

#1712

BENCH DECISION AND AWARD

☐ Expedited ☒ NTA

ARBITRATOR: DR. PINCUS

HEARING DATE: SEPTEMBER 12, 2003

GRIEVANT: DANIEL BENNER, ERIC RANSOM,
FRANK SCHUMACHERGRIEVANCE #: 27-20-2002.3110-5691-01-06
27-20-2002.1101-5688-01-03
27-20-2002.1106-5689-01-03

DEPARTMENT: DA & C

UNION: OCSEA

MANAGEMENT
ADVOCATE: KATE STILESUNION
ADVOCATE: PATTY HOWELL

ISSUE

WHICH CANDIDATE IS THE MOST QUALIFIED (MILLIRON,
BENNER, RANSOM, SCHUMACHER)?

AWARD

ALL APPLICANTS WERE CONSIDERED MINIMALLY QUALIFIED. DANIEL
BENNER AND FRANK SCHUMACHER ARE SUBSTANTIALLY
EQUAL, THEREFORE SENIORITY IS THE DETERMINING FACTOR
IN ACCORDANCE WITH SECTION 17.05 OF THE COLLECTIVE
BARGAINING AGREEMENT. FRANK SCHUMACHER SHALL
BE PLACED INTO THE POSITION (PCN # 1044.0). DUREK
MILLIRON SHALL RETURN TO HIS PREVIOUSLY HELD POSITION.

ISSUED AT:
DATE:

9/12/03

ARBITRATOR'S
SIGNATURE:

**GRIEVANCE SETTLEMENT AGREEMENT
(OCSEA)**

This Agreement made MARCH 6, 2013; by and between the
DEPARTMENT OF REHABILITATION & COLLECTION (DR&C);
the Ohio Civil Service Employees Association, Local 11, AFSCME (OCSEA), and
FRANK SCHUMACHER; ERIC RANSOM; DANIEL BENNER (Employee), parties hereto.

Whereas, there is now pending, a grievance filed by the above named employee and
OCSEA against (DR&C) pursuant to the Collective Bargaining Agreement, identified as
27-20-20021101-5688-01-03; 27-20-20021106-5689-01-03;
grievance number 27-20-20021107-5691-01-03 based on the following allegations:

Violation of Section/s 17

WHEREAS, (DR&C) denies any liability in correction with the alleged claim;

WHEREAS, all parties hereto wish to reach a full and final settlement of all matters and
causes of action arising out of the claim set forth above;

Now therefore, all parties hereto, in consideration of their mutual covenants and
agreements to be performed, as hereinafter set forth, agree as follows:

PARTIES AGREE THE CASES LISTED ABOVE SHALL
BE FORWARDED TO NON-TRADITIONAL ARBITRA-
TION.

THE NEUTRAL SHALL DETERMINE THE MOST
QUALIFIED CANDIDATE BETWEEN THE GRIEVANTS
LISTED AND THE SELECTED CANDIDATE.

THERE SHALL BE NO BACKPAY AWARDED IN
THE EVENT ONE OF THE GRIEVANTS IS
SELECTED.

NO GRIEVANCES SHALL BE FORWARDED TO
ARBITRATION RESULTING FROM THE ARBITRATOR'S SELECTION.

**GRIEVANCE SETTLEMENT AGREEMENT
(OCSEA)**

This Agreement made MARCH 6, 2003; by and between the
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the Ohio Civil Service Employees Association, Local 11, AFSCME (OCSEA), and
FRANK SCHUMACHER; ERIC RANSOM; DANIEL BENNER (Employee), parties hereto.

Whereas, there is now pending, a grievance filed by the above named employee and
OCSEA against (D.R.C.) pursuant to the Collective Bargaining Agreement, identified as
27-20-20021101-5688-01-03; 27-20-20021106-5689-01-03;
grievance number 27-20-20021167-5691-01-03 based on the following allegations:

Violation of Section/s 17

WHEREAS, (D.R.C.) denies any liability in connection with the alleged claim;

WHEREAS, all parties hereto wish to reach a full and final settlement of all matters and
causes of action arising out of the claim set forth above;

Now therefore, all parties hereto, in consideration of their mutual covenants and
agreements to be performed, as hereinafter set forth, agree as follows:

PARTIES AGREE THE CASES LISTED ABOVE SHALL
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NO GRIEVANCES SHALL BE FORWARDED TO
ARBITRATION RESULTING FROM THE ARBITRATOR'S SELECTION.

