#914

IN THE MATTER OF ARBITRATION

BETWEEN

Department of Mental Health, Office of Support Services and OCSEA/AFSCME, Local 11	CASE NO. 23-02-920812-0191-01-09 GRIEVANT: RANDY McATEE OPINION AND AWARD

APPEARANCES:

On Behalf of the Employer

Tim D. Wagner	Labor Relations Administrator, Department of Mental Health
Michael Duco	Office of Collective Bargaining
Leonard N. Mills	Chief, Office of Support Services
Carol Hildebrecht	Food Service Manager
Theodore Johnson	Food Service Consultant

On Behalf of the Union

Patrick A. Mayer	OCSEA Staff Advocate
Joe Ragaglia	Arbitration Clerk
Sharon Woo	Arbitration Clerk
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Randy McAtee	Grievant

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I. STATEMENT OF FACTS

On August 11, 1992, the Grievant, who up to that point had been classified as a Storekeeper 2 and assigned to the Department of Mental Health's Office of Support Services (OSS), Central Food Processing Facility (CFP) in Dayton, Ohio, completed the standard grievance form complaining:

> I was abolished as a Storekeeper 2. These duties are still being performed by a higher paying class. There is no permanent lack of work or no reasons of economy. If someone else is preforming (sic) my duties in my classification. For this I am aggrieved.

As relief, the Grievant requested that he be reinstated to his former position and made whole, which in practical terms meant that he be repaid the $1.94 difference between what he had been earning as a Storekeeper 2 and what he was being paid as a Stores Clerk. Abolishment is a term of art which is defined in Section 124.321(D) of the Ohio Revised Code as being:

> . . . the permanent deletion of a position or positions from the organization or structure of an appointing authority due to lack of continued need for the position. An appointing authority may abolish positions as a result of a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work.

Beyond that definition, the Code, in Section 123:1-41-04, also prescribes the reasons the State can abolish a position in classified service, declaring with regard to that subject that:

> An appointing authority may abolish positions in the classified civil service for any of the following reasons: as a result of a reorganization for the efficient operation of the appointing authority; for reasons of economy; or for lack of work which is expected to be permanent. A lack of work shall be deemed permanent if it is expected to last more than one year.

Whenever an abolishment occurs, Section 124-7-01 of the Ohio Administrative Code provides that the burden of proof shall be as follows:

> **124-7-01 Job abolishments and layoffs**
>
> (A) Job abolishments and layoffs shall be disaffirmed if the action is taken in bad faith. The employee must prove the appointing authority's bad faith by a preponderance of the evidence.
>
> (1) Appointing authorities shall demonstrated by a preponderance of the evidence that a job abolishment was undertaken due to the lack of the continuing need for the position, a reorganization for the efficient operation of the appointing authority, for reasons of economy or for a lack of work expected to last more than twelve months.

The Grievant's wasn't the only position which was abolished at the Dayton CFP in August, 1992. In all, the Employer abolished ten positions in nine classifications which, according to a letter dated May 22, 1992 from the Chief of the Office of Support Services to the Deputy Director of the Division of State Personnel for the Department of Administrative Services, would result in a savings in wages and fringe benefits for the coming fiscal year of $347,149.00. The May, 1992 letter which was written to support the decision to abolish the ten positions at the Dayton CFP, declared as the Department of Mental Health's reasons for taking that step that:

> Prior to July 1, 1991, CFP operated a cook - chill food operation of which there were seven dedicated customers within the Department of Mental Health (DMH) and Department of Mental Retardation and Developmental Disabilities (MR/DD). These customers relied on CFP to both prepare and deliver their meals to the institution twice or three times a week. These customers complained that the cost of service was too expensive.
>
> After July 1, 1992, CFP was changed from a cook - chill operation to a cook - freeze operation. This was done to increase the shelf life of the product. CFP no longer had any dedicated customers. CFP produced only for distribution to Central Warehouse which has a customer base in excess of 70 prisons and institutions. This was done in order to

