

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER 753

OCB GRIEVANCE NUMBER: 23-01-911016-0123-02-11

GRIEVANT NAME: ROBIN CREWS-JOHNSON

UNION: 1199

DEPARTMENT MENTAL HEALTH

ARBITRATOR: JOHNSON, MARGARET NANCY

MANAGEMENT ADVOCATE: LIVENGOD, RACHEL

2ND CHAIR: DUCO, MICHAEL

UNION ADVOCATE: REGAN, DAVID

ARBITRATION DATE: MARCH 10, 1992

DECISION DATE: APRIL 16, 1992

DECISION: DENIED

CONTRACT SECTION
AND/OR ISSUES:

GRIEVANCE ALLEGES THAT THE EMPLOYER
VIOLATED ART. 29 IN IT'S DECISION TO
PROCEED WITH JOB ABOLISHMENT AND
FAILURE TO MEET WITH THE UNION.

HOLDING: EVIDENCE PRESENTED ESTABLISHES THAT PROPER
NOTIFICATION WAS GIVEN CONCERNING THE MEETING.
THE UNION REFUSED TO MEET WITHOUT THE TWO
EMPLOYEES INVOLVED. THE ENTIRE FUNCTION OF THE
"UNION" IS TO ACT ON BEHALF OF THE EMPLOYEES.
THROUGHOUT THE CONTRACT WHEN THE PARTIES HAVE
INTENDED TO EXTEND A RIGHT TO INDIVIDUAL
EMPLOYEES, IT HAS BEEN SPECIFICALLY STATED.

COST: TO BE DETERMINED

STATE OF OHIO
LABOR ARBITRATION TRIBUNAL

#753

In the Matter of the Arbitration Between:

Ohio Department of Mental Health)	Case No. 23-01-91.1016-0123-
)	02-11
Office of Collective Bargaining)	
State of Ohio)	
)	
and)	Margaret Nancy Johnson
)	Arbitrator
Ohio Health Care Employees Union)	
District 1199, SEIU, AFL-CIO)	<u>OPINION AND AWARD</u>
National Union of Hospital)	<u>Grievance of</u>
and Health Care Employees)	<u>Robin Crews-Johnson</u>

This matter came on for hearing on March 10, 1992, in a conference room of the Office of Collective Bargaining in Columbus, Ohio, before Margaret Nancy Johnson, member of the Arbitration Panel selected in accordance with the terms of the Collective Bargaining Agreement.

The case for the Union was argued by David Regan, Organizer. Also present for the Union was Robin Crews-Johnson, grievant.

The case for the Agency was presented by Rachel Livingood, Assistant Chief, Arbitration Services. In attendance on behalf of the Agency were Mike Duco, Chief of Contract Compliance; John Rauch, Labor Relations Manager, Ohio Department of Mental Health; Teri Decker, Labor Relations Officer, Department of Mental Health; Valerie Butler, Labor Relations Specialist; and David Norris, Deputy Director, Human Resources.

There were no objections as to the arbitrability of the pending dispute, either upon procedural or upon substantive grounds. Accordingly, then, this matter is properly before the Arbitrator for a final and binding decision.

GRIEVANCE

The grievance dated October 16, 1991, alleges that "management's decision to proceed with job abolishment and failure to meet with Union constitutes a contract violation." The resolution requested is that "management will cease efforts to abolish positions and meet with Union and employees as one to discuss alternative. . . ."

ISSUE

The issue in this proceeding is the following: Did the Agency violate the provisions of the Collective Bargaining Agreement on October 7, 1991 when it refused to meet with affected employees, and, if so, to what remedy, if any, is the grievant(s) entitled?

CONTRACT PROVISIONS

The following provisions of the Collective Bargaining Agreement are deemed to be pertinent to a proper resolution of this dispute:

ARTICLE 29 - LAYOFF AND RECALL

§29.01 Notice

When the agency determines that a layoff is necessary, the agency shall notify the Union and inform them of the classification(s), the number of employee(s) and the worksite(s) affected. When the layoff involves a worksite with more than one (1) employee in a classification series, the layoff shall be within the entire classification series.

The agency will schedule a meeting with the Union to explain their reason for such action. The Union's comments and ideas given to avoid the layoff will be seriously considered before making a final decision.

