

ARBITRATION SUMMARY AND AWARD LOG
OCB AWARD NUMBER: 1194

OCB GRIEVANCE NUMBER: 27-22-960110-0302-01-03

GRIEVANT NAME: Inez Rice-Valentine
UNION: OCSEA
DEPARTMENT: Rehabilitation and Corrections
ARBITRATOR: Nels Nelson

MANAGEMENT ADVOCATE: Pat Mogan
2ND CHAIR: Mike Duco
UNION ADVOCATE: Anne Light Hoke
ARBITRATION DATE: 02/26/97
DECISION DATE: 03/26/97
DECISION: GRIEVANCES COMBINED
CONTRACT SECTIONS:

HOLDING: The Grievances were combined. The Arbitrator found that the Employer intended to combine the Grievances at the step 4 meeting.

COST: \$ 823.00

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ARBITRATOR: Nels Nelson

MANAGEMENT ADVOCATE: Pat Mogan

2ND CHAIR: Mike Duco

UNION ADVOCATE: Anne Light Hoke

ARBITRATION DATE: February 26, 1997

DECISION DATE: March 26, 1997

DECISION: The grievances were combined at step 3

CONTRACT SECTIONS AND/OR ISSUES: Did the Employer agree to combine grievance number (0251) and (0302) ?

HOLDING: Arbitrator Nelson found that Employer did agree to combine the grievances as step 3. Arbitrator Nelson stated that the testimony of Terry Hollon was clear and convincing, that Iddris Abdurraqib agreed to combine the grievances. The Arbitrator also stated "that the lack of response to the step three meeting for grievance #302 is a significant factor. If the grievance procedure is to function properly, it is important that the parties meet their contractual obligations. In the instant case a third step response by Abdurraqib, the hearing officer, likely would have removed any doubt about whether an agreement had been reached to combine the two grievances".

ARB COST: \$ 823.82

ARBITRATION DECISION

March 26, 1997

In the Matter of :

State of Ohio, Department of Rehabilitation)
 and Correction, Pickaway Correctional)
 Institution)
)
 and)
)
 Ohio Civil Service Employees Association,)
 AFSCME Local 11)

Case No. 27-22-960110-0302-01-03
 Inez Rice-Valentine, Grievant

APPEARANCES

For the State:

Pat Mogan, Advocate, Office of Collective Bargaining
 Michael Duco, Second Chair, Director of Dispute Resolution, Office of Collective
 Bargaining
 Iddris Abdurragib, Labor Relations Officer
 Colleen Ryan, Team Leader, Office of Collective Bargaining

For the Union:

Anne Light Hoke, Advocate
 Terry Hollon, Vice President/Chief Steward
 Inez Rice-Valentine, Grievant
 Robert L. Goheen, Staff Representative

Arbitrator:

Nels E. Nelson

BACKGROUND

The events giving rise to the grievance began on August 22, 1994. On that date the grievant, Inez Rice-Valentine, a secretary in the education unit at the Pickaway Correctional Institution of the Department of Rehabilitation and Correction, was attending a self-defense class which was required for her job. In the course of participating in the program she aggravated a pre-existing back strain.

The grievant was treated by a Dr. Cristales. He suggested that she change her starting time from 8:00 A.M. to 8:30 A.M. because medication that he had prescribed would leave her dizzy and drowsy at 8:00 A.M. When the department refused to alter the grievant's starting time, Dr. Cristales and the grievant's primary care physician agreed that the grievant would be unable to work. As a result, she went on workers' compensation on September 13, 1994.

On September 20, 1994 the grievant filed grievance no. 27-22-940920-0251-01-09. She charged that her request for a change in her starting time based on the recommendation of her doctor was a "reasonable accommodation." The grievant requested that she be granted a reasonable accommodation consistent with the Americans with Disabilities Act. When no step two response was received, the grievance was appealed to step three. The time limits for step three were extended on November 18, 1994 and May 9, 1995 for further investigation and information and on July 14, 1995 the grievance was extended until the grievant returned to work.

