

#1343

**STATE OF OHIO - OHIO DEPARTMENT OF YOUTH SERVICES
AND
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
VOLUNTARY ARBITRATION PROCEEDING**

IN THE MATTER OF THE ARBITRATION BETWEEN:

**STATE OF OHIO - OHIO DEPARTMENT OF YOUTH SERVICES
- AND -
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME**

**GRIEVANTS: SCOTT SMITH AND DAVID MCLAUGHLING
GRIEVANCE NO: 35-06-12398-01-01-04
35-06-63098-16-01-03
35-22-60898-30-01-06**

**ARBITRATOR'S AWARD
ARBITRATOR: DR. DAVID M. PINCUS
DATE: FEBRUARY 2, 1999**

APPEARANCES

For the Employer:

**David S. Reber
Colleen Ryan
Michael P. Duco
Bradley E. Rahr, Sr.**

Position:

**Labor Relations Administrator
Labor Relations Officer, Central Office
Manager of Dispute Resolution
Labor Relations Officer**

For the Union:

**Jim Pagani
Herman S. Whitter, Esq.**

Position:

**Lead Staff Representative
Director of Dispute Resolution**

ISSUE

Did the State of Ohio violate Article 17 when it failed to promote bargaining unit members, after said bargaining unit members met minimum qualifications for the positions applied for? If not, what shall the remedy be?

AWARD

The employer did in fact violate Article 17 of the collective bargaining agreement when it failed to promote the previously specified bargaining unit members even though they met the minimum qualifications specified in paragraph 5 of the Memorandum of Understanding (Joint Exhibit 2). The employer, as the proposing party of the language in dispute, has the burden of establishing the propriety of its interpretation. Here, it failed to meet its burden. I am in agreement with the union's version of what took place during bargaining. Nothing in the record indicates that the union ever intended to erode, modify, or change Article 17 in terms of its reliance on seniority for promotion purposes.

It should be noted this Award is limited to those peculiar circumstances dealing with internal promotions. In all other circumstances, the employer is not limited in its use of civil service certification lists. This Award, moreover, does not modify nor eliminate the remaining terms and conditions negotiated by the parties as contained in the Memorandum of Understanding (Joint Exhibit 2), and the job specifications agreed to by the parties. Any, and all, prior acceptance or non-acceptance decisions made by bargaining unit members regarding upgrades to the new JCO classification from any other eligible positions shall not be impacted by this Award. Bargaining unit members shall be bound to those prior decisions.

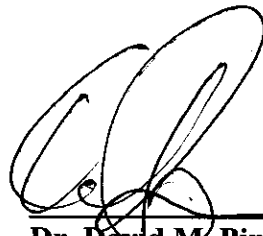
The remedy to be outlined below has some specific and general ramifications. The two grievants have been promoted during the interim to JCO positions. As such, their promotion rights have been fulfilled. The state is, however, ordered to pay these individuals for any financial losses incurred but for the employer's misapplication of Article 17 and the Memorandum of Understanding (Joint Exhibit 2). These losses include back-pay and role call pay for the period in question.

All other grievances, dealing with the same disputed issue, with proper standing and presently being processed, shall be summarily dealt with as a consequence of this Arbitrator's Award. The Arbitrator shall retain jurisdiction to hear disputes of proper standing. Grievances not yet filed, but presented within the timeframes pursuant to Article 25.02, Step One, shall be deemed as having proper standing.

The parties shall have sixty (60) days to identify grievances presently in the system.

2/2/99

February 2, 1999
Moreland Hills, Ohio



Dr. David M. Pincus
Arbitrator