> increase the CFP customer base and to help spread the cost of the operations.
>
> Prior to the change mentioned above CFP had not been able to break even on its operations during the past five years. Sales have declined and during the current fiscal year, the operation is expected to lose over $500,000. Prior to the current fiscal year the maximum amount of loss attributed to CFP was $247,000.
>
> There are two main reasons why we feel the operation has not been able to meet its financial obligations; 1) When it was decided to stop producing cook - chill it was felt that the Department of Rehabilitation and Correction would purchase the new product. To date DRC has participated very little in the program. Both DMH and DMR/DD are downsizing which has reduced the customer base dramatically. 2) The size and make up of the current staff is too large for the current amount of sales attributed to CFP.
>
> With the change from producing for its own customers to the current situation where CFP produces only for the Central Warehouse, there is no longer a need for certain positions.

The Dayton facility continued to receive raw food products after the change from cook-chill to cook-freeze took place, the raw materials coming from private vendors or from the central warehouse in Columbus. Instead of preparing specific menus for each of its client organizations as it had under the cook-chill process, however, the CFP converted the raw materials into a much smaller number of bulk items which were then shipped back to the Columbus warehouse for distribution. Transportation to and from Columbus was arranged by the warehouse using its vehicles. In the past, the CFP had used their own vehicles to ship products.

As a Stores Clerk the Grievant continued to perform many of the same duties he had performed as a Storekeeper 2, including receiving, sorting and distributing supplies and equipment. According to the classification specification for Storekeeper 2 the main difference between the two positions is

that the Storekeeper 2 is a team leader responsible for directing a number of Store Clerks, Storekeepers and/or Inmate Workers and has greater responsibilities in terms of inventory and ordering supplies than does the Stores Clerk.

Sometime prior to December 15, 1992, the Grievant filed a job audit grievance in which he alleged that an employee who was classified as a Food Consultant and a member of another Bargaining Unit was performing his old duties as a Storekeeper 2 and, therefore, acting outside of the Food Consultant's classification. Management turned down the grievance, arguing that whatever loading and unloading of shipments that the Food Consultant did were only a minor portion of his time, approximately five percent, and they fell within his job duties as set forth in the classification specification for Food Consultant which declares in pertinent part:

> Provides consultative services & advice concerning facilities' food service delivery systems to include material handling & equipment, implementation of & maintaining established policies & procedures & development of renovation & construction projects related to dietary capital improvements, makes recommendations on financial accounting, budgeting & internal controls at unit level & concerning other aspects of food service preparation &/or delivery systems.
>
> Notifies institutions of central warehouse deliveries & serves as contact person for all delivery problems; inspects food service operations to ensure compliance with federal & state guidelines & sanitation standards; investigates consumer complaints.

The pre-abolishment table of organization for the CFP indicated that the Food Consultant was in Bargaining Unit No. 5 and was over one Store Clerk who was in another Bargaining Unit. The same document lists the Grievant and a second Store Clerk both of whom are in the same Bargaining Unit as the other Store Clerk as being outside the Food Consultant's direct line of authority. The table of organization created by Management after the abolishment of the Grievant's

position shows the Food Consultant having oversight over both Store Clerks who are now in the same Bargaining Unit as the Food Consultant and fails to list the Grievant at all.

On October 21, 1992 the Grievant, another Store Clerk, the Food Consultant and the Food Systems Manager attended a meeting which had been called by the Food Consultant to ". . . clarify his status as a lead worker and the responsibility it curtails." Notes of that meeting indicate the following general discussion took place:

> LEADWORKER POSITION
>
> Ted stated he maintains his position as a positive influence for his coworkers. He gives two way directions from his superior, Carol, to subordinates. He is the link from management and is responsible for what is and is not accomplished in the stores area.
>
> Carol stated Ted is responsible through her for the work in the back. No specific directions should have to be given to the employees. Everyone should know their job and responsibilities by now: pulling; receiving; stocking; packing; etc. Carol stated she expects stores to respond when Ted or she informs them they are behind in an area and need to try to catch up without being specific.
>
> Carol does not want to see Ted working by himself when there is work to be completed. The leadworker shouldn't have to pull and pack etc. when others are sitting doing nothing. Carol stated she has had to keep tabs on the tasks done and it keeps her from her work. If you do not see anything to do then ask Ted or Carol. Everyone needs to pitch in and help keep the back orderly and clean.

