

**OPINION AND AWARD**

**IN THE MATTER OF THE ARBITRATION BETWEEN  
Belmont Correctional Institution—Ohio Department of Rehabilitations and Corrections,  
-AND-  
OCSEA/AFSCME Local 11**

**Appearing For Belmont  
Tina Krouger, Advocate  
Arthur Tate, Jr., Warden  
Brian Eastman, Chief of the Bureau of EEO,**

**Appearing for OCSEA  
Mr. Lender, Advocate  
Ralph Church, Grievant  
Tracey Cutright, Grievant  
Dave Toler, Grievant  
Joseph Williamson, Grievant  
Mark Williams, Grievant**

**CASE-SPECIFIC DATA**

**MULTIPLE GRIEVANCES #**

**Hearing held  
January 2001**

**Case Decided  
April 30, 2001**

**Subject: Removal—residency requirement**

**Arbitrator: Robert Brookins, Professor of Law, J.D., Ph.D.**

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I. **The Facts**

The parties to this dispute are the Belmont Correctional Institution, an Agency of the Ohio Department of Rehabilitations and Corrections, ("BCI" or "the Employer") and OCSEA/AFSCME Local 11 ("the Union").<sup>\1</sup>

BCI has consistently informed its new employees of an Ohio residency requirement ("residency requirement"). In 1995, the correctional institution in Moundsville, West Virginia was either closing or preparing to close, and BCI was recruiting that institution's employees. BCI notified the Moundsville employees of Ohio's residency requirement. Finally, when hiring Messrs. Ralph Church,<sup>\2</sup> Tracey Cutright,<sup>\3</sup> Dave Toler,<sup>\4</sup> Joseph Williamson,<sup>\5</sup> and Mark Williams<sup>\6</sup> as correctional officers ("the Grievants"), BCI apprised them of Ohio's residency

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<sup>\1</sup> Because much of the arbitral record lacked numbered exhibits, this opinion does not cite to exhibits in the record as extensively as the Arbitrator would have liked.

<sup>\2</sup> Hired, May 1995.

<sup>\3</sup> Transferred to BCI in 1994. Union's Post-hearing brief at 1.

<sup>\4</sup> *Id.*

<sup>\5</sup> Hired, in November 1993. Union's Post-hearing Brief at 2.

<sup>\6</sup> Hired by BCI in August 1996.

1 requirement.

2 Because the pith of this dispute involves the facts and circumstances surrounding the  
3 Grievants' living arrangements, a relatively detailed itemization of those arrangements is  
4 indicated:

5 **Ralph Church**

- 6 1. While employed at BCI, Mr. Church lived in and apartment at Shadyside, Ohio, with  
7 correction officers James Cofer and Joseph Williamson.  
8 2. Mr. Church and his wife own real estate in West Virginia where his wife and children  
9 reside.  
10 3. While employed with BCI, Mr. Church remained in Shadyside, Ohio during his  
11 workweek and spent the weekends in West Virginia with his wife and children.  
12 4. Also, while still a BCI employee, Mr. Church voted in the last general and primary  
13 election in Belmont County, Ohio.  
14 5. Mr. Church holds an Ohio driver's license and drives an automobile registered in Ohio.  
15 6. He filed his 1998, 1999 Federal and Ohio Income Tax Return with his Ohio address.  
16 7. Mr. Church received mail at his Shadyside, Ohio apartment, including utility bills, w-2  
17 tax statements, medical bills, health insurance, OCSEA's newsletters, monthly checking  
18 account statements, automobile repair bills, automobile and boat insurance, and his  
19 paychecks.  
20 8. Mr. Church normally ate, slept and kept his personal belongings at his Ohio apartment.  
21 9. The telephone bill (including a cellular telephone) and the cable television bill for the  
22 Shadyside apartment were issued in Mr. Church's name.  
23 10. Mr. Church owns a boat in Ohio and holds both an Ohio boat and dock license containing  
24 his name and his Shadyside Ohio address.  
25 11. Mr. Church both claims and intends to be an Ohio resident and his reside Ohio address  
26 containing is his primary residence for an indefinite period.  
27 12. Mr. Church intends to return to West Virginia upon retiring from BCI.

