

#1704

In the Matter of Arbitration *

Between *

OCSEA/AFSCME Local 11 *

and *

The State of Ohio, Department of Administrative Services *

Case Number:

02-10-20030528-0087-01-01

Before: Harry Graham

APPEARANCES: For OCSEA/AFSCME Local 11:

Herman Whitter
OCSEA/AFSCME Local 11
390 Worthington Rd.
Westerville, OH. 43082-8331

For the State of Ohio:

Michael Duco
Office of Collective Bargaining
100 East Broad St., 18th Floor
Columbus, OH. 43215

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present evidence and testimony. The record in this matter was closed at the conclusion of oral argument on July 9, 2003

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer violate Section 3.10 of the Collective Bargaining Agreement? If so, what shall the remedy be?

BACKGROUND: No dispute exists over the events giving rise to

this grievance. For several years the State has been concerned that an excessive number of employees were being provided time off duty for Union business. In August, 2002 the State informed the Union it would not release more than two (2) employees per institution under the release time language found in Section 3.10 of the Agreement. Negotiations for a successor Agreement were conducted during the winter of 2002-2003. During them the State proposed to delete Section 3.10 in its entirety. That did not occur. The language of the Agreement was modified to read:

However, with regard to state or area-wide meetings, leave requests may be limited for up to two (2) local union representatives from the same office, institution or division within the County. Leave requests shall not be unreasonably denied. If there is a denial OCB shall promptly at the earliest possible occasion provide the Union with a written rationale for the denial.

During the course of negotiations the parties also prepared an annotated version of the Agreement. (Jt. Ex. 7). In relevant part it provides:

Definition of office, institution or division within the County varies in different agencies for the purpose of this provision. Examples:

Institutions: Leave request shall take into account shifts, classifications and work areas.

The language of the annotation also provides that a "Reasonable standard shall apply to all leave requests."

On May 16, 2003 the Union requested leave for five (six if an employee on disability leave is considered) from the

Gallipolis Developmental Center. The people involved had various classifications, eg. Electrician, Therapeutic Program Worker, Training Officer. They also worked on different shifts. The people involved sought to attend the Union Mental Health, Mental Retardation/Developmental Disabilities, Ohio Veterans Home Assembly meeting. The Employer requested that the Union reduce its request to two people from Gallipolis. The Union refused to do so. It declined to choose among those of its members at Gallipolis who were due to attend the Assembly meeting. The Employer then denied release time to all who sought to use it.

A grievance protesting that denial was filed. It was speedily advanced to arbitration. No procedural objections were lodged by either party and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE UNION: When the parties negotiated the current contract in the Winter of 2002-2003 they bargained long and hard. Of particular interest was Union leave. The State sought to eliminate it entirely. That was resisted by the Union. A compromise on the issue was reached. Union leave was retained. The State secured a limitation on its use. "Up to two (2)" local union representatives could be released from the same institution within a county. When the Union sought to have five people from Gallipolis attend the

Assembly meeting its request was denied. That was all that occurred. The State indicated it would release "up to two (2)" people from various work sites for statewide meetings.

When the Union agreed upon the new language in Section 3.10 it did so with annotated contract in mind. That was drafted contemporaneously with the negotiations. It was completed as negotiations were on-going. The annotations, which were submitted to the Union membership as part of the ratification package, clearly indicate that at institutions "Leave requests shall take into account shifts, classifications and work areas." There is no evidence that was done in this situation. Any defense by the State that overtime would result from release of five people from Gallipolis is speculative. The State did not demonstrate that to be the case. The Union contends that at most overtime would have been incurred to replace one person, Monty Blanton, an Electrician at Gallipolis. Even that is conjectural according to the Union. In any event, the State did not demonstrate overtime would be incurred, it merely asserted as much.

The annotated Agreement provides that the State "shall" take account of "shifts, classifications and work areas" when considering leave requests. Further, the Employer is to utilize a reasonableness standard when considering leave

requests. In this situation there is nothing to indicate that either provision of the annotated Agreement was complied with.