FRANK F. SCHUMACHER

3334 Hummel Rd.
Shelby, Oh 44875
(419) 347-6207

January 28, 2003

Ms. Teri Decker
Bureau of Labor Relations
Ohio DR & C
1050 Freeway Drive North
Columbus, Oh 43229

Subject: Step Three Response, Schumacher/ManCi 27-20-021101-5688-01-03

Dear Ms. Decker,

Regarding the denial of the Step Three response of grievance number 27-20-021101-5688-01-03, I must protest in the strongest of terms based on the following excerpt from the current Contract on page 31, Section 17.05 "...If the position is in a classification which is assigned to pay range twenty-seven (27) or lower, the job shall be awarded to the qualified employee with the most State seniority unless the Agency can show that a junior employee is demonstrably superior to the senior employee. If the position is in a classification which is assigned to pay range twenty-eight (28) or higher, the job shall be awarded to an eligible bargaining unit employee on the basis of ***qualifications, experience, and education***. When these factors are substantially equal, State seniority shall be the determining factor".

As my personal review of the Merit Selection file documents which apply to this grievance prove without a doubt that the successful applicant was *not* more "substantially equal" than the grievant as defined by the contract language, Mr. Burris and by ManCi management. The documents in the Merit Selection file bore out the following facts that I request that you compare yourself.

D. Milliron (Successful Applicant)

D.O.B. 8-26-56
Education: High School

Date of Hire: 5-28-85
Application/Resume: No Safety/Health
Experience noted.

Interview Summary: Safety experience
Limited to seven years
Safety Steward ManCi

F. Schumacher (Grievant)

D.O.B. 7-26-47
Education: Associates Degree Mechanical
Engineering.
B.S.B.A. Business Management

Date of Hire: 2-21-91
Application/Resume: 5 years Assistant
Safety Manager,
Ohio Steel Tube
Interview Summary: All questions safety
related answered in
in depth.

The above differences are borne out by the documents in the Merit Selection file, unless, due to the

passage of time, the documents were altered showing an entirely different set of facts thereby supporting ManCi's management and Mr. Burris' decision.

While I do not question Mr. Burris' qualifications as a Step 3 Hearing Officer, I do however, question his investigation of the case and his subsequent judgment based on the documentation of the facts on file. How this grievance can be denied based on the fact that the position in question is in pay range 32, and contract language clearly states the criteria necessary to be met for positions in pay range 28 and higher, a decision which clearly does not support the defined parameters.

At this time, the grievance is being submitted for consideration for arbitration, the outcome of which will determine whether my attorney will have the opportunity to question your office and that of the management of ManCi in regards to your/their interpretation of the language and intent of the contract.

Therefore, in closing, I request that you reconsider the denial of the step 3 response and to re-investigate this matter before it continues further.

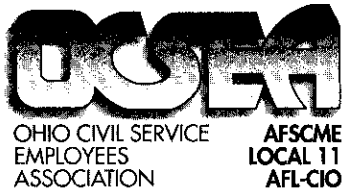
A response from your office on this matter in a timely manner would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank F. Schumacher". The signature is written in a cursive, flowing style.

Frank F. Schumacher

Cc: OCB, Union office file



RONALD C. ALEXANDER
PRESIDENT
DAVID L. SLONE
VICE PRESIDENT
VANESSA TOLLIVER
SECRETARY-TREASURER
IRWIN M. SCHARFELD
EXECUTIVE DIRECTOR

January 27, 2003

Mr. Steve Loeffler, Deputy Director
Office of Collective Bargaining
100 East Broad Street, 18th Floor
Columbus, Ohio 43215

Re: Frank F Schumacher
27-20-(02-11-01)-5688-01-03
R&C Mansfield Correctional Ins

Dear Mr. Loeffler::

This letter is to inform you that OCSEA/AFSCME Local 11 requests that the above-referenced grievance be taken to arbitration pursuant to Section 25.02 of the contract with the State of Ohio.

Thank you.

Sincerely yours,

Herman S. Whitter/pa

Herman S. Whitter, Attorney
Director, Dispute Resolution

Cc: Patricia Howell

CERTIFIED MAIL



7002 0860 0006 5478 8775



OHIO CIVIL SERVICE
EMPLOYEES
ASSOCIATION
AFSCME
LOCAL 11
AFL-CIO
390 WORTHINGTON RD. • STE. A
WESTERVILLE, OHIO 43082-8331



FIRST CLASS MAIL

FIRST CLASS MAIL

STEVE LOEFFLER, DEPUTY DIRECTOR
OFFICE OF COLLECTIVE BARGAINING
100 E. BROAD ST, 18TH FLOOR
COLUMBUS, OH 43215



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APPEAL AND PREPARATION SHEET

