

#797

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING
STATE OF OHIO

AND

OCSEA/AFSCME LOCAL 11

ARBITRATION AWARD

CASE NUMBER: 24-09-910920-0590-01-06
ARBITRATOR: John E. Drotning
HEARING DATE: June 10, 1992

I. HEARING

The undersigned Arbitrator conducted a Hearing on June 10, 1992 at the Office of Collective Bargaining, 106 N. High St., Columbus, Ohio. Appearing for the Union were: Brenda Goheen, Laurie Stelts, Dave Kuninger, and Gary Sharp. Appearing for the Employer were: Ed Ostrowski, Brian Eastman, Arlene Janes, Ed Dwyer, and George Stringfellow.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. No post hearing briefs were filed and the case was closed on June 10, 1992. The discussion and award are based solely on the record described above.

II. ISSUE

The parties jointly stipulated the following:

1. The grievance is properly before the Arbitrator.
2. The layoff was free of procedural flaw.
3. The issue before the arbitrator is framed as:

Did the State violate Article 18 or Article 38 of the Agreement in the abolishment and layoff of employees classified as Boiler Operator II or Stationary Engineer II? If so, what shall the remedy be?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 through #9.

The parties also submitted joint stipulations on page 1(A) which are as follows:

1. Grievance is properly before the Arbitrator.
2. Employees laid off by seniority:

John Mossholder	7-14-75
Marvin Connell	5-08-78
Glenn Spillman	6-05-78
David Kuninger	10-16-78
Gary Sharp	10-16-78
Alfred Bayes	3-10-80
Robert Carpenter	11-15-82
Charles Zollars	12-17-84
Lawrence Blubaugh	7-08-85
3. George Stringfellow was promoted to a management position on 10-6-91.
4. Gary Sharp was rehired 12-16-91 as a "new" MRW 2.
5. Glen Spillman has been on disability leave since 7-19-90. His two years are up on 7-19-92.
6. Scott Zimmerman was a Therapeutic Program Worker who was given a lateral to a "new" Maintenance Repair Worker 2. (11-3-91)

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. MANAGEMENT

1. TESTIMONY AND EVIDENCE

Mr. Edward Dwyer testified that he worked at the Mt. Vernon Developmental Center. He said the Center's task is to train mentally retarded people for work. Dwyer said the self-contained facility was built in 1909 and initially was a tuberculosis sanitarium. Dwyer went on to say that the facility

had been remodeled and a new building had been built and there is no farming at the facility.

Dwyer testified he was aware of the old power house in which there were three boilers; namely, coal-fired Scotch Marine boilers which developed steam to heat water and to dry clothes. Dwyer said that at that time two of the boilers each operated 175 HP engines and the third boiler had a 303 HP engine.

Dwyer went on to say that one HP is worth 12,500 BTU's and he also noted that 34 pounds of water which is evaporated equals about one HP.

Dwyer said that the 303 HP unit on the premises was used primarily to heat the facility in the winter. Two Scotch Marine coal fired boilers were used in the summer.

Dwyer said that the Environmental Protection Agency requires stack emission tests and the 303 HP unit did not pass. Therefore, he said he was advised to run the boiler at a lower rating in order to minimize stack emissions.

Dwyer went on to say that they had sent employees to smoke school in order for them to read emissions.

Dwyer said there are emission controls on stacks and in some cases, those stacks used water scrubbers to remove sulfur from the coal and ash. Moreover, he went on to say that the agency had to go to low sulfur coal which costs a lot more.

Dwyer said he suggested a number of ways to work out these problems and eventually they decided to go with gas fired satellite units some of which were very close to buildings. He said they also used hot water boilers and they were downsized in

the power plant and they were called "Ohio specials" which means these boilers can be operated without licensed personnel. As a result, he said the Agency could do away with the scrubbers.

Dwyer said that three hot water units were near one building and there were two satellite units by another building and there was a steam boiler in the storage facility. He went on to say that the four gas fired units now sit in the old building for laundry and heat and they operate on 29.5 HP engines.

Dwyer said the Employer saved about \$300,000 in labor. He said there was no need for a stationary engine and boiler operator whereas in the past, there were about ten stationary engineers and boiler operators working the old units.

