study.

Lively said that a pay range change would not change a person's control number. She went on to say that a re-classification means changing one's classification to another and she cited, for example, Personnel Technician #3 to #2 and that would be a re-classification of positions. She went on to say that Northrop's position was re-classified and re-assigned. She said that a promotion requires a change in a control number and

it is normally for an open job which has to bid. The classification study, said Lively, provided a no-harm or no adverse injury or impact to any employee. She said that if an employee was improperly assigned, the DAS would put that individual in what they called a "holding position" until that situation could be taken care of.

Lively said that Management Exhibit #2 went to Steve Sunder and he sent her Management Exhibit #1 and both agreed on the specifications.

Lively said that no employee lost money because of the class modernization study.

Lively was asked whether Northrop gained steps and she said sure because there are seven steps in pay range 12.

Mr. Gene Brundige testified that in 1989, Jennifer Dworkin was the lead staff person for SCOPE and class modernization was not a big issue for SCOPE.

Brundige testified about a ULP (see Management Exhibit #3) and that was settled.

Brundige said there was no demand by the Union for bargaining over placement within pay ranges. He went on to say that Northrop's change was consistent with all others and his control number stayed the same and he is doing the same duties as he was in the past. He went on to say that the parties collapsed Peripatologist 1 and 2 and he (Northrop) got no increase but he would move forward.

The Employer also cross examined Mr. Northrop who testified that he received a letter on 3/13/90.

Ellen Smith was not cross examined.

2. ARGUMENT

The class modernization study was completed during the second Agreement between SCOPE and the State of Ohio. The State also asks that the effective date of the change from pay range 11 to pay range 12 to begin on July 1, 1989.

The pay range for the Peripatologist was pay range 12 as noted in Article 21.04 of the 1989-92 Collective Bargaining Agreement. The Employer asserts that essentially the pay changes were designed to maintain employees at their prior rates or if the change led to another step, it had to be a minimal increase according to the class modernization study.

Moreover, the Employer points out that Northrop's control number stayed the same and that control numbers change only if one is promoted and that did not occur in this case. The Employer goes on to say that Northrop was not harmed and he lost no money and in fact, he now has five additional steps in the 1989-92 Agreement.

The Union negotiated pay ranges by classification and it did not generate an instant increase for Northrop. The Employer also points out there was no vacancy and Northrop was not promoted and he was not harmed.

For these reasons, the Employer asks that the grievance be denied.

V. DISCUSSION AND AWARD

The parties did not agree on the issue. Essentially the Union argues that Northrop received a promotion and should have been placed at a step which guaranteed a minimum of 4% increase in salary. The State asks whether the Contract, specifically Article 21.04, was violated?

Article 21.04 states the following:

Employees in the classification title of Peripatologist shall be assigned to pay range 12.

Northrop was assigned to pay range 12 and in that sense Article 21.04 was not violated. The dispute raised by the Union is the step assignment which was from step 4 in pay range 11 to step 2 in pay range 12. It argues that this was a backwards move and that Northrop should have been assigned to Step 3. It argues that Northrop's move was promotional. Article 21.08 states that:

An employee who is promoted to a classification title shall be placed into a step which will guarantee him/her a minimum of four percent (4%).

The data shows that if Northrop was at pay range 11, step 4 in 1988, the rate was 13.11. The new rate for pay range 11, step 4 on July 1, 1989 was 13.63 which is also the pay rate for pay range 12 at step 2. In any event, Northrop's increase between 1988 and 1989 apparently was \$.52 an hour or a 4% increase and this is the increase Northrop would have received even if he were not moved to pay range 12 according to Article 24.01. Thus, the question is whether the move from pay range 11 to pay range 12 should be at step 3 which would include an additional 4% increase because of being promoted?

The move to pay range 12 was predicated on the state wide class modernization study which resulted in the Peripatologist classifications of 1 and 2 being merged into one class. Whereas under the old contract, Peripatologist 1's were assigned to pay range 11 and Peripatologist 2's were assigned to pay range 12, the 1989-92 Contract states that Peripatologists are assigned to pay range 12. The Union in its brief claims that "Clearly, the parties intended for Mr. Phil Northrop, a Peripatologist 1, be moved to a Peripatologist 2 at pay range 12." It relies on the definition of a "promotion" in dictionaries and in Article 17.02(A) which states:

17.02(A)

As used in this Agreement a promotion is defined as the act of placing an employee in a position for which the classification title carries a higher salary base rate than previously held.

The Employer's position that the move was a result of the class modernization study and not the result of a promotion is supported in some respects. Northrop's job did not change significantly, he did not bid on a vacant position, and his control number remained the same. All these factors indicate that Northrop was not promoted in the usual sense.

However, the reclassification of Northrop from Peripatologist 1 at pay range 11 to Peripatologist at pay range 12 has some significance and can be viewed as fitting the definition of "promotion". There is no evidence regarding the reasons behind the merger or combination of the Peripatologist 1 and 2 classifications into a single classification of Peripatologist, but presumably task distinctions were minimal or

the points derived from the point factor method were similar. It could be that the study results indicated a "holding position" for the peripatologist 2 classification, but there was no evidence. Although the evidence may not be sufficient to conclude that the by collapsing the two classifications into one, the intention was that Northrop be promoted to Peripatologist 2, the evidence suggests that there was an upward, promotional factor involved in eliminating the Peripatologist 1 classification and setting up the new classification of Peripatologist.

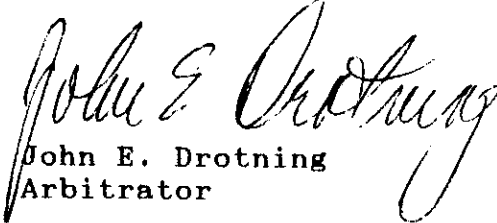
Ms. Lively testified that the purpose of the modernization study was to look at existing classifications to make sure a classification fit the appropriate job. She noted that no funds were attached to the implementation of the class modernization study and all employees were moved to the identical or nearest rate as held prior to implementation and that no employee was harmed. Since the purpose of the study was not to establish new classifications but to update existing specifications, moves from one pay range to another were not accompanied by pay increases.

In Northrop's case, if the classification of Peripatologist 1 remained and moved from pay range 11 to pay range 12, step 2 would be the appropriate step placement for him. However, the change in classification prompts support of the Union's position that there was a "de facto" promotional aspect.

Moreover, the Employer's suggestion that Northrop is better off now at pay range 12, step 2 than he was at pay range 11, step 4 because he can now move forward for a longer period of years is countered by the fact that by merging the two classifications,

Northrop has lost the potential possibility of bidding on and being awarded a Peripatologist 2 position.

Thus, placement on pay range 12, step 2 follows the contractual provision in 21.04, but once the class modernization study was implemented for SCOPE (according to testimony, implementation took place during March 1990), Northrop was promoted to a different classification title and Article 21.08 language regarding promotions is determinative. Northrop shall receive back pay as if he had been placed on pay range 12, step 3 as of the date of implementation.


John E. Drotning
Arbitrator

June 2, 1991