ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 647

OCB GRIEVANCE NUMBER: 27-24-900518-0071-06-10

GRIEVANT NAME: WISOR, GARY

UNION: SCOPE/OEA

DEPARTMENT: REHABILITATION & CORRECTION

ARBITRATOR: DWORKIN, JONATHAN

MANAGEMENT ADVOCATE: DURKEE, TED

2ND CHAIR: WILSON, DONALD

UNION ADVOCATE: STEVENS, HENRY

ARBITRATION DATE: MARCH 7, 1991

DECISION DATE: AUGUST 5, 1991

DECISION: DENIED

CONTRACT SECTIONS AND/OR ISSUES: ARTICLE 17, SECT. 17.01 AND .02: UNION CLAIM THAT FILLING VACANCY IN EXEMPT SUPERVISOR POSITION WAS GOVERNED BY PROMOTION AND BIDDING LANGUAGE OF THE AGREEMENT.

HOLDING: "THE DEFINITIONS OF VACANCY IN ARTICLES 17 AND 13 ARE CLEAR AND UNAMBIGUOUS.... THE PLAIN MEANING OF VACANCY IS AN OPENING IN A CLASSIFICATION WITHIN THE BARGAINING UNIT.

COST: $1,002.80

OCB-SCOPE VOLUNTARY GRIEVANCE PROCEEDINGS
ARBITRATION OPINION AND AWARD

OCB #647

In The Matter of Arbitration	*	
Between:	*	
	*	
THE STATE OF OHIO	*	
Department of Rehabilitation	*	
and Corrections	*	
Southeast Correctional Institution	*	
	*	Case No 27-24-(90-05-18)0071-06-10
-and-	*	
	*	
STATE COUNCIL OF PROFESSIONAL	*	Decision Issued:
EDUCATORS	*	August 5, 1991
OEA/NEA, UniServ	*	
State Unit 10	*	

APPEARANCES

FOR THE STATE

Thomas E. Durkee	Labor Relations Officer
Donald Wilson	OCB Representative
Ben Bower	Warden
Heskel Wagner	Personnel Officer
David Burris	Labor Relations Officer

FOR THE ASSOCIATION

Henry L. Stevens	SCOPE Staff Representative
Carrie Smolik	SCOPE President
Edward Blackston	SCOPE Representative
Gary Wisor	Representative Grievant

ISSUE: Article 17, Sections 7.01 & 17.02, and Article 13: Claim that filling vacancy in exempt supervisory position was governed by promotion and bidding language of the Agreement.

Jonathan Dworkin, Arbitrator
PO Box 236, 9461 Vermilion Road
Amherst, Ohio 44001

THE GRIEVANCE, ISSUES, POTENTIAL IMPACT

The grievance, initiated May 14, 1990, appears at first to be an unremarkable job-bidding complaint. It was commenced by an aggrieved employee and others when the Ohio Department of Corrections and Rehabilitation rejected six inside bids for an opening at the Southeast Correctional Institution and hired an outside applicant. It states:

> **Explanation of Grievance**
>
> > I applied for a job, Teaching Supervisor 1 at the institution at which I am currently working. The job posting was from March 14, through March 23, 1990 Class #69632. There were six people who applied, including myself and one other staff member . . .
>
> . . .
>
> **The above mentioned action(s) violate(s), misinterpret(s) the Agreement between SCOPE/OEA and the State of Ohio.**
>
> **Specific Violation of Article** 17.02
>
> **Remedy Sought** Is to install [Grievant] into the position or repost the position giving opportunity to rebid the position with certified personnel.

On closer inspection, the grievance is anything but commonplace. It claims an entitlement based on the Promotion Clauses of the Agreement between the State of Ohio and the State Council of Professional Educators (SCOPE) -- an entitlement of Bargaining Unit members to priority for exempt supervisory vacancies. If the grievance is

sustained, it will blur the boundary between exempt and represented positions and curtail Management's assumed prerogative[1] to appoint whomever it wishes to supervisory positions.