Dwyer testified that repair work on pumps did not require a license and there were maintenance people who could do that work. He went on to say that the Employer was supposed to hire four maintenance repair people for all work days and they could do other kinds of work as well. However, he said that in effect, all the work could be handled on the day shift and therefore, they hired two maintenance repair persons. Those people do a number of tasks and there is no excessive overtime for those maintenance repair people.

Dwyer said that they made some promotions but in effect they did not need ten additional workers and he went on to say that the lack of operating engineers was a permanent fixture.

He acknowledged that the new boilers required some training on the part of employees, but these boilers are not continually monitored because they operate under 30 HP. He also testified that the current staffing is appropriate and safe.

Dwyer said that he tried to find work for all employees who were laid off. He said he helped them with their resumes and called the Ohio Bureau of Employment Service, etc. and also talked to a private industry council.

Mr. George Allen Stringfellow testified that he got the old boilers operating and that he had a boiler operator license and an operating engineer license up through October 1991 when he was then promoted to building maintenance supervisor. He said he had been in the Union and he had been on the executive board and was president of the local for two terms. Stringfellow said he had to go to schooling and involve himself for some time with the boilers in order to get a license.

Stringfellow went on to say that he was given notice of a change in the kind of boilers that were going to be used long before the sixty day period when the new equipment was put in place. He said he was always aware of the fact that there would be a change from coal to natural gas.

In March of 1991, Stringfellow said the contractor took out all the coal fired boilers. He said the new boilers do not require boiler operators or operating engineers. The boilers are inspected once a year and he said that he along with the maintenance repair men inspect these boilers and they do water tests and blow down boilers and also do visual checks. He said

the work on the boilers now is down to about two hours a day, although in winter, it might take four.

Stringfellow also testified about the existing four boilers and also about softeners, the chlorine units as well as the de-alkalizer, etc.

Stringfellow said that tests are done once a day. He went on to say that the new boilers are safe and they have safety devices and if something happens to a boiler, it shuts down.

Management also cross examined Union witnesses. Ms. Laurie Stelts testified that she first learned about the layoff of Union employees on September 6, 1991. She then testified about a meeting of labor-management personnel and the fact that Article 38 came up prior to Article 17.

Stelts was asked how many powerhouse employees at the Columbus Developmental Center were converted into groundskeeping jobs and she said she did not know. She was asked how many were in maintenance repair and she said she did not know. However, she testified that she heard that powerhouse employees were given groundskeeping and maintenance repair jobs.

Mr. David Kuninger testified on cross that he had been a stationary engineer and he manned the boilers. He testified that he is now unemployed and he has been so since his layoff.

He was asked whether the new boiler problems are now way down and he said he did not know because he was not there.

Mr. Gary Sharp on cross testified that the new boilers fired automatically and if one boiler is on and a switch is set appropriately, then the next boiler can go on if it is necessary; that is, the lag boiler comes on in turn.

Sharp said that the problems now are about 75% less than in the past.

2. ARGUMENT

Management at the outset notes that the case is simple and clear. Mt. Vernon Developmental Center abolished ten unit positions in 1991. The abolition was because the jobs formerly held were not needed because the new boilers were replaced by natural gas units using 29 HP which is under the 30 HP rate.

There is no license to operate these boilers so maintenance repair employees can handle the situation.

Management argues that Article 38 states:

Whenever new equipment or technological changes significantly affect operations, the Employer will provide notice to the Union as soon as practicable but not less than 60 days in advance.

The Employer notes that it gave the Union plenty of notice about the impending change of going from coal fired boilers to natural gas.

The Employer goes on to say that whenever possible, it tries to provide training to employees in order to acquire the skills and knowledge necessary for new procedures. That, of course, argues the Employer, was inappropriate because in this case, there was no new technology which required training employees.

Rather, in fact, there was no need for existing positions. Thus, no amount of training could have prepared boiler operators and stationary engineers to do work which was unnecessary. In short, there was no need for ten full-time positions in the maintenance department.

The Employer also notes that Article 38 language is designed to enable an employee in an affected classification to acquire skills associated with technological change but in this case, there was no need for former operators or engineers. In short, there were no new procedures for these employees to learn. Thus, there was no need for six stationary engineers and four boiler operators.