28 **Tracey Cutright**

- 29  
30  
31 1. Mr. Cutright shared an apartment in Shadyside, Ohio with correction officers Mike  
32 Ondek and David Toler.  
33 2. Mr. Cutright does not own real estate in West Virginia, but his wife owns and resides on  
34 West Virginia property that she obtained from a divorce in a prior marriage.  
35 3. While employed with BCI, Mr. Cutright lived in Shadyside, Ohio during the workweek  
36 but returned to West Virginia to visit his wife and children on weekends.  
37 4. Mr. Cutright voted in the last general and primary election in Belmont County, Ohio and  
38 held an Ohio driver's license.  
39 5. Mr. Cutright filed 1998 and 1999 Ohio state Income Tax Returns, which carried his Ohio  
40 address.  
41 9 Mr. Cutright received mail at the Shadyside, Ohio address, including utility bills, w-2 tax  
42  
43

- statement, OCSEA's newsletters, monthly checking account statements, and his paychecks.
10. Mr. Cutright normally ate, slept and kept some of his personal belongings at his Ohio apartment.
  11. Mr. Cutright shared rent, telephone and utility expenses equally with his two roommates.
  12. Mr. Cutright paid Mr. Ondek cash for his share of the monthly expenses
  13. Mr. Cutright has family in Ohio.
  14. Mr. Cutright had no written rent receipts
  15. Mr. Cutright claims he intends to be an Ohio resident and that his Ohio address is his primary residence and his home for an indefinite period.
  16. Mr. Cutright intends to return to West Virginia upon retiring from BCI.

#### **Dave Toler**

1. Before his removal from BCI, Mr. Dave Toler resided in an apartment in Shadyside, Ohio, with two other correction officers, Mike Ondek and Tracey Cutright.
2. Mr. Toler and his wife owned real estate in West Virginia where she resides with their children.
3. While employed at BCI, Mr. Toler lived in Shadyside, Ohio during the workweek and traveled to West Virginia to visit his wife and children on weekends.
4. Before BCI fired him, Mr. Toler voted in the last general and primary election in Belmont County, Ohio and possesses an Ohio driver's license.
5. In 1998 and 1999, Mr. Toler filed Federal and Ohio Income Tax returns with his Ohio address as return.
6. Mail addressed to Mr. Toler at Shadyside, Ohio included utility bills, w-2 tax statements, OCSEA's newsletters, monthly checking account statements, and his paychecks.
7. Mr. Toler normally ate, slept, and kept his personal belongings at his Ohio apartment.
8. Also, Mr. Toler shared his rent, telephone, and utility expenses equally with his two roommates.
9. The Shadyside water bill was in the name of and issued to Mr Toler.
10. Mr. Toler obtained an Ohio fishing license.
11. Mr. Toler claimed that he never had a need for written receipts and therefore could present none to DAS. However, Mr. Toler had Mr. Ondek signed a receipt acknowledging that Mr. Toler paid Mr. Ondek in cash for Mr. Toler's fair share of their January and February rent.
12. Mr. Toler claims he believes he is an Ohio resident with the requisite intent to be one.
13. He claims that he intended for Shadyside to be his primary residence.
14. Mr. Toler intends to return to West Virginia at the end of his employment with BCI.

#### **Joseph Williamson**

1. Mr. Joseph Williamson lived in Shadyside, Ohio, where he rented an apartment with two other correction officers, James Cofer and Ralph Church. There was no written lease.
2. Neither Mr. Williamson nor his wife owns real estate in West Virginia, but his mother-in-law does.
3. Mr. Williamson's wife and children reside on his mother-in-law's West Virginia property.

