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VOLUNTARY LABOR ARBITRATION

In the Matter of Arbitration
Between:

THE STATE OF OHIO
Department of Mental Health
Oakwood Forensic Center

-AND-

THE STATE COUNCIL OF PROFESSIONAL EDUCATORS
OEA/NEA

Case No.:

IN RE: GRIEVANCES OF: Mary Bice (23-12-911213-0290-06010) &
Steve Sellers (23-12-911213-0291-06-10)

OPINION AND AWARD OF ARBITRATION

Dennis E. Minni, Esquire
Arbitrator
Suite 104
14761 Pearl Road
Strongsville, Ohio 44136
(216)238-0365

Date Of Hearing: April 8, 1992

Situs Of Hearing: Ohio Office of Collective Bargaining
Columbus, Ohio

Employer Representatives and Witnesses:

1. Teri Decker.....Labor Relations Officer, Dept. of Mental Health
2. John S. Allen,.....Chief Executive Officer, O.F.C.
3. Ted R. Smith,.....Clinical Services Director
4. Jessica W. Byrd,.....ODMH Asst. Deputy Director, NW Area
5. Ron Becker,.....Chief, Fiscal Services
6. Rachel Livengood,.....OCB Asst. Chief of Arb. Services
7. Shelly Ward,.....Labor Relations Specialist, (Observer)

Association Representatives and Witnesses:

1. Mary Bice,.....Grievant (Librarian)
2. Steve Sellers,.....Grievant (Educational Specialist II)
3. Henry Stevens,.....Labor Relations Consultant
4. Grant Shoub, Esquire,....Attorney for SCOPE

ISSUE: Did the institution of a reduction in force ("RIF") eliminating the Educational Specialist II position held by Mr. Sellers and reclassifying the Librarian position held by Ms. Bice to a half-time position violate the letter and spirit of Article 18.01 of the parties' collective bargaining agreement ("cba") which provides for "a determination of substantive validity" as management's burden of proof in justifying its lay-off decisions.

If so, what should the remedy be?

BACKGROUND INFORMATION

The parties, the Ohio Department of Mental Health (hereafter "Management" or "Employer") and the State Council of Professional Educators, OEA/NEA, (hereafter the "Association" or "OEA") are signatories to a collective bargaining agreement (hereafter "cba" or the "contract") which was entered into the record as Joint Exhibit 1 (JX-1). Said contract imposes the following limitation on selected panel arbitrators in Article 6.04, which states:

"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."

This limitation is duly noted because an issue was unable to be set forth by stipulation of the parties prior to or at the hearing leaving the framing of an issue to the undersigned. This having been done, the Employer's fear that non-adaptation of its proffered statement of the issue would be in derogation of its management rights set forth in Article 5 is noted, but not validated.

Management's contractual right to effectuate a lay-off/recall or reduction in force among the classifications covered in this cba may well become compelling evidence of the propriety of its decision(s) regarding manpower measures but it does not per se follow that adaptation of the issue set forth by the Association denies the Employer its management rights contained in Article 3.01 (JX-1, pg. 12).

There is not much argument between the parties as to the facts that led to the instant Grievance. The case pivots upon the existence of "substantive validity" to support the Employer's exercise of its contractual powers alleged to have been performed in incorrect fashion by the Association. OEA maintains the cba was breached because the reduced or abolished positions are needed at Oakwood Forensic Center ("OFC") as formerly constituted.

The OFC mission is to positively respond to the needs of mentally ill felons removed from their respective environments of incarceration. The treatment goal is to stabilize the mental condition of these referees allowing for reinclusion in the prison populations from which they originated.

The budgetary concerns so prevalent in government today did not escape this operation (OFC) of the Ohio Department of Mental

Health. A number of employees from several different bargaining units were affected by this abolishment action, with the two in the SCOPE/OEA unit forming the concern in this proceeding. Specifically, Librarian Bice was placed into a half-time Librarian I position with corresponding restated duties and Educational Specialist II ("teacher") Sellers saw his position completely abolished. "Job Abolishment" may seem to be a harsh, vindictive term but in the Ohio public sector it is a legal term of long-standing usage and does not imply any underlying motivation on the part of the appointing authority effectuating same.

The parties proffered into the record ten (10) joint exhibits, some of their own and testimony from the enumerated witnesses.

It was also stipulated that the matter was arbitrable and properly before the undersigned as arbitrator. The Employer's burden of proof is to show by a preponderance of the evidence that these two abolishments were possessed of "substantive validity" in accordance with that term's plain meaning and operation in Article 18 of the cba.

POSITION OF THE ASSOCIATION

There was an adequate amount of work to perform for both Grievants that was within the objectives of OFC. The needs of the served population were not diminishing but were on the rise. The skills provided by the Grievants were unique to them. They are the only librarian and teacher at OFC.

Mr. Sellers had a waiting list of patients to serve and Ms. Bice had other duties including oversight of three (3) libraries at the facility.