The Employer goes on to say that Article 38 was really designed to train existing employees in new skills. The Employer cites an example and it notes that a typist whose proven ability to handle an IBM Selectric may be faced one day with the prospect of mastering Word Perfect on a IBM computer. That situation could be addressed and that typist must master those skills or be left behind and Article 38 gives the employee an opportunity to develop such skills.

The Employer also states that Article 18 was not violated. A change in the equipment, argues the Employer led to more efficient operation and greater economy of service. There were no more coal conveyors, no more fire adjustments, no more ash collection or exhaust monitoring and moreover, there was no need to comply with the Ohio EPA or Industrial Relations laws

governing the operations of boilers because this equipment was less than 30 HP.

The Employer cites 124.321(D) of the ORC which talks about the abolition of positions and goes on to say that the change in the equipment means that the Mt. Vernon Developmental Center was more efficient after the abolishments and those abolishments resulted in economies to the State. As a result, the State saved about \$287,000 in salaries in one calendar year and substantial capital investment in an emission control technology was avoided by the switch from coal to natural gas which might have saved somewhere between \$500,000 and \$1,100,000. Thus, there was considerable increase in efficiency and economy. The Employer goes on to cite a 1983 Ohio Supreme Court decision in its closing argument which notes that dismissals are valid when they are done for the purposes of economy or improved public service and there is no ulterior motive involved.

The Employer goes on to say that there are limited number of arbitration decisions and the Employer essentially is asserting that those decisions in effect support its position that the change in equipment meant that there was no need to maintain ten or eleven employees to do work which, in effect, was not needed. Therefore, the Employer's position meets the tests of the languages of Arbitrators Pinkus and Graham.

The Management also argues that the Union's interpretation of Articles 18 and 38 is totally inconsistent with Article 17 of the Contract.

The Union cites decisions by Graham, Bittel, and Dworkin and somehow the Union argues that as a result of those decisions, the State had to assign the grievants to another bargaining unit classification.

For all those reasons, the Employer argues that there was certainly no violation of Article 17.

B. UNION

1. TESTIMONY AND EVIDENCE

Ms. Laurie Stelts testified that she worked at Mt. Vernon Developmental Center as an Activity Therapy Specialist and had been chief Steward and was on the negotiating team for the 1989 Contract.

She said she discussed Article 38 with Management and she noted that the issue arose over a situation when switchboard operators became unnecessary and they could either bid or were given other jobs. Stelts testified that she thought other MR&DD units had changed over and she noted the Columbus Developmental Center and she testified they were replaced by Maintenance Repair workers.

Stelts said that she learned about the new heating system and the lost jobs in the Spring of 1991. She said when she met with Management and with Mr. Fuscardo on August 27, 1991, she was told that the stationary engineer and the boiler operator guys would go and they would probably had two or three maintenance repair workers. She said she wanted three of the laid off

employees to go on maintenance repair and the other three for other possible openings.

Stelts testified that she felt that one person should always be in the powerhouse but she went on to say that a consultant told her it was not necessary.

Stelts testified that the Columbus employees were given alternate jobs.

She said that she raised the issue of Article 38 and Management told her there was no technological change. However, Stelts said that she always felt that such a change was covered by Article 38. Stelts testified she thought that the people noted on page 1A of the yellow brief should have been re-trained to work with the new equipment and the top three should have gotten the work. Stelts said that she told Management that Article 38 came before Article 17.

Mr. David Kuninger testified he was employed by the Mt. Vernon Developmental Center and he was a stationary engineer 1 although he started as a boiler operator 2.

Kuninger said his own duties involved the supervision and assistance to boiler operators and he was in charge of the rest of the plant and took care of equipment. He pointed out that the Mt. Vernon facility had three boilers, two steam turbines, circulating pumps, alkalizers, soft water, a diesel unit, etc.

He acknowledged that three gas fired boilers replaced coal and the three turbines were replaced with electric pumps. He said he worked with the new system in the Spring of 1991 and they went on line in June 29, 1991.

Kuninger said he was not trained on the new system but he read the manuals on the new boilers although he noted that other maintenance workers were trained.