4. During his workweek at BCI, Mr. Williamson remained in Ohio and visited his wife and children on weekends.
5. Before he was fired, Mr. Williamson voted in the last general and primary election in Belmont County, Ohio and holds an Ohio driver's license.
6. Mr. Williamson filed his 1998 and 1999 Federal and Ohio income tax return with his Shadyside, Ohio address as the return address.
7. Mr. Williamson received mail at his Shadyside address, including utility bills, w-2 tax statement, medical bills, OCSEA's newsletters, monthly checking account statements, and his paychecks.
8. He normally ate, slept and kept his personal belongings at his Ohio apartment.
9. He and his roommates equally shared the rent, telephone and utility expenses at their Shadyside address.
10. Mr. Williamson testified that he and Mr. Church paid Mr. Cofer in cash for their share of the monthly expenses at Shadyside, Ohio. However, the electric and the refuse removal bills for their apartment were issued in Mr. Williamson's name.
11. Mr. Williamson cellular telephone was billed to him at his Shadyside address.
12. He holds a firearms license from the state of Ohio where he also purchased firearms.
13. Mr. Williamson claims he is and fully intends to be an Ohio resident and his Shadyside, Ohio address is not only his primary residence but also his home for an indefinite period.
14. Mr. Williamson intends to return to West Virginia at the end of his employment with BCI.

#### **Mark Williams**

1. Mark Williams claimed that his residence is in Martin Ferry, Ohio, where he rents an apartment with another correction officer
2. Mr. Williams and his wife own real estate in West Virginia.
3. Mr. Williams testified that he lives at his home in Martin Ferry, Ohio, but his wife and children live on their West Virginia property.
4. While employed with BCI, Mr. Williams remained in Martin Ferry, Ohio during the workweek and visited his wife and children in West Virginia on weekends.
5. Before BCI fired him, Mr. Williams voted in the last general and primary election in Belmont County, Ohio.
6. Mr. Williams holds an Ohio driver's license and has Ohio license plates registered in his name.
7. Mr. Williams filed his 1999 Federal and Ohio Income Tax return with his Martin Ferry, Ohio address.
8. Mr. Williams has a written lease for his Martin Ferry, Ohio address where he received mail, including utility bills, w-2 tax statement, OCSEA's newsletters, monthly checking account statements, and his paychecks.
9. Mr. Williams normally ate, slept and kept his personal belongings at his Ohio apartment.
10. Mr. Williams shared his rent, telephone, and utility expenses with his roommate, Mr. Tim Ball. He claims he paid Mr. Ball in cash.
11. Mr. Williams had no written receipts to present in support of the expenditures because he paid his roommate in cash.

1 12. Mr. Williams intends to return to West Virginia at the end of his employment with BCI.  
2  
3

4 When BCI hired the Grievants, it also hired other employees from West Virginia who, in  
5 BCI's view, fulfilled Ohio's residency requirements (Section 124.27) by, among other things,  
6 selling their West Virginia homes and moving to Ohio. However, these employees grew  
7 increasingly concerned that the Grievants had not complied with that residency requirement.  
8 Finally, in 1998 the employees were prepared to take legal action unless BCI began to enforce  
9 residency requirement. Prior to this point, BCI had done little to actually force its employees to  
10 comply with Ohio's residency requirements.

11 The prospect of a law suit apparently ended BCI's relaxed posture regarding Ohio's  
12 residency requirement. On or about August 6, 1998, Chief of the Bureau of Prisons, Mr. Errol  
13 Douglas, communicated with "all wardens," regarding the residency status of employees living  
14 outside of Ohio.<sup>\7</sup> Again, on or about February 17, 1999, Mr. Douglas "Institution Personnel  
15 Officers," requesting updates "of all individuals currently living outside of . . . [Ohio]."<sup>\8</sup> On  
16 February 23, 1999, Labor Relations Officer, David Lynch and Personnel Officer, Rick Shutek  
17 notified all of BCI's employees of their duties to comply with Sections 124.27 and 123 1-11-02  
18 within the next six months.<sup>\9</sup> On February 25, 1999 the Warden of BCI, Arthur Tate, Jr., also  
19 notified BCI's classified employees of the absolute duty to satisfy Section 124.27.<sup>\10</sup> Finally, on  
20 July 16, 1999, Messrs. Shutek and Lynch, through Warden Tate, afforded BCI's classified

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<sup>\7</sup> Employer Exhibit No. 2.