The language of the Agreement relied upon by the Union is in Article 17, Section 17.02. The provisions define "promotion," establish criteria for filling vacancies, and create preferences for promotional opportunities. Section 17.02 states in pertinent part:

> **17.02 - Promotion**
>
> A. Definition
> 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.
> . . .
>
> B. Filling of the Vacant Position
> The Employer shall give first consideration to those applicants seeking a promotion into the vacancy. Second consideration shall be given to transfers within the same classification title and parenthetical subtitle.
>
> All timely filed applications shall be considered in the following order: 1) within the facility of the employing agency where the vacancy exists, 2) within the employing agency where the vacancy exists, 3) unit-wide. If no selection is made from these pools of applicants, the Employer will then consider applicants for original appointment. Employees bidding under 2 or 3 shall have no right to grieve non-selection.

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[1] The prerogative is not altogether "assumed." Article 3, Section 3.01, the Management Rights Clause of the Agreement, reserves to the Employer "selection, retention, and promotion to positions not within the scope of this Agreement." Section 3.01 is an important facet of this dispute and will be discussed at some length in the Opinion.

> The following criteria shall be utilized for consideration when filling vacant positions by transfer or promotion: qualifications; work record, as reflected by a review of active disciplinary record(s) within the preceding two (2) years; ability; and agency seniority. When these criteria are relatively equal, agency seniority shall be the deciding factor for selection. For purposes of unit-wide consideration, agency seniority shall mean each applicant's agency seniority.
>
> The Employer and the Association hereby state a mutual commitment to Affirmative Action as regards job opportunities within the agencies covered by the contract. Therefore, when all other qualifications are relatively equal in the opinion of the Employer, affirmative action may be the most qualifying factor. This selection process supersedes and voids the provisions of civil service law as to promotions and transfers in the bargaining unit.

If this were a dispute in the private-employment sector, an arbitrator might regard it as unsubstantial on its face and summarily reject the grievance. Most (almost all) non-governmental collective bargaining agreements implicitly draw a line between the lowest-rated supervisor and the highest-rated position in the represented workforce. The line is a bidding-promotional barrier; unit employees have enforceable job access for unit vacancies, based upon seniority or whatever other decisional factors are specified in their contracts. Rarely do they have priorities for exempt vacancies. In more than twenty years of private-sector practice, this Arbitrator has seen only a handful of exceptions. A few small machine or fabricating shops where the workforce is stable, the practical working distinction between

supervisors and represented employees is nebulous, and promotional opportunities are scarce, do have labor-management contracts which grant unit employees bidding rights to supervisory vacancies. In such instances, the enabling language is precise and unambiguous.

It would be a profound mistake if the grievance were to be rejected out of hand because of private-sector standards. This dispute is regulated by a public-sector Agreement, created pursuant to an Ohio law granting State employees substantive bargaining rights -- a law only seven years old. The law mirrors the National Labor Relations Act and federal labor-management policy in many respects, but it also embodies important differences. For example, the state statute does not leave parties to their own devices with respect to interpreting contractual silence. Ohio collective bargaining agreements are controlling to the extent that they address terms of employment, but pre-existing civil-service rules and statutes continue to govern in areas not expressly addressed. OHIO REVISED CODE, §4117.10 provides that units of employees and governmental agencies are free to negotiate binding language on wages, hours, and conditions of employment; when they do not, however, those matters are subject to law. Section 4117.10 states in part:

> (A) 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. * * * 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. * * *[2] 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.

REVISED CODE §4117.10 has significant impact on this case, SCOPE's position, and the Arbitrator's interpretation of relevant contractual provisions. Unless, as the State argues, the SCOPE Agreement clearly insulates exempt vacancies from Bargaining Unit bidding rights, the Union is entitled to the benefit it demands. The reason is that Grievant and the other five employees who bid for the supervisory opening would have had priority for the vacancy under the OHIO ADMINISTRATIVE CODE, and civil-service regulations. Teachers and teaching specialists (within the Bargaining Unit) occupy the same class series in the state classification design as teaching supervisors. If there were no Collective Bargaining Agreement, Grievant or another current employee most probably would have moved into the vacancy.

