

ARBITRATION SUMMARY AND AWARD LOG
OCB AWARD NUMBER: #1424

OCB GRIEVANCE NUMBER: 28-07-980409-26-02-12

GRIEVANT NAME: Board Parole Officers

UNION: District 1199/SEIU, AFL-CIO

DEPARTMENT: Department of Rehabilitation and Correction

ARBITRATOR: Robert G. Stein

MANAGEMENT ADVOCATE: Joseph Shaver

2ND CHAIR: Steve Little

UNION ADVOCATE: Matt Mahoney

ARBITRATION DATE: January 10, 2000

DECISION DATE: February 24, 2000

DECISION: Denied

CONTRACT SECTIONS: Article 43

#1424

HOLDING: The Arbitrator held that Board Parole Officers were not entitled to institutional pay supplement because their work did not differ significantly from that of a Correction Officer.

COST: \$1,137.50

#1424

IN THE MATTER OF ARBITRATION

BETWEEN

DISTRICT 1199/SEIU, AFL-CIO

AND

THE STATE OF OHIO/DRC/APA

Before: Robert G. Stein

Direct Appointment

Case # 28-07-980409-26-02-12

Principal Advocate for the UNION:

Matt Mahoney, Administrative Organizer

DISTRICT 1199/SEIU, AFL-CIO

475 E. Mound Street

Columbus OH 43215

Principal Advocate for the EMPLOYER:

Joseph S. Shavers, Director Labor Relations

DEPARTMENT OF CORRECTIONS

Steve Little, Labor Relations Specialist

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RECEIVED 11/15/12

INTRODUCTION

A hearing on the above referenced matter was held on January 10, 2000, in Columbus, Ohio. The Employer raised the issue of procedural arbitrability as a threshold issue. Arguments were heard on this issue and on the merits of this case. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions. The parties submitted closing arguments in lieu of filing briefs. The hearing was closed on January 10, 2000. The parties agreed that the Arbitrator's decision is to be issued by February 25, 2000.

ISSUE

The parties agreed upon the following definition of the issue:

1. Is the grievance arbitrable?
2. Did the Employer violate the terms of the collective bargaining agreement when it denied the Grievants the institutional pay supplement? If so, what should the remedy be?

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RELEVANT CONTRACT LANGUAGE/

ARTICLE 43 WAGES

Section 43.09

"A special institutional supplement of three percent (3%) shall be implemented, effective July 1, 1997, for those employees in non-correction specific classifications of the Department of Rehabilitation and Correction who work in institutions and whose classification title does not include the term "correctional" or "corrections."

BACKGROUND

This dispute concerns the payment of a three percent (3%) institutional pay supplement to Parole Board Parole Officers (hereinafter referred to as Board Parole Officers or "BPO"). There are approximately twenty-eight (28) people who hold this classification in the bargaining unit. Board Parole Officers have a different job than that of a traditional Parole Officer. BPOs work for the Parole Board and spend time in corrections institutions serving as liaisons between the inmate population and the Parole Board.

Board Parole Officers do not carry weapons because it is not permitted in correctional institutions. Therefore, they do not receive the five percent (5%) risk supplement provided for in Article 43.09. This risk supplement is provided to Parole and Probation Officers who must conduct arrests, transport parolees, and/or are required to enter designated risk zones for the purpose of parolee supervision or conducting investigations.

Currently, other 1199 bargaining unit employees who hold such titles as Nurse, Social Worker, and Psychologist are paid the three percent (3%) institutional pay supplement. When the Board Parole Officers discovered they were not paid the institutional pay supplement, they filed a grievance on 4-8-98.

UNION'S POSITION

Arbitrability

The Union rejects the Employer's contention that the grievance was not timely filed. It argues the grievance represents an on-going violation of Article 43.09.

Merits

It is the Union's contention that this case is uncomplicated. The Union argues Article 43.09 of the Collective Bargaining Agreement guarantees employees of the Department of Corrections ("Department") a three percent (3%) institutional pay supplement. The only people who do not receive this supplement are those employees who have "corrections" in their job title, contends the Union. The Union asserts that all the conditions required by Article 43.09 are met by Board Parole Officers. They are employees of the Department, work in institutions, and do not have the word "corrections" in their title. Therefore, they are entitled to the three percent (3%) institutional pay supplement, argues the Union.