The Union agrees that the State may deny leave requests from more than two people. When it does so, it must furnish information concerning shifts, classifications and work areas of leave applicants from institutions and it may not unreasonably deny leave. In this situation it cannot be determined if the State did either. Thus, the grievance should be granted and the State directed to comply with provisions of the annotated Agreement the Union urges.

POSITION OF THE EMPLOYER: The State notes that changes occurred in Section 3.10 in the recently concluded round of negotiations. It may limit the number of people on Union leave from the same institution to two. (2) That is what it did in this situation. From time-to-time the Employer might release more than two people but that would certainly be unusual. In this situation the Union requested five people be released from Gallipolis. The State asked the number be reduced to two. The Union refused to comply with that request. Thus, under the terminology of Section 3.10 all leave requests were denied.

Reference to the annotated Agreement is misplaced according to the State. It is the Agreement that governs, not

the annotation. In this situation there is a coincidence that is unfavorable to the Union. All those who sought leave were officers in the Union. They were officials of various Union organizations, eg. the Assembly President, the Chapter President and Automatic Delegate to the Assembly, the Assembly Secretary, an Alternate Delegate to the Assembly and an Assembly Board member. That so many people from Gallipolis sought leave to attend the Assembly meeting is unfortunate from the standpoint of the Union but the Agreement does not require the State to accommodate itself to the Union organizational structure. The Agreement is clear according to the Employer. It permits the Union to have "up to two local union representatives from the same...institution" on leave for Union business. In this situation the Union sought more than two people off-duty on Union leave. The Agreement permits the State to act as it did in this instance, hence, the grievance should be denied in its entirety it contends.

DISCUSSION: The position of the State is correct, to a point. It may grant Union leave for "up to two (2) local union representatives from the same office, institution or division within a County." However, contrary to the assertion of the State at arbitration, the annotated Agreement is an integral part of the Contract. The annotation was completed as the Agreement was being negotiated. It was carefully reviewed by

Union officials. Then, and only then, was the proposed language forwarded on to the Union negotiating team for discussion and ultimate concurrence. The proposed Agreement, including the annotations, was subsequently provided to the entire membership of the Union as part of the ratification package, to be voted up or down. The Agreement was accepted by the Union membership and the State as well. The annotated notes cannot be ignored.

Those notes, providing a guide for interpretation of the Agreement, indicate clearly that the State is to apply a standard of reasonableness in acting upon requests for Union leave. On the surface, a request for five people to be off-duty from Gallipolis appears excessive. However, as pointed out by the Union, the people involved work on different shifts, in different classifications. More specifically, Monty Blanton is an electrician at Gallipolis. He works on the first shift. However, he testified without contradiction he is available 24 hours per day, seven days per week. He indicated that the Employer has not incurred overtime when he has been absent on Union leave. He has also been off-work on sick leave and his position has remained unfilled. He has been called at home for technical advice. He has provided it gratis. The State has not shown it has experienced or is likely to experience a hardship when Mr. Blanton is away on

Union leave.

The Agreement permits the State to grant leave for up to two people from an institution. When the State determines not to do so it must be mindful of the interpretive guidelines set out in the annotated Agreement. Should the Union seek an explanation for a denial of leave the State must provide it. The Employer is held to the standard of reasonableness. Should the Union find the explanation for leave denial unreasonable it may file a grievance in protest. Similarly, the annotation concerning consideration of "shifts, classifications and work areas" must mean something. It is not surplus wording. If the Union seeks a rationale from the State concerning denial of Union leave with reference to how the Employer took into account "shifts, classifications and work areas" it must be provided. Again, if the Union finds such explanation unsatisfactory it may grieve. Presumably grievances over this issue will not be many. However, the State explicitly agreed to provide a rationale for denials of Union leave and to abide by the standard of reasonableness. Compliance with those basic provisions of the Agreement is not onerous. It is mandatory.

AWARD: The grievance is sustained. The Employer may limit requests for Union leave to "up to two" people per the "same office, institution or division within a County." Should the

Union seek a rationale for denial of Union leave it must be provided. Such rationale must meet the standard of reasonableness. It must take "account of shifts, classifications and work areas." Should the Union find the explanation of leave denial wanting it may grieve.

Signed and dated this 1st day of August, 2003 at Solon, OH.



Harry Graham
Arbitrator