The new unit, said Kuninger, used natural gas so there was less work.

Kuninger said that he thought there was discrepancy between the description of the new boilers which used 29.5 HP because he thought that the way the tubes are pinched or punched out that, in fact, the boilers are really operating 150 HP. Kuninger argued that the boilers are not safe and they are unmanned. He went on to say that automatic controls can go bad and these boilers, again, are unmanned.

Kuninger said that low water in the boilers or high water can mean a blow-up. He went on to say that if one loses steam, one can lose everything. He went on to say that if a boiler operator was present, he would not let anything happen to the system. He reiterated that if boiler water gets too high, there is a dangerous situation. He went on to say that if the water level is too high, he can shut the valve off or drain the tube.

Kuninger testified that he worked on softeners and alkalizers and one does not want to have hard water. He went on to say that checking equipment out once every eight hour day is insufficient and he argued that it was more useful to have people around to stop various problems before they start. He went on to say a very cold winter could mean more breakdowns.

Kuninger said he tested generators both on or off load for power and he stated that inexperienced people really cannot spot or take care of problems.

Kuninger said that the new system requires help just as in the past, but it is now unmanned and small boilers could blow up.

Mr. Gary Sharp said he was re-hired on December 16, 1991 as a Maintenance Repair 2 and he said he had been a Stationary Engineer when laid off. He said he was in that capacity for about 13 years and now in his present position he tests waters, does blowdowns, etc.

Sharp said that firing up a boiler is a task which takes a certain amount of talent and training.

Sharp said that the current equipment is distinguishable from the prior equipment in that now the system uses electrical motors, not turbines and the boilers are much smaller, although they are just as likely to blow as a big boiler. Sharp said that the small diesel generators are used to cover power outages and in one situation, they needed 24 hour coverage because a fuse box went bad. Sharp said that he knew of no other maintenance repair guys who had the same training as he.

On redirect, Sharp said that his old job using coal in the boilers took about 60% of his time.

The Union cross examined Management witnesses. Mr. Ed Dwyer testified that the old boiler room had de-alkalizers, some air raiders, blow down tanks, water softeners, weighing device, and diesel generators and most of that equipment is still there. He went on to say that the former stationary engineer and boiler

operator maintained that work which is now done by maintenance repair personnel. Dwyer said the issue is not whether a maintenance repair person can do the work.

Dwyer on cross testified that the Mt. Vernon Developmental Center knew that there would be an effort to go with two or three maintenance people in about 1988 and he cited Union Exhibits #1 - #5 which are job awards.

Mr. George Stringfellow, on cross, testified he had about 1800 hours at steam boilers and pumps in order to take the tests to be licensed. He said he had to know boilers, pumps, gas outs, stacks, water columns, etc. and he knew all the safety issues. Stringfellow said he knew what was wrong and how to fix it.

Stringfellow went on to say that a boiler operator starts with a visual check and then would check the water, pull the fire and ash, say twice a day, and if anything went wrong, he would fix it. He went on to say that he took care of pumps, the heating system and softeners, etc..

Stringfellow said the boilers need soft water to keep the lines clean and to re-generate a softener, it might take ten minutes or it could take four hours to re-generate three. De-alkalizers take two hours and there were two units. The brine pit, said Stringfellow, was filled once a week and it took about one-half hour by a maintenance repair worker.

Stringfellow said that once a week, he changes pumps and boilers and he greased the product, etc. and does blowdowns, etc.

Stringfellow said the satellite boilers are taken care of by the maintenance repair 3 personnel. He went on to say that the maintenance repair 2 and 3's do lots of different work.

Stringfellow also said that the security police check gauges, the water, and the air and comfort heating systems and if something is off, the security guards can then call in.

Stringfellow said that the warranty on the equipment is up in December of 1992 and that means the Department will pick up less duties because at that point, they will have gotten all the bugs out of the new system.

However, Stringfellow said that the de-alkalizers and the softeners will stay as is.

Stringfellow went on to say that the Union began meeting with the Employer in March of 1991 and at that time, he asked whether Article 38 would be in effect. He went on to say that he learned that only about three maintenance repair people would be in the department in October or November 1991. He said he told the laid off employees to apply for positions which might be available.