<sup>\8</sup> Employer Exhibit No. 1.

<sup>\9</sup> Employer Exhibit No. 4.

<sup>\10</sup> Employer Exhibit No. 5A. The actual Ohio Residence Form is Employer Exhibit No. 5B.

1 employees a "second and final notice" to comply with the residency requirement and that the six-  
2 month window for correcting residency problems would end on August 25, 1999.<sup>\11</sup> On  
3 September 3, 1999, OCSEA's General Counsel, Linda K. Fiely, openly questioned BCI's  
4 interpretation of 124.27 to require classified employees to establish 'primary, permanent  
5 residence' in Ohio."<sup>\12</sup> In response to the General Counsel Fiely's concern about the "primary,  
6 permanent" standard, Chief of the Bureau of EEO, Mr. Brian Eastman stated:

7           The Department does not intend to attach any more significance to  
8           the term than what is *required under the law*' As you are aware, the  
9           Ohio Revised Code does not define "resident" for purposes of  
10          124.27 of the Revised Code. Therefore, the *common usage* of the  
11          word applies. Blacks Law Dictionary defines resident as "*one who*  
12          *has his residence in a place.*" Black's defines residence as "*a*  
13          *factual place of abode. Living in a particular locality.*" Barron's  
14          Law Dictionary defines residence as a term often " . . used as *being*  
15          *synonymous with domicile*, since a person's residence is usually  
16          also his or her domicile and since the two terms have been held  
17          equivalent in judicial construction of some statues." The  
18          *Department of Administrative Services* advised the Department of  
19          Correction and Rehabilitation *that for State Residency*  
20          *requirements the term residence is synonymous with domicile*, and  
21          permanent, primary domicile in the state of Ohio is required for

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\11       Employer Exhibit No. 6.

\12       Employer Exhibit No. 7.



1 classified service. The residence in Ohio must be the single  
2 domicile for permanent residence, regardless of temporary absence  
3 or ownership of vacation property.<sup>\13</sup>

4 On February 14, 2000, Warden Tate notified Grievant Toler that he was the subject of an  
5 impending formal investigatory interview, scheduled for February 29, 2000, at 9:00 p.m., to  
6 verify his residency under Section 124.27 of the Ohio Revised Code and 123:1-11 of the Ohio  
7 Administrative Code.<sup>\14</sup> Following the investigatory interview, BCI determined that Grievant  
8 Toler was in violation of Section 124.27 and, thus scheduled a pre-disciplinary hearing for July  
9 26, 2000. On or about August 9, 2000, BCI held Grievant Toler's pre-disciplinary hearing. And,  
10 on or about September 7, 2000, the Pre-disciplinary Hearing Officer held that the Grievant had  
11 violated Section 124.27 and, accordingly there was just cause for discipline. On September, 23,  
12 2000, Warden Tate informed Grievant Toler that he was officially removed, effective September  
13 20, 2000. The specific charges against Grievant Toler were his alleged "violation of Rule No. 1  
14 of the Standards of Employee Conduct, which addresses any violation of the Ohio Revised Code,  
15 (ORC), in that you have failed to comply with Ohio Residency requirements as specified in ORC  
16 124.27. According to the record, your residence is stiff not within the State of Ohio.  
17 Accordingly, you are hereby removed from your position as Correction Officer." BCI took the  
18 same action on the same dates against Grievants Mark Williams, Tracy Cutright, Joseph

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<sup>\13</sup> Employer Exhibit No. 8. (emphasis added).