The grievant returned to work on December 18, 1995. She was placed in a secretary's position in the management unit. Because the department had placed the grievant had been placed on an involuntary disability separation on October 13, 1995, she did not receive credit for the sick leave and personal leave that she had accrued while she was on workers' compensation.

On January 8, 1996 the grievant filed grievance no. 27-22-960110-0302-01-03. In this grievance she charged that the department improperly placed her on an involuntary

disability separation, denied her compensation for her accrued sick leave and personal leave, and failed to reinstate her to her former position. The grievant requested that the disability separation be expunged from her record; that she be credited with accrued vacation, sick, and personal time; and that she be made whole.

The department's step two response was provided on January 18, 1996 by George Engle, a labor relations officer. It indicates that the grievant was informed of the rules regarding her disability separation by telephone and a letter dated October 13, 1995 and that these constituted a pre-separation hearing. The grievance response stated that the grievant was not due accrued sick leave or personal leave because she was being reinstated from a disability separation. It added that the law required only that she be placed in the same or similar position upon reinstatement.

The step three hearing for grievance no. 302 took place on February 29, 1996. The grievant appeared at the step three hearing with Terry Hollon, the chief steward. The union claims that at the hearing the department agreed to combine grievance nos. 251 and 302. The department was represented by Engle and Iddris Abdurragib, a labor relations officer, who served as the the hearing officer. The state asserts that no agreement was made to combine the grievances.

At the third step meeting the department agreed to an amendment to grievance no. 302. It states:

Furthermore, as a result of these violations, the employee was further harmed when she was lessed [sic] payment of wages not credited to her leave balances.

The union claims that this amendment indicates that the department agreed to combine the two grievances. The state rejects this contention.

The dispute was presented at step four on March 15, 1996. The union was represented by Brenda Goheen. The state's representatives included Colleen Ryan, a labor relations supervisor from the Office of Collective Bargaining. The union contends that grievance nos. 251 and 302 were discussed. The state claims that only grievance no. 302

was considered. In any event, no settlement was reached and the union requested arbitration.

The arbitration hearing took place on February 26, 1997. At that time the state argued that only grievance no. 302 was before the Arbitrator. It further maintained that since it had stipulated that the grievant was not placed on disability separation and should be credited with accrued sick leave and personal leave for September 13, 1994 through December 17, 1995, the only issue before the Arbitrator was whether the grievant should have been reinstated to her former position as a secretary in the education unit.

The union insisted that the department had agreed to combine grievance nos. 251 and 302. It indicated that this required the Arbitrator to determine whether the department had violated the collective bargaining agreement in September 1994 when it refused to allow the grievant to change her schedule from 8:00 A.M. - 4:30 P.M. to 8:30 A.M. - 5:00 P.M.

The parties requested the Arbitrator to rule whether the grievances had been combined before proceeding with their presentations regarding the alleged failure of the department to accommodate the grievant's back problem. After hearing the arguments regarding the issue, the Arbitrator ruled that the department had agreed to combine the grievances and indicated that he was prepared to proceed.

The parties, however, expressed a desire to attempt to negotiate a settlement. After several hours a settlement was reached and agreed to by the state and the union. As part of the settlement the grievant agreed to waive any further administrative appeals or legal action.

This decision is prepared in response to the parties' request for a written decision in support of his ruling at the hearing that they had agreed to combine grievance nos. 251 and 302.

ISSUE

The issue as framed by the Arbitrator is as follows:

Did the department agree to combine grievance nos. 251 and 302?

UNION POSITION

The union argues that the department agreed to combine grievance nos. 251 and 302. It points out that the grievant testified that at the step three meeting for grievance no. 302 Hollon told Abdurragib that the two grievances ought to be combined. The union notes that the grievant reported that Abdurragib accepted Hollon's request and an amendment to grievance no. 302 was written which was intended to roll together grievance nos. 251 and 302.