The Union pointed out many of these same facts to Management throughout the steps of the grievance procedure as proof that the Grievant's duties remained and, therefore, that his job had been abolished in error, but to no avail. The result was that the matter proceeded to arbitration at which time the parties relied upon the following provisions of the written agreement to support their respective positions:

§ 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.

When the matter ultimately proceeded to arbitration, the parties entered into a number of stipulations, including the following:

> 3. This grievance # 23-02-920812-0191-01-09 challenges only the rationale of the abolishment of the position of Storekeeper 2.
> 4. This abolishment was effective Sept. 8, 1992. The Union was notified on July 28, 1992.
> 5. The Storekeeper 2 position was abolished for reasons of economy and permanent lack of work.
> . . .
> 8. Class specifications are prepared by the State and reviewed by the Union which may challenge them. Positions descriptions are prepared from the class specifications, but are not reviewed by the Union.

It was upon these fact that this matter rose to arbitration and award.

II. POSITION OF THE UNION

Whatever may have led Management to change from a cook-chill to a cook-freeze operation did not justify abolishing the Grievant's position. Whether Management likes it or not, there are definite rules which govern abandonment, rules which put the onus on the Employer to establish all of the mandatory statutory and contractual criteria before it can take the step of abolishing an employee's position. Thus, the law and the Contract provide that a position may only be abolished for reasons of economy and/or if there is a permanent lack of work. Neither of those situations exist in this case.

Clearly there was no financial exigency such as would justify the Employer's decision to abolish the Grievant's job. Management reluctantly admitted as much when it volunteered that the only savings the abolishment of the

ten positions, including the Grievant's, would yield was that it would not have to pay salaries and benefits to the Grievant and nine other affected employees. Beyond those savings, no one can point to any economic benefit to be realized from the abolishments. Obviously, Management felt that such savings were sufficient to justify the decision to abolish the Grievant's position along with the nine others, but the Courts of this State have said otherwise. Rather, they have unanimously held that there must be some economic justification to warrant abolishing positions other than the savings the Employer can realize from not paying wages and benefits to the affected employees.

Management alleged that those benefits existed or would exist as a result of the changes made in the Dayton CFP's operations, but it was unable to offer any evidence whatsoever to substantiate those allegations. Again, the law requires more. It demands that the Employer establish by a preponderance of the evidence that it had sound economic reasons for abolishing a position. Evidence means more than supposition, but that is all the State offered in this case.

Likewise, it was unable to meet its burden of establishing that there was a permanent lack of work for the Grievant's position. If anything, the record established just the opposite, that there was as great if not a greater need for the Grievant's position after the change at the Dayton CFP than there was before. Clearly, materials continued to be received at the CFP and finished food products shipped from the facility. The only difference is that instead of shipping the finished food products from the CFP to certain customers as was the case before the changeover, they are now shipped to a Columbus warehouse. The raw materials to make those meals are sent to the CFP from Columbus or are delivered by private vendors who contract with the State. Either way, the food products have to be received by someone, inventoried, stocked, removed from stock, delivered to the kitchens and the finished products shipped to someone.