2. ARGUMENT

The Union asserts that the State abolished ten positions and replaced them with three maintenance repair workers (see Joint Exhibit #3).

The Union notes that the Mt. Vernon Developmental Center converted to gas systems after the coal-based boiler system was eliminated.

Article 38, argues the Union, requires that the Employer train employees in order to acquire skills and knowledge necessary to retain a position if new equipment or technological

change significantly affects the operations. A new boiler system, argues the Union, affected the operations under Article 38. In this case, the Union argues that the State replaced the ten employees with three maintenance repair workers.

The Union goes on to say that Article 38 means employees must be maintained if they are displaced by new technology or new equipment. In this case, the State claims that the change did not involve new technology. The Union asserts that Article 38 states:

Whenever new equipment or technological change significantly affects operations...

and the Article goes on to protect employees.

The new boilers, argues the Union, changed the equipment and, therefore, Article 38 should support that Union's claim.

The Union asserts that the State replaced ten employees with three maintenance repair workers and under Article 38, the displaced workers should have been given jobs.

The Union also argued that the new telephone system affected employees and the operators were offered alternative jobs.

The Union claims that when the parties drafted Article 38, it was meant to put people in new positions.

The Union argues that Article 38 covers the process.

The Union goes on to cite Article 18 and then it cites Article 124.12(B), 124.12(C) and 124.12(D). The Union goes on to say that the State did not demonstrate a change in work and while licensure may affect a change, the work remains the same. In any event, there was not a lack of work, argues the Union, and therefore, the laid off employees should get work. New equipment

requires more work of a specialized nature or knowledge and using operators and engineers is important for safety reasons.

The Union argues that Article 38 states that when an employee is unable to complete training, the agency should make a good faith effort to place the employee in other positions.

The Union goes on to reiterate that the State violated Article 18 and it cites ORC 124.321-327.

The Union argues that the State's conversion to a gas fired system did not really result in the lack of work but was in effect a technological change so Article 38 should have been implemented.

The Union cites *Esselbourne v. the Ohio Department of Agriculture*. It argues that the Employer failed to demonstrate that the job abolishment was undertaken due to lack of work as required by Ohio law.

The Union also cites Arbitrator Graham and the Union claims the issue is whether the State met its burden of proof that the abolition of the boiler operators and stationary engineers. The Union argues that the Employer should have retained all of the employees affected by the new equipment. Thus, if the arbitrator finds that Article 38 does not apply, then Article 18 must be utilized in order to have these grievances upheld and the laid off employees be given full back pay and benefits.

V. DISCUSSION AND AWARD

The parties agree that the issue focuses on whether Management violated Articles 38 and 18 of the Contract in eliminating six stationary engineer and four boiler operator positions.

The testimony of witnesses is that the Mount Vernon Developmental Center converted from coal fired boilers to a gas system in 1991. The new system used three (3) hot water units near one building, two (2) satellite units by another building, and one (1) steam boiler in the storage facility.

The Employer claimed that the boiler operating and stationary engineering functions were no longer required and it abolished ten positions and laid off ten employees. To do the new type of work involved in the new system, the Employer created three new Maintenance Repair Worker #2 positions (see Joint Exhibit #3). Thus, the issue is whether Management needed the personnel who formerly operated coal fired boilers.

These new boilers operate with less than 30 horsepower and they do not have to be continually monitored. Thus, employees checking on or maintaining the new boilers do not have to be licensed boiler operators and/or stationary engineers.

Mr. George Stringfellow, both a licensed boiler operator and stationary engineer, was promoted to Management in October 1991. Stringfellow testified the new boilers do not require boiler operators or stationary engineers and because the new system is "safe", there is no need for the former positions. Thus, former employees could apply for the new Maintenance Repair positions.

Article 38 talks about the need for retraining employees in order for them to handle "new equipment".

Article 38 - Technological Change

Whenever new equipment or technological changes significantly affect operations, the Employer will provide notice to the Union as soon as practicable but not less than sixty (60) days in advance. The Employer, whenever possible, will provide training to employees to acquire the skills and knowledge necessary for the new procedures.