<sup>\14</sup> Employer Exhibit No. 14.

Williamson, and Ralph Church.<sup>\15</sup>

On or about October 3, 2000, the Union timely grieved the decision to terminate the Grievants. The parties agreed to forego the third step in their grievance procedure and expedite the Grievance directly to arbitration.

**III. Relevant Contractual Language and External Regulations**

**Article 5—Management Rights**

Except to the extent expressly abridged only by the specific articles and sections of this Agreement, the Employer reserves, retains and possesses, solely and exclusively, all the inherent rights and authority to manage and operate its facilities and programs. Such rights shall be exercised in a manner which is not inconsistent with this Agreement. The sole and exclusive rights and authority of the Employer include specifically, but are not limited to, the rights listed in the Ohio Revised Code, Section 4117.08 (C), Numbers 1-9.

**Section. 124.27**

Any person appointed to a position in the classified service under sections 124.01 to 124.64 of the Revised Code, except temporary and exceptional appointments, shall be or become forthwith a resident of the state.

**Section 123:1-11-02.—Ohio Administrative Code provides that:**

Every applicant for examination must be a resident of the state of Ohio or signify in writing his or her intention to become and remain upon appointment, a resident of Ohio, unless such requirements are specifically waived in the examination announcement or otherwise waived in statute or rule.

**IV. The Issue**

Whether the the Grievants were removed for just cause? If not what shall the remedy be?

**V. Summaries of the Parties' Arguments**

**a. Summary of the Employer's Arguments**

**1. Management Reserved Rights**

- a. right to define residency requirements. Without that right, management could scarcely retain operational control.
- b. Rights such as determining residency requirements are so central to the

<sup>\15</sup> Various Employer Exhibits.

Employer's managerial and operational function as to be impervious to challenges based on arbitrariness, unreasonableness, or capriciousness.

c. Residency requirements are legitimate exercises of state power to promulgate regulations for its services.

d. Because the Department of Administrative Services (DAS) is charged with central maintenance of state employment issues, DAS must have authority to promulgate and define essential employment requirements and to clarify legislative mandates for state employment. Such actions are so basic as to be impervious to allegations that DAS somehow exceeds its legal authority by making such decisions. Therefore, absent the Employer's express concession of this right in a the Contract, challenges to that right must fail.

2. Notice

a. The Employer gave the Grievants six-months notice within which to comply with Section 124.27 as interpreted by Section 123:1-11-02.

3. Residency—Legitimacy and Applicability

a. The residency requirement, as set forth in Section 123:1-11-02, is not contrary to law, given the absence of a definition in Section 124.27 and the usual flexibility of residence requirements in serving their underlying purposes.

4. Persuasiveness of the Grievants' Arguments

- a. The Grievants have offered a thinly-veiled sham to circumvent Ohio's residency requirement.
- b. The Grievants' conduct speaks louder than any of their empty allegations about their intent to become Ohio citizens.
- c. Alleged "intent" to be an Ohio resident for employment purposes is insufficient without actual physical removal of one's vested primary residence in West Virginia.
- d. The Grievants are not voluntarily choosing Ohio as their domicile. Each Grievant intends to keep his West Virginia home and has no intent to become a permanent resident of Ohio.
- e. An apartment is transitory by definition.
- f. The Grievants stated no intent to abandon their West Virginia domicile. Instead, they stated that they intend to return to West Virginia, where their families will remain and where the Grievants will someday retire.

B.

**Summary of the Union's**

**Arguments**

1. Scope and Other Characteristics of Section 124.27

- a. Section 124.27 does not use either "primary" or "permanent" to modify "resident."
- b. Section 124.27 makes no reference to "Domicile" as a modifier of resident.
- c. DAS unilaterally interpreted Section 124.27 to implicitly contain the modifiers "primary," "permanent," and "domicile." Section 124.27 contains only the term "resident," which is not defined in chapter 124.
- d. Section 123:1-11-02 was repealed in November 11, 2000 and, therefore, lacks any force or effect.