In the past, it was the Grievant's job as a Storekeeper 2 to be responsible for that work, both personally and as a leader. Now the Grievant performs much of the same physical work he did before, but instead of being classified as a Storekeeper 2 with all that entails, he is classified as a Stores Clerk. Not only do the physical parts of the Grievant's job still exist at the CFP, but the leadership role which is an integral part of the duties of his classification haven't disappeared either. Instead, they have been delegated to another employee, the Food Coordinator, who is not even in the same Bargaining Unit as the Grievant or the other Store Clerk. The Food Consultant is just that, a consultant who, according to the classification specification for that position, has absolutely no leadership role to play, is not to do any physical work and is to have no direct authority over the Store Clerks. That leadership role and the concomitant responsibility for directing the Stores Clerks falls, according to the applicable classification specification, to the Grievant's old position. Management knew as much when it decided to abolish his position. It also knew that it had to have someone fill that role after the abolishment took place. It was with these thoughts in mind that the Employer redistributed much of the Grievant's work to the Food Consultant. Having taken that step, Management then declared that there was a permanent lack of work for the Grievant. The argument is obviously nonsense since the Grievant's work continues to be performed by others.

As there is no economic justification for the abolishment and considering that the duties of the Grievant's position continue to be performed, albeit by someone other than the Grievant or another Storekeeper 2, it follows that Management did not have a right to abolish the Grievant's position. The Employer may feel that the rules regarding job abolishment are onerous, but they are the rules and Management is obligated to follow them just as the Union is.

There is no question that in this case Management broke the rules. Therefore, the Grievant is entitled to be made whole.

III. POSITION OF THE EMPLOYER

In resolving this dispute, it is important for the Arbitrator to keep in mind both what is at issue and what is not at issue. The latter, in many ways, is just as important as the former. Specifically, the issue before the Arbitrator does not involve Management's decision to go from a cook-chill processing operation to a cook-freeze process. Nor does it involve the concomitant decision to increase the CFP's efficiency and economic viability by reaching out to a much broader market than the seven facilities who were the CFP's only customers. When it became clear that, for a number of reasons including the loss of three of its seven customers, the CFP would either have to radically change the way it did business and seek out new markets and new customers or go under financially, Management took the logical step of radically altering the CFP's method of operation in order to ensure that it would continue as a financially viable entity. The decision to change the CFP's method of operation was strictly Management's to make. All that the Union can challenge, all that it has challenged by the way of this grievance, was the abolishment of one of ten positions in one of nine different classifications which occurred as a result of the change Management instituted.

Just as the Union cannot challenge the Employer's decision to go from a cook-chill to a cook-freeze process, neither can it challenge Management's right to abolish positions as long as in doing so it adhered to all applicable statutory and contractual requirements. Those are spelled out in Article 18 of the Contract and Section 124.321 of the Ohio Revised Code. Those provisions, along with the applicable sections of the Ohio Administrative Code, vest the Employer with the right to abolish a position whenever certain circumstances exist. In this case, it is clear that the Employer had the right to abolish the

Grievant's position because of the financial circumstances which led Management to change its way of doing business made it no longer feasible to maintain someone in that classification. This is not to say that the Storekeeper 2 position was not needed at some time or that the Grievant did not competently perform his duties in the past. There is no question on that score because those issues are not relevant to this matter. The issue, instead, is did Management have the right to abolish the position in the first place and, if it did, did it do so properly? The answer in both cases is in the affirmative.

The Union, of course, argues that Management violated the Contract when it abolished the Grievant's position and, more specifically, that the Grievant's duties are still being performed by other Bargaining Unit members to whom Management parceled out the work. Even the most casual review of the evidence demonstrates the fallacy of the Union's argument. Specifically, seventy percent of the Grievant's duties are no longer necessary because of the change in the operation of the CFP. What remains, the minority of the Grievant's work, was either absorbed by the Store Clerk who performed the exact same duties in many respects as the Grievant or was redistributed to the Food Service Coordinator, another Bargaining Unit position. The important point to bear in mind is that it was no longer necessary for the Employer to have the duties performed which were the hallmark of his position. What was left when those were taken away were only a few things, most of which were already being performed by the Store Clerk to whom those duties had already been entrusted pursuant to the position description and classification specifications of that position. The remaining work, which was an almost insignificant amount of the Grievant's responsibilities, was redistributed to the Food Service Coordinator.