The union contends that Hollon's testimony was the best evidence regarding what happened at the step three meeting because he had nothing to gain or lose. It observes that he stated that all aspects of the grievant being forced to go on workers' compensation were discussed and that Abdurragib consented to roll together the two grievances. The union emphasizes that Abdurragib signed the amendment to grievance no. 302 which combined the two grievances.

The union claims that both grievances were considered at step four. It maintains that the grievant covered all of the facts relating to both grievances and that Goheen presented the union's position for both cases. The union reports that the state requested a caucus but never responded to the grievances.

The union rejects Ryan's testimony that grievance no. 251 was not discussed at step four. It points out that she admitted being out of the room during part of the mediation session. The union further notes that she acknowledged that she did not review her notes regarding the meeting prior to testifying.

STATE POSITION

The state argued that grievance nos. 251 and 302 are separate and distinct grievances. It points out that grievance no. 251 concerns the grievant's request to change

her hours of work. The state notes that grievance no. 302 relates to her disability separation, entitlement to accrued leave, and reinstatement as a secretary in the management unit.

The state maintains that no written document indicates that the two grievances were combined. It observes that the appeal form for step four lists grievance no. 302 but not grievance no. 251. The state reports that the request for arbitration also refers only to grievance no. 302. It stresses that the amendment to grievance no. 302 does not refer to a change in the grievant's work schedule or mention grievance no. 251.

The state indicates that Abdurragib testified that the grievances were not combined at the step three hearing for grievance no. 302. It charges that the union tried to confuse Abdurragib by the way it phrased its questions to him. The state reports that he was on sick leave for some time and admits that he may have been confused about some of the details.

The state maintains that grievance no. 251 was not discussed at the step four meeting for grievance no. 302. It points out that its grievance tracking form lists only grievance no. 302. The state notes that Ryan testified that the discussion involved the disability separation and the leave balances. It stresses that she further stated that no agreement was made to combine the two grievances.

ANALYSIS

The Arbitrator must conclude that the department agreed to combine grievance nos. 251 and 302. This conclusion is based in part on the testimony of Hollon. He testified in a clear and convincing fashion that he proposed combining the two grievances and that Abdurragib agreed to his suggestion. The testimony of Abdurragib that there was no agreement to combine the grievances was less convincing. At first he seemed not to recognize the grievances at issue. Even his subsequent statements were less credible than those of Hollon.

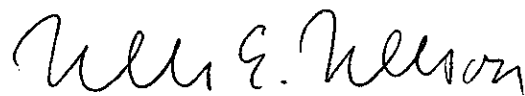
The Arbitrator's conclusion that the two grievances were combined is also supported by common sense. Grievance no. 251 protests the department's refusal to grant the grievant's request for a schedule change. Grievance no. 302 relates to the denial of accrued sick leave and personal leave and her return to work. These issues would not have arisen had the department granted the schedule change the grievant had requested. Since the grievances involve many of the same facts, it is logical to combine the two grievances. This fact makes the union's position all the more credible.

The Arbitrator also believes that the lack of a response to the step three meeting for grievance no. 302 is a significant factor. If the grievance procedure is to function properly, it is important that the parties meet their contractual obligations. In the instant case a third step response by Abdurragib, the hearing officer, likely would have removed any doubt about whether an agreement had been reached to combine the two grievances.

This award and the agreement reached by the parties at the arbitration hearing fully resolve the issues contained in grievance nos. 251 and 302. At the hearing the grievant had the opportunity to discuss fully the entire incident. The state admitted that there was no disability separation and agreed to credit the grievant's sick leave and personal leave balances, to grant her 110 hours of vacation, and to pay her \$5500 in back wages. The grievant agreed to forego her claim to the secretary's position in the education unit and to waive any right to any further administrative appeals or legal action.

AWARD

The department and the union agreed to combine grievance nos. 251 and 302.



Nels E. Nelson
Arbitrator

March 26, 1997
Russell Township
Geauga county, Ohio