If after this meeting the agency deems that the action is still necessary, the following procedure shall be adhered to.

Every effort will be made to place employees in comparable employment in the public or private sector. The agency shall notify all affected employees of the impending layoff at least forty-five (45) days prior to the effective date of any layoff, if the reason is for lack of funds, and ninety (90) days prior notice shall be given to affected employees for any other reason.

STATEMENT OF CASE

By letter dated September 18, 1991 the Agency advised the Union of its intent to lay off two employees holding the job classification of Rehabilitation Program Specialist in the Department of Mental Health (Management Exhibit 1). In this letter the Agency indicated the Union would be contacted "to schedule a meeting in order to explain our reasons for such action and to permit you to give us your comments and ideas to avoid the layoff." A follow-up letter under date of September

20, 1991, scheduled a meeting for September 26, 1991 (Management Exhibit 2).

At the Union's request this meeting was postponed until October 2, 1991. Although a Union Organizer appeared at the scheduled time and location, he indicated that due to the unavailability of an affected employee, the meeting could not be held. The following day a letter was sent to the Organizer confirming the meeting was to be held on October 7, 1991. The Agency further indicated that "we will not proceed with the meeting with the affected employees present" (Union Exhibit 4). In response, the Union advised the Agency that it "has the absolute right to bring individuals who face possible layoff to the meeting required by Article 29 of the Collective Bargaining Agreement" (Union Exhibit 5).

On October 7, 1991 the Union appeared at the Central Office for the layoff meeting along with the two affected employees. The Agency reiterated its intent not to meet with the employees present. Consequently, no meeting was held at that time. A decision was made by the Agency to proceed with the layoffs. The Union was so advised in a letter dated October 11, 1991 which also states that the Union's "refusal to participate in the meetings scheduled for purposes of discussing the proposed Central Office layoffs is considered a waiver of [its] right to such a meeting" (Management Exhibit 9). The pending grievance was filed the same day.

POSITION OF THE UNION

The Union maintains that the refusal of the Agency to meet with the two affected employees constituted a violation of Article 29 of the Agreement between the parties. In spite of the contractual commitment to confer, the Agency unilaterally implemented a reduction in the work force without holding the requisite meeting.

The Union consists of its membership. The position of the Agency that the term "Union" extends only to staff or elected officials is without merit. Such a limitation is an impermissible modification of contract language. The Union exists because of its membership. As Union members the affected employees had a contractual right to be present at the meeting. The Union does not endeavor to restrict Agency attendance at meetings. The attempt by the Agency to preclude affected employees was improper.

Furthermore, as members of the affected classification, these individuals were best qualified to address the subject matter of layoff. The Union relies upon the input of its employees for ideas and suggestions on how to avoid a reduction in force.

Finally, the Union has always brought targeted employees to such meetings. Not until the instant case has such a prerogative been challenged by the Agency.

The Union did not waive this right. The failure of the Agency to meet and confer in good faith requires remedial

reinstatement, back pay, and proper adherence to Article 29 prior to implementation of a layoff.

The grievance should be sustained.

POSITION OF THE AGENCY

The Agency in this proceeding made every effort to comply with the requirements of Article 29. On September 20, 1991 a notification letter was sent advising the Union of the impending layoffs and of a meeting scheduled to discuss the Agency decision. This conference was never held because the Union refused to meet without the presence of the affected employees. The Union herein is precluded from any remedial action in this matter. The proper course of action for the Union would have been to meet and then grieve. Having failed to do so, the Union is not entitled to the relief it requests.

The Agency was not in error when it refused to meet with the affected employees. Its sole commitment is to confer with the "Union". In drafting Article 29 the parties did not contemplate attendance by affected employees. When the parties intended to extend a right to the individual employee, the term "employee" rather than "Union" is used.

There is no evidence that historically affected employees have been permitted to attend layoff meetings. The singular instance of attendance by affected employees cited by the Union fails to establish a past practice indicative of what was meant in Article 29 by the word "Union."

The Agency was ready to comply with the clear and unambiguous language of Article 29. It scheduled and rescheduled a meeting with the Union as required by Article 29. There has been no contract violation by the Agency.

The grievance should be denied.