There is no need to engage in an in-depth analysis of law to demonstrate this conclusion; it is impliedly conceded by the Employer. In its grievance responses, the Agency repeatedly defended its position on the sole basis that "Bargaining unit rights under Article 17 extend only to positions covered by the Agreement." This places the Union

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[2] At this point, the statute lists laws which cannot be subsumed by collective bargaining. None are pertinent to this controversy.

in a peculiar dilemma. It can prevail on its grievance if it negotiated bidding into exempt positions **or did not negotiate on the subject**. In the event there was no negotiation, Ohio law would supplement the Agreement, providing Grievant the privilege he seeks. The only way SCOPE can lose this case is if it agreed at the bargaining table to reduce job-access rights for its membership.

The concept that the separation between exempt and bargaining-unit classifications in public employment may not be as strict as in the private sector is further demonstrated by a recent arbitral decision involving bumping rights of laid-off supervisors. The grievance was between the State and another union (Ohio Civil Service Employees Association, OCSEA/AFSCME Local 11) and it is arguable that decisions under the OCSEA Agreement should not collide with or influence SCOPE grievances. That argument, however, was put to rest in the opening statement of the State's Advocate. He urged the Arbitrator to consider the Employer's relationship with other unions and the dire consequences likely to occur if the grievance is sustained. He pointed out:

> It is impossible to apply the Association's theory as the State of Ohio has at least five other collective bargaining agreements and those covered positions may be promotions for SCOPE members.

The OCSEA case was the reverse of this one in several respects. The Oakwood Forensic Center, a psychiatric facility of the Ohio Department of Mental Health, issued layoff letters to two exempt

supervisors. The letters advised that the supervisors had bumping rights into lower positions in their classification series. When one of the affected individuals displaced a bargaining-unit employee, OCSEA grieved. Its argument was that the labor-management contract protected unit positions against bumping from outside. As can be observed, the union's theory in that dispute was the direct opposite of SCOPE's contention that exempt vacancies (at least those in a common classification series) must be filled according to contractual bidding procedures. To succeed, OSCEA had to establish that the boundary between supervisory and unit classifications was absolute and barred job placement interactions; to succeed in this controversy, SCOPE has to establish that the boundary is permeable.

Just as OHIO REVISED CODE §4117.10 is a decisional factor in this case, it was determinant in the OCSEA grievance. A pivotal issue in both disputes was whether or not the influence of state civil service law was annulled through collective bargaining. The rights to bump into the bargaining unit or bid into supervision exist at law; if not spoken to in agreements, those rights continue by operation of §4117.10.

The State prevailed in the OCSEA case. The award stated in part:

> 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. * * * If their State seniority is sufficient, they may bump into

> a class series similar or related to the one they previously held.[3]

The Employer's contention that SCOPE does not have bidding rights into exempt vacancies seems inconsistent and unfair from the perspective of its earlier position that exempt employees can bump into OCSEA jobs. Nevertheless, as the parties are aware, neither consistency nor equity can displace contractual language in this forum. The issue to be decided, therefore, is whether or not the SCOPE Agreement provides Unit members promotional bidding rights into exempt classifications.

Two collateral issues are linked to the contractual one. The first evokes the recognized arbitral presumption that those who negotiated and drafted a contract expected their words to have tangible meaning. If two interpretations of a clause are reasonable, one of which establishes a real benefit and/or obligation, and the other of which is illusory, an arbitrator should choose the former over the latter. To do otherwise would lead to the pointless conclusion that language was adopted by the parties for no reason.

This principle is pertinent because of the unusual composition of the SCOPE Unit. It is comprised mainly of Teachers and Teaching Specialists. All are professionals in comparable classifications whose salaries are determined by educational attainment and length

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[3] Case No. 23-12(90-02-23)0183-01-03; at page 19. (J. Dworkin, Arb., April 21, 1991).

of service. Except for those in the very small classifications of Librarian 1 and 2, Peripatologist 1 and 2, and Education Specialist 1 and 2, SCOPE members have no promotional opportunities and nowhere to bid within the Unit. Yet the promotional language in Article 17 of the Agreement is comprehensive and meticulously drafted. It is obvious that time was spent on it at the bargaining table; it is a carefully balanced statement of Union and Management Rights. It is bewildering to the Arbitrator that the negotiating teams would have spent a good deal of time and intellectual energy on Article 17 when no one (or hardly anyone) stood a chance of benefitting from it. Yet, that will be the result if the grievance is denied.