- 1 e. Section 124.27 has no legislative history and the Employer's speculations as to  
2 the purpose of Section 124.27 are irrelevant.
- 3 f. Although the Employer views domicile and residence as synonymous, the  
4 Employer failed to produce any legal analysis to support that those terms are  
5 normally viewed as synonyms.
- 6 g. Ambiguous terms such as resident should be broadly construed to protect those  
7 subjected to it.
- 8
- 9 2. Burden of Proof
- 10 a. The Employer improperly shifted the burden to the Grievants to show that they  
11 are residents of Ohio.
- 12 3. Disparate Treatment
- 13 a. The Grievants are victims of disparate treatment because other correctional  
14 institutions that are a part of the Department of Rehabilitation and Corrections do  
15 not impose the residency requirement in the instant case.
- 16 4. Suspended Enforcement of Section 124.27
- 17 a. Before the instant case, DAS has made no effort to enforce residency  
18 requirements consistently and fairly.
- 19 b. The Employer failed to act reasonably and responsibly in altering approximately  
20 20 years of past practice.
- 21 5. BCI's Duty to Bargain
- 22 a. BCI failed to bargain with the Union before initiating the residency requirement.
- 23 b. On several previous occasions DAS issued "hollow" notifications of its intent to  
24 enforce the residency requirement.
- 25 6. Work Rules and the Collective-Bargaining Agreement
- 26 a. Work rules must be reasonable and inoffensive to Ohio's laws such as the Ohio  
27 Revised Code and the Ohio Administrative Code.
- 28 b. The residency requirement in the instant case does not appear in the parties'  
29 Collective-Bargaining Agreement.
- 30 c. For DAS to nullify public employees' statutory rights, such an intent must be  
31 specifically and unequivocally set forth in the Collective-Bargaining  
32 Agreement.<sup>16</sup> Absent such an explicit intent, the Employer must respect statutory  
33 standards.
- 34

## 35 V. Discussion and Analysis

36  
37 The foregoing summaries illustrate that the Parties offered numerous arguments—with

<sup>16</sup> State ex rel. OAPSE/AFSCME, Local 4 v. Batavia Sch. Dist. Bd. of Edu., 89 Ohio St. 3d 191 (2000).

1 varying degrees persuasive force—to support their positions in this dispute. Nevertheless, the  
2 resolution of this dispute rests on much narrower grounds. At bottom, this dispute resolves itself  
3 into two basic issues: (1) The Employer's authority to interpret a general statute (public law) that  
4 contains a pivotal term, which is hopelessly ambiguous on its face and which has an equally  
5 ambiguous history; and (2) whether the Employer's interpretation of that term is consistent with  
6 any clear trend of judicial interpretation.

7  
8  
9 A.

#### **Major Procedural Issues**

10 The most outcome-determinative procedural issues that the Union raises is whether the  
11 Employer afforded its employees sufficient notice before implementing the Section 124.27 and  
12 whether the Employer had a duty to bargain with the Union before implementing its  
13 interpretation of Section 124.27, regardless of the propriety of that interpretation.

14 The Union correctly argues that where, as here, an employer has a long-standing practice  
15 or custom, an employer must afford employees and the Union proper notice and an opportunity  
16 to comply with either the resurrected or the newly minted work rule. Evidence in the record  
17 establishes that the Employer afforded the Grievants substantial notice and an opportunity to  
18 comply.<sup>17</sup>

19 On the other hand, the record does not show that the parties bargained about this issue,  
20 and it is unclear whether the Union demanded that the Employer bargain or that the Employer  
21 simply refused to offer to bargain. Therefore, the Arbitrator lacks sufficient evidence to address  
22 this issue.