DECISION

The sole question to be answered by the Arbitrator in this proceeding is whether the Agreement between the parties obligates the Agency to confer with individual employees affected by a proposed layoff. This dispute arises under Article 29 wherein is set forth the procedure to be followed in the event a layoff is deemed necessary. In analyzing this controversy the Arbitrator makes two observations. First, the right to lay off employees is an inherent managerial prerogative which is restricted only insofar as the terms of the Agreement limit its exercise. This dispute, then, can be resolved by determining what constraints have contractually been imposed upon management in effecting layoffs. Second, the issue presented for resolution leaves no room for arbitral discretion or the balancing of equities. The contractual language remains constant whether the affected employees include two, twenty or two hundred members of the bargaining unit.

Pursuant to Article 29.01 the Agency is required to give notice of the layoff, including classifications, work sites and number of employees, to the "Union". Additionally, the

Agency must "schedule a meeting with the Union to explain their reason for such action." The evidence presented establishes that proper notification was given and that the meeting referenced in Article 29 was scheduled. Such a meeting, however, was never held because the Union refused to meet without the two employees involved and the Agency refused to meet with the employees.

In the opinion of the Arbitrator the term "Union" refers to the business entity established to represent employees in the bargaining unit. The entire function and purpose of the "Union" is to act on behalf of the employees and to provide an agent for the unit members. The word "Union", however, is not synonymous with affected employees and the same cannot be used interchangeably. Throughout the Collective Bargaining Agreement "Union" and "employees" are used to establish specific rights and obligations. When the parties have intended to extend a right to individual employees, it has been specifically stated. The distinction between "Union" and "employee" prerogatives, for example, is clearly discerned in Article 7 wherein grievance appeal procedures are established.

The argument advanced by the Union in this case cannot be sustained. The term "Union" cannot be equated with unit membership. To do so would create chaos in the relationship between the parties. Moreover, the position of the Union portends unfathomable dilemmas. For example, in Article 1 the parties have provided that "this Agreement may be amended only by written

agreement between the Employer and the Union." While an employee may certainly waive an individual right, it cannot reasonably be argued that the individual may execute a modification of the Collective Bargaining Agreement on his own behalf.

In the opinion of the Arbitrator, the right set forth in Article 29 extends exclusively to the Union as the bargaining agent or representative of all employees in the bargaining unit. There is no conclusive evidence of a contrary intent. Although testimony pertaining to one prior layoff proceeding was presented, it failed to indicate a consistent, uniform and well-established practice by which "Union" in Article 29 was defined to include affected employees. In the absence of evidence supportive of the contention that in the past "the Union has always had targeted employees present," this Arbitrator cannot conclude that such a right extends to individual employees.

It remains to consider the contention of the Union that the failure of the Agency to meet represented an attempt to interfere with internal Union business. It is the position of the Union that the Agency cannot dictate who will represent the Union on contractual matters. In support of this position, the Union cited a letter from administrative personnel stating, "It is well established that the State does not determine who will represent the Union regarding Collective Bargaining issues." The Arbitrator recognizes that an Agency cannot interfere with internal Union business or management. Elected officials, appointed representatives and professional staff are beyond the purview of

the State. There is no contention, however, that the individual employees were present on behalf of the Union. On the contrary, the testimony elicited clearly identifies the employees as affected individuals, not Union representatives.

The Union contends that the employees were best qualified to argue their case for avoiding the layoff. It is the employees who knew why their jobs ought to be preserved. This argument, however, fails to recognize the representative character of labor relations in an organized work environment. Pursuant to Article 2 it is the Union that is recognized as the representative of all unit employees. Article 3 of the Collective Bargaining Agreement more fully details the right of the Union to act as a representative of all bargaining unit employees and the obligations corresponding thereto.

In summary, pursuant to Article 29.01 the Agency is required to deal with the agent or representatives of the bargaining unit and those individuals acting in a representative capacity. The Agency, however, is not obliged to meet and confer with individual employees acting on their own behalf, even in the presence of a Union delegate.

AWARD

The grievance is hereby denied.


MARGARET NANCY JOHNSON

Dated and made effective at the facility of the Agency
this 16th day of April 1992.

Margaret Nancy Johnson