Reasonable notice shall be given in advance of any technological changes that could potentially displace employees so that employees can be retrained. Such training shall be for employees to acquire skills and knowledge necessary to adapt to the technological changes within the agency. Training will be provided on an equal opportunity basis to all employees with the affected classification; where there are limitations of resources, state seniority shall be used to determine the order in which training opportunities are made available. An employee shall be responsible for registering for such training.

The Employer will make every reasonable effort to schedule the training during normal working hours. If the training does occur during normal working hours, then the employee to be trained shall be permitted time off to participate in the training. The training shall be at the Employer's expense.

Should an employee be unable to satisfactorily complete the required training, the Agency will make a good faith effort to place an employee into a similar position within the same geographic jurisdiction (see Appendix J). If that position is at a pay level less than the employee is presently receiving, the employee's salary shall be frozen until such time as the employee's new pay schedule catches up to the frozen salary.

Article 38 protects employees; that is, allows an employee to be retrained for a new job rather than being laid off and having the Employer put an "experienced employee" on to do the "new" job. While Article 38 focuses on retraining employees so that they can handle "technological change"; the "technological change" may be such that there is no need for an employee to do the kind of work involved with the "new equipment". The last paragraph of Article 38 is that the Agency could assign an employee to a similar job

even if the employee is paid less than what he "formerly received", but that is not a violation of the contract and is not an issue raised by either party.

The language of Article 38 does not support the claim that all ten (10) former employees should be employed to handle the new equipment. The Employer's decision to employ three (3) maintenance repair workers and not to use the full complement of boiler operators and stationary engineers was because the new equipment did not require boiler operators or stationary engineers to work on the new gas systems. That decision does not violate Article 38.

Thus, the other issues focus on Articles 18 and 17. Article 18 deals with layoffs, bumping and recall, not retraining. Article 18 allows a "laid off" employee to bump, but in this situation, bumping is not the issue; rather it is the Union's claim that the former employees should be used in the new system. Apparently, the Union considers the reason for laying off the ten employees a violation of Article 18.01; thus, the employees should not have been laid off.

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 123:1-41-01 through 22, except for the modifications enumerated in this Article.

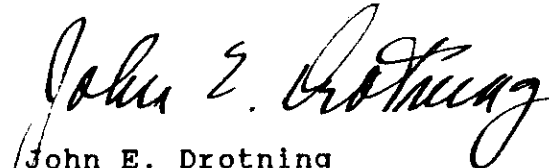
As noted earlier, however, the new system did not require boiler operators or stationary engineers and the Employer abolished these positions. There is no basis for the Union to argue that Management violated Article 18.

Article 17 allows employees to file for promotions and transfers, but that is not the issue under consideration. What is a problem is that Article 17.09 talks about an employee who is demoted to a lower pay range which is the case when employee Sharp was demoted to a Maintenance Repair Worker classification. (Zimmerman, a therapeutic program worker, was issued a lateral transfer to Maintenance Worker #2 under Article 17.08.) Article 17.09 requires Employer approval and the Employer apparently approved Sharp's position. What apparently was not approved was a job for David Kuninger who was initially hired on the same date as Sharp but who was laid off and not re-hired.

The problem is that the testimony and evidence is such that it is not clear what happened to Kuninger. Did he ask to be re-hired as a Maintenance Worker #2? Did he have an opportunity to bump and not take an alternative job? What was Management's reason for not considering him? Presumably, the three most senior laid off employees should have been offered the three newly created Maintenance Repair Worker #2 positions. But the testimony, evidence, and closing arguments do not allow a precise answer with regard to a Contract violation when Kuninger was not re-hired.

In summary, the Employer did not violate Article 38 or Article 18 when it abolished ten positions and laid off employees in the Boiler Operator II and Stationary Engineer II classifications. However, it cannot be determined if there was some violation in the case of David Kuninger being laid off and not being rehired to Maintenance Repair 2. Thus, the Arbitrator

maintains jurisdiction and asks that the parties attempt to work out a mutually acceptable answer to Kuninger's situation and if there is no solution by July 31st, to submit briefs only on David Kuninger.


John E. Drotning
Arbitrator

July 16, 1992