23 B.

#### **Substantive**

## Issues

The Employer launches its substantive case by asserting that it has a residual, absolute, and inalienable right to “promulgate and define essential employment requirements and to clarify legislative mandates for state employment.”<sup>\18</sup> Furthermore, in the Employer’s view, the exercise of its rights in this area is so fundamental to operational control and to realization of its mission as to be rise above any challenge to that right, including those of unreasonableness, arbitrariness, or capriciousness.<sup>\19</sup>

The quick response to this position is that there are *no absolute* rights. That is not to discount either the existence or importance of the Employer’s residual rights under the Parties’ Collective-Bargaining Agreement. Furthermore, few would seriously deny that a public employer has the authority and the duty to enforce applicable public statutes. Those rights and duties are not at issue in this dispute, however. Nevertheless, the language of Section 124.27 addresses a legitimate concern of the Employer in this case: assuring that all of its employees are residents of Ohio. That much is clear on the face of Section 124.27. Nor does the Union seriously contend to the contrary.

The essence of this dispute is the scope of BCI’s discretion or authority to police residency requirements by engrafting its interpretative gloss on a general public statute that addresses that subject.

Insofar as the Employer contends that it has *carte blanche* to interpret public law, that contention tumbles down under its own wright. Even the judiciary lacks such discretion.

<sup>\17</sup> See pp. 3, 6-7 *supra* for discussion of facts on this point.

<sup>\18</sup> Employer’s Post-hearing Brief at 4.

<sup>\19</sup> *Id.*

1 Instead, when interpreting a statute, courts must make a good-faith attempt to implement the  
2 intent of the legislative body in question. Surely no less is expected of BCI. Indeed, BCI is also  
3 obliged to reference and follow judicial precedent when interpreting such a statute as Section  
4 124.27. Consequently, BCI's interpretation of "resident," in Section 124.27, must square with  
5 the common and traditional meaning of that term as set forth by the relevant judiciary.<sup>120</sup>  
6 Otherwise, the Employer has overstepped its authoritative or discretionary bounds.<sup>121</sup>

7 In the instant case, however, the Employer interprets "resident" to mean "primary,  
8 permanent "resident," Yet the statutory language mentions only "resident." Both the Employer  
9 and the Union cite and discuss case law showing the ambiguity, functionality, and resilience of  
10 "residence" or "resident." Regarding functionality, for example, the Employer's Post-Hearing  
11 Brief correctly points out that residence may be defined broadly for purposes of collecting  
12 income tax and narrowly for purposes of licensing Certified Public Accountants.

13 In the instant dispute, however, the legislature opted to use the basic term "resident" and  
14 one must assume that is what the drafters intended. The issue thus becomes the propriety of the  
15 Employer's interpretation of Section 124.27.

16 For reasons discussed below, the Arbitrator holds that the Employer's interpretation of

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<sup>120</sup> See e.g., *Stewart Title Guar. Co. v. McReynolds*, 886 S.W.2d 233, 235 (Tenn.Ct.App.1994) (stating, "Our responsibility when construing a statute is to ascertain and to give effect to the statute's purpose without unduly restricting or expanding the statute's coverage beyond its intended scope. If, however, a statute is ambiguous, we may invoke the various rules of statutory construction,") (emphasis added).

<sup>121</sup> See, e.g., *Hartong v. Makary*, 106 Ohio App.3d 145, 665 N.E.2d 704, 707 Ohio App. 9 Dist. Aug 30, 1995 (stating:

[T]he term "resident" is not defined in the policy. In the absence of a policy definition, the term must be given its *plain and ordinary meaning*. A "resident" is a person who lives in a place "for a period of some duration or regularity, although not necessarily there permanently, but excludes a temporary or transient visitor. internal

(Internal quotation marks omitted)(emphasis added).

1 Section 124.27 is wide of the mark. First, Section 124.27 inauspiciously declares that employees  
2 in the classified service," shall be or become forthwith a *resident* of the state."