The second ancillary issue is raised by SCOPE's reliance on past practice. According to the evidence, this is the first time a supervisory vacancy did not go to a Bargaining Unit applicant. The Union introduced substantial documentation illustrating twenty-four instances in which its members were promoted to supervisory jobs or higher-rated positions in other units. All the promotions occurred during the terms of SCOPE Collective Bargaining Agreements, and there were no exceptions. Until the appointment leading to this dispute, contractual bidding rights were always observed. The issue stemming from these facts is whether or not the Agency violated a binding past practice when it bypassed senior candidates for a supervisory vacancy and selected a new hire.

* * *

The grievance was presented to arbitration in Columbus, Ohio on March 7, 1991. At the outset, the State challenged substantive arbitrability. It called attention to the fact that the Agreement specifically states what is grievable. Article 5, Section 5.05 establishes the grievance procedure exclusively for resolving "contractual and disciplinary" matters, and Section 5.02 defines a contractual grievance as "an alleged violation, misinterpretation or misapplication of specific provision(s), article(s) and/or section(s) of this Agreement." The Employer argued that this dispute went beyond anything ceded to the Unit by contract -- that it was an attempt to invade exclusive Management Rights. Accordingly, the State's Advocate argued in his opening statement:

> The Employer views this issue as a question of substantive arbitrability. Appointments or promotions to managerial and supervisory positions are excluded from the bargaining unit, no dues are collected from the employees, there is no representation of these employees over terms and conditions of employment and the Association did not attempt to have managerial or supervisory positions included during bargaining unit determinations.
>
> The appointment or promotion to managerial or supervisory positions are not covered within the four corners of the contract. The Employer will be putting on evidence both to the substantive arbitrability and the merits (in protest). The two are not intertwined and the merits have no relevancy to the question of substantive arbitrability.

The Advocate requested a "bench" decision on arbitrability and the Arbitrator complied. He ruled in favor of the Union. The reasons

have already been discussed in this portion of the Opinion and Award; they may be summarized as follows: The Union does not seek to enlarge the Bargaining Unit. Its objective is to secure an award granting employees bidding rights to non-Unit jobs. The arguments supporting the goal are based on the written Agreement, allegations of binding past practice, and law. Contractual terms and past practice are matters traditionally within arbitral purview. And while law is usually not determinant of arbitration decisions, it is inextricably linked to the Agreement governing this controversy. As stated, OHIO REVISED CODE §4117.10 incorporates civil service law into public-sector collective bargaining agreements for wages, hours, and terms and conditions of employment not addressed by negotiators.

ADDITIONAL FACTS AND CONTENTIONS

The individual who bypassed six Teacher applicants and was selected for the Teaching Supervisor vacancy had exotic "qualifications," but little teaching background. A native of Nigeria, he earned a diploma in 1966 from the Nigeria Federal School of Agriculture. In 1977, he earned a B.S. from Tuskegee in plant and soil science. He carried that major forward to an M.S. degree from the same university in 1979. In 1985, he received a Ph.D. in Horticulture from Pennsylvania State. His doctoral dissertation was entitled "Effect of Relay Intercropping of Carrot and Sweet Corn in a Multi Cropping

System." His work history since 1977 included jobs as a security officer, youth leader, greenhouse supervisor, and horticulture teacher for the Columbus, Ohio public schools. His resume contains twenty published articles and papers on farming, nutrition, and ecology.

In his closing comments, the Employer's Advocate remarked that the individual selected for the job was the "superior" applicant. He argued:

> It is not a question of relative equality of the applicants. [The chosen candidate] had superior qualifications and as an added bonus, was an affirmative action candidate.

As might have been anticipated, the SCOPE Representative took vigorous exception to the statement that six career teachers with long years of service were inferior to a Ph.D. in horticulture for the position of Teaching Supervisor. Frankly, the Arbitrator agrees with the Union, but the dispute does not turn on qualifications. The State maintains that it had unconditional discretion to choose the person to fill the supervisory vacancy; it was entitled to select someone demonstrably less qualified than Grievant and, (in the Advocate's words) "Management's exercise of its right to appoint or promote into any position outside the Unit is none of the Association's business." That comment identifies the crux of this controversy. The

pivotal question is: Did the Bargaining Unit have a contractually supportable claim to exempt position openings?