Again, Management had a contractual and statutory right to make those decisions. The fact that it did or that some of the Grievant's duties were

absorbed by another position while a few were redistributed to another member of the Bargaining Unit doesn't mean that Management violated the Contract when it made those decisions or that they should be overturned now. So long as Management was acting within the scope of its authority which it was, so long as it followed the Contract, the Ohio Revised Code and the Ohio Administrative Code which it did, so long as it had sound recognized reasons for doing so which it did, then the decision to abolish the Grievant's position cannot and must not be set aside. Certainly it cannot be where the evidence fails to disclose the Employer acted in bad faith, which is the only possible reason to overturn Management's action. It is the Grievant's responsibility to establish by at least a preponderance of the evidence that Management acted in bad faith. Considering that the Employer had sound financial reasons to take the action which it did, neither the Grievant nor the Union can meet that burden and, therefore, the grievance should be denied.

IV. OPINION

By now the rules and principles governing abolishments are well recognized and understood. By contract, layoffs, including job abolishments, are controlled by Ohio Revised Code Sections 124.321 through .327, and Administrative Rules 123:1-41.01 through .22. Further, as Arbitrator Harry Graham noted, even though the contract doesn't make reference to any other specific provisions of either the Ohio Revised Code or the Ohio Administrative Code the principles specified in Administrative Rule 124-7-01(A)(1) nevertheless apply in such situations. Dr. Graham's conclusion, which he discussed In the Matter of Arbitration between OCSEA/AFSCME Local 11 and The State of Ohio, Bureau of Employment Services, Case No. 11-09-(891026)-0119-01-06, is important because Administrative Rule 124-7-01(A)(1) places the burden upon the employer to establish by at least a preponderance of the evidence that a job abolishment was undertaken for reasons of economy, lack of work or as a result of a organization

for the efficient operation of the organization. In this case, to meet that burden the Employer made a number of allegations including that it abolished the Grievant's Storekeeper 2 position because of a lack of work and for reasons of economy.

At first glance, it would appear that the Union acknowledged the meritoriousness of the Employer's claim as it stipulated that "the Storekeeper 2 position was abolished for reasons of economy and permanent lack of work." It is clear, though, from the Union's presentation that it was denying the validity of that assertion. Thus, it repeatedly sought to show, both through the testimony of its witnesses and by way of cross-examination of the Employer's witnesses, that the Department of Mental Health did not have a sound economic reason to abolish the Grievant's position and that it was not abolished for lack of work as the duties of the position continued to be performed after the abolishment, albeit by another Bargaining Unit member. Considering the vehemence and tenacity with which the Union argued the Grievant's case, coupled with the Employer's failure to make any effort to enforce the stipulation by attempting to cut off the Union's presentation, the undersigned is left to conclude that the stipulation in question, far from intending to end the dispute was, instead, badly drawn and that its true intent was to specify the reasons the Employer acted to abolish the Grievant's position. Under the circumstances, it is appropriate to review the evidence the Employer presented in order to determine if the Department of Mental Health met the burden of proof imposed upon it by the Contract.

What the State was able to establish was that it had sound economic reasons for altering the operations at the Central Food Processing facility in Dayton, Ohio from a cook-chill to a cook-freeze process. The Union, in fact, never seriously questioned the Employer's evidence which established that for a

number of reasons the CFP's customer base which originally consisted of seven "dedicated" clients had seriously shrunk while its costs had not, with the predictable result that the facility expected to have a $500,000 shortfall in fiscal year 1990. It was these considerations, coupled with the belief that by abandoning the cook-chill process in favor of a cook-freeze operation the CFP would not only be able to cut its costs, but would be able to tap into a significantly larger customer base which, in turn, would make it profitable that led Management to act. After considering how the change in processing would impact employees at the CFP, the Director of the OSS sought authority from the Department of Administration (DOA) to abolish ten positions in nine classifications. According to the July letter from the OSS Director to the DOA, the Department of Mental Health expected to save approximately $346,000 in salaries and benefits by abolishing the ten positions. In the Grievant's case, the abolishment of his position was expected to save the State more than $34,000.00.