Each Grievant performed helpful, positive services to the patient community at OFC. This belies management's required statement of explanation for the abolishments (JX-7, pg. 2) wherein these Grievants' services were termed an "economic drain" without "clear therapeutic benefit".

The Association does not feel that substantive validity has been established by management. Indeed the reverse is the case because educational services do provide a therapeutic benefit to inmates.

All that the Employer has wrought here is an attempt to distribute the duties of Grievant Sellers among other employees contrary to the requirements of the cba and make Grievant Bice perform the same duties on a half-time basis; both approaches falling woefully short of meeting the substantive validity test.

Mr. Sellers should be returned to his former position with

full back pay and benefits. While Ms. Bice's position should be reclassified to its former full-time status, making her whole for the time and benefits lost as well.

POSITION OF THE EMPLOYER

Initially the Employer backs its decision to effectuate a reduction in force ("rif") by pointing out that OFC's mission is to stabilize its patients until they can be reintroduced to their respective correctional institutions. This is not by way of making light of the value of the educational services offered at OFC concession. However, the same services along with others are provided in the referring custodial communities.

The main issue is meeting the budgetary constraints placed by statewide cuts and retaining OFC's short term acute care mission.

Contractually, the definition of "substantive validity" has been approached in a previous arbitration award (JX-9)by Arbitrator Jonathan Dworkin. That case supports management's view herein that its discretion must not be compromised.

It cannot be overlooked that there is a million dollar reduction being effectuated over a three year period. Regrettably jobs, along with contracted services, had to become the object of working within the ambit of these cuts.

Thus the Grievances lack merit and should be denied.

DISCUSSION AND ANALYSIS

The burden of proof as to the substantive validity of the reductions is clearly management's. As the proponent of these job reduction measures the Employer must show by a preponderance of the evidence that the cba's promise of putting compelling reasons for its decisions in writing is met.

I conclude that this burden has been met with regard to both protests. In denying these grievances I considered the Association's position that management failed to establish the substantive validity of its rationale that:

"Long-term educational programming is an economic drain with no clear therapeutic benefit being realized."

This position stems from part of the rationale however. Overall the facts are inescapable that no one can gainsay the value of teaching or librarian service *per se*. However, the Employer's argument that its action as to Mr. Sellers was based on some duplication of educational components in the patients' treatment

plan and that librarian services in Ms. Bice's case were reduced to basic levels in proportion to maintaining the position as a half-time job are cogent because the mission of OFC, stabilization of the patient, does not encompass a long term involvement with the inmates.

I do not feel that a denial of educational training or full time reduction of library services at OFC is the same as similar reductions would be at the main correctional facilities. No one could argue the value of education at any point in the custodial or corrective system. There is no lack of testimony and other evidence in the record as to the Employer's financial straits or dictates necessitating position abolishment.

The Association would make the issue one of simply placing value on teaching or library services and then proffering that as a reason why no substantive validity for these reductions was demonstrated. In the abstract, there could never be an acceptable counterpoint to this approach. Education is good, has intrinsic value and is difficult to present in a negative sense.

The real test here is that in the context of a labor-management relationship management acts and organized labor reacts. Article 18 does not embody such a "sacred cow" that this public employer cannot abolish a teaching position because education is desirable. It goes without saying that it would be quite an indictment against management if any classification lacked value or otherwise failed to contribute to the overall needs of the program. These acts by management were predicated on a determination based upon Oakwood's mission or role within the correctional service of Ohio.

There is no evidence of record that only Association represented classifications were subjected to abolishment. Or that there was a retaliatory or vindictive motivation against the Association or these Grievants.

The Employer's reliance on its managerial right (Art. 5, cba) to determine where the cuts would be effectuated is found compelling as well. I do not think the "economic drain" term can be fairly taken out of context (or "therapeutic benefit" for that matter) as a standard for proving there was appropriate justification for the lay-off or reduction to half-time decisions.

Whatever weight in favor of the Employer's position is played by reliance upon its Article 5 rights is not to be summarily dismissed. It is well-settled in arbitration practice that the office of arbitrator does not carry with it the ability to gainsay a managerial decision because the arbitrator personally disagrees with it. I think Arbitrator Dworkin's admonition about not invading the locus of managerial authority is well taken and pertinent herein. (JX-9).

I cannot fault the Employer for placing the budgetary cuts where it did or deny them the full benefit of the language it bargained for. Flexibility in such situations means effective managerial exercise. Whomever disagrees with said exercise probably is directly affected and I appreciate that. It is only within the powers and limitations of the collective agreement that I have authority to overturn an Employer's choice. My decision stems from being convinced that "substantive validity" existed and was demonstrated in the record.

AWARD

Therefore, based upon the foregoing analysis and the record as a whole the Grievances are wholly denied and dismissed.

Dated this 31th day of July, 1992 at Strongsville, Ohio.

Respectively submitted,

Dennis E. Minni
Panel Arbitrator