SCOPE urges that Article 17, Section 17.02 demands that the grievance be sustained. The Section states that a promotion is "the act of placing an employee in a position for which the classification title caries a higher salary base rate than previously held." It goes on to require the Employer to fill vacancies by giving "first consideration to those applicants seeking a promotion." In other words, the provision makes every vacancy a promotional opportunity for individuals covered by the Agreement; and such individuals are to be given "first consideration." There is no language in Section 17.02, according to the Union, which limits its scope to Bargaining Unit vacancies. It follows that all vacancies of an employing agency, including those in supervisory classifications, are subject to SCOPE bidding-promotion rights.

If there is any doubt as to the meaning of Section 17.02, the Union maintains that its interpretation is verified by binding past practice. Fourteen Teaching Supervisor positions in the Department of Corrections and Rehabilitation became vacant during the two contractual terms. Each of them, except the one at issue, was filled by a Bargaining Unit applicant. In the Union's judgment, the long-standing, unbroken custom signifies mutuality of purpose, intent, and understanding; until now, the Employer tacitly acknowledged that current employees were entitled to first consideration for <u>all</u>

vacancies. In SCOPE's view, the sudden reversal of the Employer's practice was a unilateral change in working conditions -- an illegal employment action in Ohio.[4]

The Employer admits it has followed a practice of promoting Bargaining Unit teachers to supervisory vacancies. Indeed, it agrees that the custom has been of value to all concerned. It forcefully maintains, however, that the practice never was binding and never became a contractual commitment. In closing argument, the Employer's Representative clarified the distinction between a practice and a binding practice:

> It may be a good practice to promote bargaining unit members and be beneficial to both sides. However, such practice does not rise to the level of a contractual benefit for bargaining unit members.

The linchpin of the State's position is Article 17, Section 17.01 A. Section 17.01 contains thorough instructions on how vacancies are to be posted. The first paragraph, Subsection A, is the key to everything that follows. It defines "vacancy."

17.01 - Vacancy

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[4] See *DeVennish vs City of Columbus*. 57 Ohio St. 3d 163 (1991) cited by SCOPE. See also, *Lorain City School District Board of Education vs SERB*, 40 Ohio St. 3d 257; *Eaton City School District Board of Education vs SERB*, 1991 SERB 4-23 (12th Dist. Ct. App., 1991).

> A. Definition
> As used in this Agreement a vacancy is defined as a new or existing permanent full-time or permanent part-time position **in the bargaining unit** which the Employer has determined to fill by transfer, promotion, or original appointment. A position for which a recall list exists is not a vacant position. [Emphasis added].

The Employer observes that the negotiators carefully described and limited SCOPE bidding rights in Section 17.01. They extended those rights to "vacancies," and wrote unmistakable language clarifying what they meant by that term. A "vacancy," according to the unambiguous language of the Agreement, is an opening in **a Bargaining Unit position**. The Employer charges that the Union is attempting to expand the definition, and gain a new benefit through arbitration. If the Arbitrator were to grant this grievance, according to the State, he himself would violate strictures on his authority contained in Article 6, Section 6.04 of the Agreement:

> **6.04 - Arbitrator Limitations**
>
> Only disputes involving the interpretation, application or alleged violation of provisions of this 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 the arbitrator impose on either party a limitation or obligation not specifically required by the express language of this Agreement.

OPINION

The Union marshalled powerful evidence and advanced persuasive arguments in support of Grievant's claim. It proved beyond debate that a practice of promoting supervisors from the Bargaining Unit existed and was followed without variation for many years. It established that unless Unit members have contractually enforceable access to supervisory vacancies, they have no real promotional rights under Section 17.02, and the language painstakingly crafted in Article 17 becomes empty and worthless for all practical purposes. The Union demonstrated to the Arbitrator's satisfaction that an award denying the grievance would be an injustice. But none of these proven facts is conclusive if, as the State argues, the language of the Agreement plainly excludes the promotional benefit demanded by the grievance.