In support of its argument the Union cites Joint Exhibit 5, the Fact-finding Report issued by Dennis Minni. In this report, Mr. Minni recommends inclusion of the three percent (3%) pay supplement in the Collective Bargaining Agreement. Mr. Minni also

references the language contained in the OCSEA Agreement and states that the three percent (3%) institutional pay supplement for the 1199 bargaining unit is intended to be implemented in the same fashion as it is in the OCSEA Agreement, argues the Union. The Union also argues that the Board Parole Officers are denied the five percent (5%) risk supplement paid to Parole Officers who can carry weapons.

Based upon the above, the Union requests that the grievance be granted and the Board Parole Officers receive the three percent (3%) institutional pay supplement, including any back pay that may be due them.

EMPLOYER'S POSITION

Arbitrability

The Employer argues that a grievance should have been filed within fifteen (15) calendar days from the date the Grievants knew or should have known of the events giving rise to the grievance (See Article 7.04). At the very latest the Grievants should have known of these events by August of 1997. However, they did not file their grievance until April 8, 1998. Based upon these events the Employer argues the grievance should be considered untimely.

Merits

The Employer does not agree that Board Parole Officers are eligible for the three percent (3%) institutional pay supplement. The Employer contends that other bargaining unit employees, such as Case Managers, have far more exposure to inmates than do Board

Parole Officers. In addition, the Employer argues that when Board Parole Officers interview inmates they are accompanied by at least one Corrections Officer.

The Employer asserts it was not the intent of Mr. Minni's Fact-finding report to provide Board Parole Officers with a supplement. The Employer cites the origin of the institutional pay supplement. It was a result of a supplemental Fact-finding Award issued by the undersigned Arbitrator in 1994 (JX 4). The Employer contends that institutional pay supplements were never intended to be paid to people whose primary focus is corrections work.

Based upon the above, the Employer requests that the grievance be denied.

DISCUSSION

Arbitrability

I find this grievance to be timely, based upon the continuing nature of this violation. This is a well-established principle in arbitration (See Titan Wheel Int't, 97 LA 514, 519 [Smith 1997; St. Louis Post Dispatch, 97 LA 1136 [Heinz, 1991]). The alleged violation was renewed every time the Grievants received a pay check and the institutional supplement was not included. However, by waiting until April 8, 1998, the Grievants cannot claim any back pay prior to the date of filing.

Merits

As author of the 1994 Supplemental Fact-finding Report, I can state with certainty the purpose of the three percent (3%) institutional pay supplement. Page 10 of Joint Exhibit 4 sums this up most succinctly. It states:

“...the following is recommend in order to provide additional compensation to employees who work in the unique and unusual conditions of a prison environment, but who have a different focus or work than that of Corrections Officers. [emphasis added]

Board Parole Officers as well as Parole Officers have a “focus of work” that is markedly similar to that of Corrections Officers. The Parole Officer’s core function is to deal solely with inmates/parolees and their training is primarily focused upon the control and rehabilitation of offenders. This is not the case with nurses, for example. Their professional focus is the healthcare of inmates and does not have a singular rehabilitation focus. Of course, the same can be said of the supplement eligible OCSEA bargaining unit members such as secretaries, carpenters and maintenance repair workers. Their work and training involves inmates but the value of their work, like that of nurses is also measured by other standards.


The training and professional focus of Board Parole Officers are specifically designed around the offender population. Their very existence is tied to the difficult task of dealing with a complex offender population. However, the concentrated nature of their mission is what makes them better prepared to handle inmates and parolees. Because Parole Officers and Board Parole Officers have this special knowledge of inmates, they can reasonably be expected to know more about their behavior, both in and outside of institutions. This is not the case with many other employees who work in correctional

institutions. They may have some basic training in dealing with inmates, but their professional focus is divided. They are less prepared to understand and react to criminal behavior. While it is true that Parole Board Parole Officers do not have the specific word "corrections" in their title, it does not change the fact that their work is corrections based. It is my determination that the word "parole" in the title Parole Officer conveys a similar meaning.

AWARD

Grievance denied.

Respectfully submitted to the parties this 24 day of February 2000.

A handwritten signature in black ink, appearing to be "R. Stein", written over a horizontal line.

Robert G. Stein, Arbitrator

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