In Bispeck v. Trumbull County Board of Commissioners, 37 Ohio St. 3rd 26 (1988), the Ohio Supreme Court, in a per curiam decision unequivocally declared that whatever savings the State may realize from not having to pay the wages and benefits to an employee whose position is abolished is not, in and of itself, sufficient economic reason to justify the abolishment. Put another way, if the only savings the State can demonstrate is that in the future it will not have to pay the salary of the employee whose position is abolished, it has failed to meet its burden of proving by a preponderance of the evidence that it abolished the position for reasons of economy.

In this case, the Employer alleged that the change from the cook-chill to the cook-freeze process would result in significant economic benefits to the agency, benefits that were so great that within just two years it expected to not only stem the tide of red ink which had been overwhelming it, but it would show a

profit. To support those allegations the Employer offered the testimony of the OSS's Director who gave a general narrative of his agency's financial position both before and after the changeover took place. He did not, however, offer any documentation to support his testimony. However, since the Union did not seriously question the Director's assertions in this regard, the undersigned must accept them as true. As the Union recognized, though, the fact that the change in operation may have resulted in an overall economic benefit did not give the Employer license to willy-nilly abolish positions at the Dayton facility. Rather, both the Contract and the underlying statutes and Administrative Code sections make it clear that when the Employer abolishes a position it must be able to demonstrate by a preponderance of the evidence that it had justifiable reasons to abolish that particular position. Each abolishment must stand or fall on its own merits. The corollary of that principle is that even though the Employer may have had sound economic reasons to abolish nine other positions at the Dayton CFP, the fact that it did does not mean that it had a basis upon which to abolish the Grievant's position. That decision, if it is to survive, must be established on its own merits.

Unfortunately, the only economic benefit the Employer could point to from abolishing the Grievant's position was the $34,000.00 in wages and benefits it would save from not having to pay him. Any other savings the Employer may have realized from abolishing this position were theorial at best and were undifferentiated from the economic benefits it expects to realize from the change in operations. Since all the Employer was able to establish was that it would save money by not having to pay the Grievant as a result of the abolishment of his position, it follows that it failed to establish its claim that the abolishment was justified for reasons of economy. If the abolishment is to stand, then, it must do so on the basis of a lack of work.

The lack of work must be real, though. It cannot be created by transferring the Grievant's duties to those of another employee. It is on this point that the Union attacked the Employer, alleging the work the Grievant had previously performed as a Storekeeper 2 was still being performed at the CFP only the duties were now being performed by two other people, one of whom was outside the Bargaining Unit. Specifically, the Union argued that the leadership responsibilities which are one of the hallmarks of the Storekeeper 2's position had been taken away from the Grievant and delegated to the Food Consultant who, while he is still a classified employee, is a member of a different Bargaining Unit from the Grievant and the Store Clerk. To meet that challenge, the Employer raised two arguments, the first was that because of the cut back in the amount of work engendered by the changeover to the cook-freeze process there was no need for a team leader and, the second, was that the leadership role had been taken over by the Food Consultant to whom the work was delegated by the Food Service Manager and that the leadership role was part of the Food Consultant's responsibilities as specified in the position description for that position. The arguments are mutually contradictory. If the facility doesn't need a lead worker as the Employer originally alleged, then it certainly doesn't need the Food Consultant to fulfill that role. On the other hand, if he is actively fulfilling the role, then it follows that the facility needed a lead worker and that the role he is fulfilling was the Grievant's.