3 The Employer engrafted onto "resident" the added restrictions of "primary and  
4 permanent," which immediately and effectively elevate "resident" to the level of "domicile."  
5 Yet, even a cursory examination of the case law of Ohio and her sister states reveals that  
6 "resident" and domicile are not commonly understood to be synonymous.

7 "The terms 'domicile' and 'residence' although sometimes used synonymously, are  
8 frequently held not to be convertible, due to their distinguishing characteristics."<sup>22</sup> "Domicile  
9 ordinarily has a broader meaning than residence, which requires the actual physical presence at  
10 some abode coupled with an intent to remain at that place for some period of time."<sup>23</sup> Finally,  
11 "while one can have only a single domicile, he may have several residences."<sup>24</sup> When called  
12 upon to interpret a residency requirement, courts invariably look to either the facial language of  
13 the statute or regulation in question to which they usually apply traditional definitions and  
14 interpretations. If, however, the regulation, or statute suggests that the legislature sought to  
15 achieve a special purpose or goal by breaking with tradition, courts will interpret the residency  
16 requirement to achieve that purpose. The key is that courts are disciplined in their interpretations

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<sup>22</sup> Spires v. Spires (1966), 7 Ohio Misc. 197, 200, 35. O.O.2d 289, 292, 214 N.E.2d 691, 694.

<sup>23</sup> *In re Fisher* (1993), 91 Ohio App.3d 212, 215. *See also*, *Furr v. Lordy* (*In re Lordy*) (stating, "A person's domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there. A person has only one domicile at a particular time even though he or she may have several residences").

<sup>24</sup> *Id.* *See also*, *In re Fore* (1958), 168 Ohio St. 363, 371 stating:  
It is urged by the petitioner that the word, 'resident,' should be interpreted as synonymous with 'domicile,' and that in Ohio the Probate Court can not appoint a guardian for a person not domiciled in Ohio unless he has a 'legal settlement' in Ohio. We do not ascribe this meaning to the word, 'resident,' *as it is used in this section*. Rather, we believe it is to be given its ordinary meaning, that of indicating simply a place of dwelling within the state.



1 of residency requirements, always referencing either or both of the two forgoing criteria.

2 In the instant case, there is little evidence that, when interpreting Section 124.27, the  
3 Employer looked either to traditional guidelines or the purpose of the legislature. In the case of  
4 Section 124.27, however, there is no legislative history and, thus, no readily available avenue for  
5 assessing the purpose of Section 124.27. Consequently, the Employer was left with tradition,  
6 which it apparently choose to ignore.

7  
8 C.

### **The Decision**

9 Having held that the Employer misinterpreted Section 124.27, the issue becomes whether  
10 the Grievant were terminated for just cause. They were not. If the Employer is to adopt and  
11 enforce a public statute as a work rule, then it must properly apply that rule as it was reasonably  
12 intended to be applied. In the instant case, the Arbitrator believes that the number and strength  
13 of the Grievant's contacts with Ohio are sufficient to satisfy "resident," under Section 124.27,  
14 when that term is interpreted in its ordinary sense. This is not to say that none of the Grievants'  
15 conduct raises an eyebrow. Clearly, it does. Yet, on balance, the Grievants' behavior and their  
16 expressed intent are consistent with a desire to become a resident of Ohio, even though the  
17 domicile for most remains in West Virginia.

18 If the Employer wishes to enforce a more stringent standard than is reflected on the face  
19 of Section 124.27, it has other avenues through which it may promulgate and enforce such a  
20 work rule. Misinterpreting public simply is not an available means.

### **C. The Award**

21 For all the foregoing reasons, the Grievances are sustained in their entirety.  
22  
23 Consequently, the Employer is hereby instructed to reinstate the Grievants with full backpay,  
24

1 less any earnings they did receive or with due diligence would have received from the date of  
2 their removal to the date that this award would have been received but for its tardiness.