This finding merits explanation. To begin with, practices are never superior to contract terms. They are implicitly consensual ways in which parties interpret vague provisions in their contracts and/or fill in gaps where their contracts leave matters unexpressed. When a practice is followed repeatedly without exceptions over a suitable period of time, it may become as binding as it would be if its substance were added to the collective bargaining agreement itself. But a practice which conflicts with or changes unambiguous, written contractual provisions is never binding no matter how long it has existed or how consistently it has been observed. Practices and written agreements are not on a par. Agreements are the fundamental

sources of employment terms; binding practices only supplement or explain them. When conflict occurs, agreements will always prevail. These principles applied to this dispute mean that SCOPE cannot successfully claim a benefit through a practice if the Agreement states clearly that the benefit shall not be provided.

Similar reasoning applies to the inequity of the State's position and the illusory nature of Article 17. Neither can influence the dispute if the power to fill supervisory positions is a verified Management Right conferred by contract. While it is true that arbitrators will interpret agreements so as to give meaning and substance to every provision, the axiom is conditional. It has absolutely no pertinence or weight unless two contractual interpretations are possible; then and only then is the arbitrator's task to select one of them. An arbitrator is neither required nor permitted to clarify provisions which need no clarification; s/he is obligated to enforce unambiguous language, not "interpret" it. In other words, if the negotiators created an illusory benefit, it must stand as such. It is not within the Arbitrator's power to improve the SCOPE Agreement.

These findings lead inevitably to the core of this dispute -- the Collective Bargaining Agreement. The SCOPE Representative made a resourceful case for the conclusion that the Agreement is indefinite on the subject of promotional rights. He accomplished that by focusing on Section 17.02 and ignoring Section 17.01. Section 17.02 defines "promotion" and directs that employees (Bargaining Unit members) are

to receive first consideration for vacancies, but it does not define "vacancy." The negotiated interpretation of that word is in Section 17.01, Subsection A. It states precisely that a "vacancy" is a "position in the bargaining unit."

On examining Article 17 in its entirety, it is obvious that its Sections were intended to be read in conjunction. Section 17.01 A defines "vacancy;" Section 17.01 B states how vacancies are to be posted and applied for; Section 17.02, Subsections A and B tell how vacancies are to be filled.[5] The remaining Sections flow in logical sequence through probationary periods for promoted employees, reassignments, a special grandfathered classification for Teaching Coordinators, and civil service examinations.

Taking Article 17 as a whole, it is apparent that the "vacancies" for which employees must be given first consideration according to Section 17.02 are subject to the definition in Section 17.01 A; they are Bargaining Unit openings. This conclusion finds appreciable support in Article 3, the Management Rights Clause. When it ratified that Article, SCOPE agreed to the following:

> 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

[5] Subsection C addresses employee initiated movements to lower classifications.

rights and authority of management include specifically, but are not limited to the following:

. . .

13. Determine the management organization, including selection, retention, and **promotion to positions not within the scope of this Agreement**. [Emphasis added.]

The words, "positions not within the scope of this Agreement" refer to the classifications for which the Union achieved recognition under Article 1 of the Agreement. Teaching Supervisor is not among these classifications. By adopting Article 17, the Employer relinquished some of its control of promotions to Unit vacancies. But it did not give up any of its discretion with respect to non-Unit vacancies. It preserved that discretion through Article 3 and Article 17, Section 17.01.

The Agreement is definite in this regard. The negotiators wrote decisive language, thereby excluding the possibility of civil-service carryovers. Despite the inequities, the Arbitrator has no alternative but to deny the grievance; any other decision would constitute a breach of trust.

AWARD

The definitions of "vacancy" in Article 17, Section 17.01 A and Article 13 of the Agreement between SCOPE and the State are too clear

and unambiguous to permit arbitral interpretation. The plain meaning of "vacancy" is an opening in a classification within the Bargaining Unit. Accordingly, the grievance is denied.

Decision Issued at Lorain County, Ohio, August 2, 1991.

Jonathan Dworkin, Arbitrator