

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 1098

OCB GRIEVANCE NUMBER: 23-18-941207-1180-02-11

GRIEVANT NAME: Marlena Rickles

UNION: 1199

DEPARTMENT: Mental Health

ARBITRATOR: Mollie Bowers

MANAGEMENT ADVOCATE: Robert Thornton

2ND CHAIR: Cindy Sovell

UNION ADVOCATE: Maria Margevicius

ARBITRATION DATE: November 21, 1995

DECISION DATE: November 25, 1995

DECISION: Denied

CONTRACT SECTIONS Article 26.03

AND/OR ISSUES: The issue was whether the grievant had been improperly separated from state employment and whether employees on worker's compensation were grandfathered in at the time the article was changed.

HOLDING: Arbitrator Bowers found the language in Article 26.03 to be clear and unambiguous and did not limit management's right to sever an employee's service after he has been in a leave of absence, receiving worker's compensation, for a period of three years. Arbitrator Bowers found that the union knew of management's interest in placing time limits on Article 26 provision; the union was capable of fashioning/proposing language which would protect employees rights through grandfathering; and the absence of a grandfather clause in 26.03 shows that the union did not intend to limit management's rights.

IN THE MATTER OF THE ARBITRATION BETWEEN: *

HEALTH CARE AND SOCIAL SERVICE UNION,
SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO

-and-

OHIO DEPARTMENT OF MENTAL HEALTH

* Grievance No.
* 23-18-941207-
* 1180-02-11
*
* Grievant:
* Marlena Rickles
*
*

ARBITRATOR: Mollie H. Bowers

APPEARANCES:

For the Union:

Maria Margevicius, Organizer
Thelma L. Cohagen, RN
Lisa Hetrick, Ohio State Coordinator
William C. Keene

For the State:

Robert Thornton, Advocate
Cindy Sovell, Second Chair
Tim Wagner, Ohio Department of Mental Health

The Hearing was held on November 21, 1995, at 9:00 a.m. in Room 703, Office of Collective Bargaining, Columbus, Ohio. The Grievant was not present at this proceeding. The Health Care and Social Service Union, Service Employees INTERNATIONAL Union, AFL-CIO (hereinafter, "the Union") proffered the following: (1) the Grievant agreed that the Hearing should proceed in her absence; (2) the Grievant was not present partly because she was physically unable to travel to Columbus; and (3) the Grievant, even if she was present and testified, could not add anything to the record that other witnesses can make because the instant case concerns the parties' intent at the negotiating table and the Grievant was not a member of the bargaining team. The Union advocate and that of the Ohio Department of Mental Health (hereinafter, "the State") stipulated that the case is properly before this Arbitrator. At the conclusion of the case, the Arbitrator acceded to a request from the parties to render a bench decision.

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ISSUE

Did management violate Article 26.03 of the collective bargaining Agreement when it separated the Grievant from State employment? If so, what should the remedy be?

DECISION

The parties agree that, in the 1994 negotiations, management put the Union on notice that it sought to place limitations on certain types of leave addressed in Article 26.03. They also agree that instead of unlimited leave when an employee was off on workers' compensation, the outcome of the 1994 negotiations was that a three year cap was placed on such leave, at the end of which "the employment relationship will automatically sever."

To make its case in this proceeding, the Union argued that the intent of the parties at the bargaining table was to grandfather in all those who were out on workers' compensation leave at the time Article 26.03 was changed. The Arbitrator disagreed for two key reasons.

First, a fundamental principle of contract interpretation is that clear and unambiguous language takes precedence over parol evidence. Article 26.03 is clear and unambiguous in stating that "At the end of the three (3) year period the employment relationship will automatically sever".

Second, the State was correct when it argued that "an employer retains those rights which are not limited by the terms of an [a]greement". The language in Article 26.03 leaves no doubt that management's right is unfettered to sever the

relationship with any employee after she/he has had a "leave of absence for the length of time he/she receives Workers' Compensation not to exceed three (3) years ".

Third, the contents of Article 26.02 and the parol evidence pertaining to its negotiation were a basis for the Arbitrator's decision. The parties agree that time limits were first placed on Union leave in the 1994 negotiations. Judicious note was taken, however, that this section also contains language to grandfather in employees currently on Union leave by stating that "Any employee presently on Union leave may remain on such leave for a period not to exceed three (3) years from the effective date of this Agreement". It was also revealed in the instant proceeding that the Union was the party which proposed the grandfather language. The Arbitrator reasoned, therefore, that the Union: (1) was well aware of management's interest in placing time limits on certain provisions under Article 26 when it entered contract negotiations; (2) understood and was capable of fashioning language to protect the rights of employees currently on Union leave; and (3) by the absence of a grandfather caveat in Article 26.03, the Arbitrator can only conclude that the Union did not intend to limit management's right to adhere to the clear and unambiguous language contained therein.

AWARD

The grievance is denied.

Date: November 25, 1995

Mollie H. Bowers
Mollie H. Bowers, Arbitrator