Beyond the logical inconsistency which dooms the arguments, there is nothing in either the Food Consultant's position description or classification specification to support Management's claim that either or both of those documents legitimize the decision to delegate the leadership role the Grievant had performed to the Food Consultant. The best that the Employer can point to is language which says the Food Consultant is to consult on certain operations. This is a far cry from the explicit language found in the classification

specification and position description of the Storekeeper 2 position which declare that the individual in that position will act in a leadership capacity. It is too great a stretch in the face of the unambiguous directive in the Storekeeper 2's classification specification that the individual in that position should carry out a leadership role, to maintain, as does the Employer, that the nebulous language of the Food Consultant's classification specification legitimized Management's decision to abolish the Storekeeper 2's position and delegate the duties of that position or at least the leadership duties, to the Food Consultant. The salient point is that not only did the Food Consultant act in a leadership capacity, but he did so at Management's express order. Further, the evidence demonstrates that this was not some haphazard occasional event. Rather, the testimony of the Food Service Manager, the Food Consultant, as well as the Grievant, and another member of the Bargaining Unit, and the documentary evidence introduced into the record, all substantiate the conclusion that the Food Consultant regularly and actively acted as a leader for the Store Clerks and that this was the exact same role the Grievant had played in his position as a Storekeeper 2.

The record also reveals that many of the other duties of the Storekeeper 2 position continue to be performed at the CFP, but not by the Grievant. Instead, they have been taken over by either the Food Consultant or the Food Service Manager. In passing, it should be noted that the Employer argued that because of the change from the cook-chill to cook-freeze operation there was significantly less work to do as there were less deliveries and shipments from the CFP under the new system. After stressing for so long the reduction in work in the Grievant's area wrought by the changeover, the Employer then introduced testimony establishing that because of the changeover to the new food preparation system, the CFP would be involved in preparing food for hundreds

of customers not just the four it was left with when it decided to go over to the new system. Obviously, if there were a significant reduction in the amount of work, then pursuant to the statute and the Contract which incorporates the statute, the Employer would be justified in abolishing the position, all other things being equal. In this case, the Employer's own testimony did not support the claim of lack of work. Coupled with the Union's testimony and the documentation submitted by the Union, the picture which emerges is just the opposite from what the Employer attempted to portray. There is, based on that evidence, no less work for the Grievant to do now than there was before the changeover.

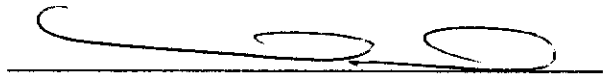
What has changed is that instead of shipping directly to certain dedicated customers, the CFP receives primarily from the Central Warehouse in Columbus and ships directly to the warehouse. The Employer points to the difference as establishing that the Grievant's Storekeeper 2 position could be abolished because the classification specification and position description for the position speak in terms of the Storekeeper 2's responsibility to ship and receive items from customers. Since there are no more customers, the Employer concludes that there is no more work for the position.

The argument is essentially sophistry, elevating form over substance. It basically says that because the shipments no longer go to "customers," the work involved with those shipments no longer exists. To the extent that the CFP continues to receive and ship food products, there is work to be performed. It doesn't matter that the shipments are going to or coming from the Central Warehouse in Columbus, Ohio as opposed to going to or from certain specified customers. The evidence established that the same work is being done now as it was in the past. Therefore, even though the position description and/or classification specifications continue to talk about customers, the flaw is not fatal. It only means that the paperwork has not yet caught up with reality. It

is the reality, though, which must control. In short, Management failed to establish by a preponderance of the evidence that there was a lack of work such as would justify the abolishment of the Storekeeper 2 position.

V. **DECISION**

For the foregoing reasons, the grievance is sustained. The Grievant is to be restored to the Storekeeper 2's position and receive all pay and benefits he would have received in that position less any sums he received while he was classified as a Storekeeper.



LAWRENCE R. LOEB, Arbitrator

OCT 17 1993
Date