STATE OF OHIO
OCSEA AFSCME, LOCAL 11 AFL-CIO

Step 4 Grievance Designee
Office of Collective Bargaining
106 North High Street - 6th Floor
Columbus, Ohio 43215

Re:

Grievant Name: Frank Schumacher
Grievance #: 5688
Chapter Name/Number: Local 11 Chap 7010
Agency/Work Location: MANCF

AND

Your Assigned Staff Representative

- ☐ Removal ☐ Fines (# of days _____)
☐ Suspension (# of days _____)
☒ Issue (Contract Interpretation) 2.02 17.0 17.05 2.0

IF STEP 3 RESPONSE WAS NOT RECEIVED:

☒ Step 3 Response was due on 12/10/02 but was not received. The Union requests a Step 4 meeting.

Date the Appeal was mailed to Step 4 1/21/03 Staff Rep.: Patti Howell

This letter is to inform you that we are appealing the above captioned grievance to Step 4 of the grievance procedure pursuant to Article 25.02 of the labor agreement between the State of Ohio and OCSEA AFSCME, Local 11, AFL-CIO.

Please send correspondence to:

Mansfield Correctional
PO Box 0588 Mansfield Ohio 44901-0588
Attn Local 7010 OCSEA

TEAR HERE AND MAIL TO OFFICE OF COLLECTIVE BARGAINING.



GRIEVANCE FORM



STATE OF OHIO - OCSEA, LOCAL 11 AFSCME, AFL-CIO

Date:	11-1-02	Grievance #:	2720(02-11-1)(5688)01-03
Grievant(s) Name:	Frank F. Schumacher	Soc Sec#:	296-44-8996
Home Address:	3334 Hummel Rd.	Work phone:	Put 419-526-2000
City, State, Zip:	Shelby, Oh 44875	Home phone:	(419) 347-6207
Job Classification:	C/O	Work location:	MANCI
Agency:	DR&C - MANCI	P.O. Box	788, Mansfield, Oh
Steward name:	M. Miller	Work phone:	(419) 526-2000
Home address:	Third Shift MANCI	M. Miller	419-756-1391
City, state, zip:	P.O. Box 788 Mansfield		
Immediate supervisor:	Capt. E. Hale, 3rd. Shift	Work phone:	()

Suspension / Discharge Grievances:

The Union submits grievances involving suspension /fine/discharge at Step 3 within 14 calendar days of the date of notification. Send the original, completed form to the Agency Head or Designee.

All Other Grievances:

Contract interpretation grievances and written or oral reprimand grievances shall be filed at Step 1 of the grievance procedure.

Contract article(s) allegedly violated:	Witnesses:
(All Pertinent Articles) 2.2.02, 17, 17.05	

Statement of facts (who, what, where, when?):

I am grieved since I was not awarded the recent posted vacancy of "Safety Coordinator" class 24441 at MANCI, I was interviewed on 10-30-02.

Per article 17, 17.05, on the basis of my qualifications, experience and education I believe I should have been awarded this position.

I have 2 college degrees and 5 years safety management experience at Ohio Steel Tube, Shelby, Oh. Further, per 17.05, the awarding of any position higher than a pay range 28 shall be awarded to an eligible bargaining unit employee on the basis of qualifications, experience and education. Per the current contract, Safety Coordinator Class, 24441 is listed as pay range 32.

1) That I be awarded above vacancy, with all necessary back pay and made whole.

Signature:

Frank F. Schumacher

Date:

11-1-02



GRIEVANCE FORM

STATE OF OHIO - OCSEA, LOCAL 11 AFSCME, AFL-CIO



Date:	11-1-02	Grievance #:	2720(02-11-1)(568801-03)
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City, State, Zip:	Shelby, Oh 44875	Home phone:	(419) 347-6207
Job Classification:	C/O	Work location:	MANCI
Agency:	DR&C - MANCI	P.O. Box	788, Mansfield, Oh
Steward name:	M. Miller	Work phone:	(419) 526-2000
Home address:	Third Shift MANCI	M. Miller	419-756-1391
City, state, zip:	P.O. Box 788 Mansfield		
Immediate supervisor:	Capt. E. Hale, 3rd. Shift	Work phone:	()

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Contract article(s) allegedly violated:

(All Pertinent Articles)
2,2.02,17,17.05

Witnesses:

Statement of facts (who, what, where, when?):

I am grieved since I was not awarded the recent posted vacancy of "Safety Coordinator" class 24441 at MANCI, I was interviewed on 10-30-02.

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1) That I be awarded above vacancy, with all necessary back pay and made whole.

Signature:

Frank Schumacher

(Grievant/Union Representatives)

Date:

11-1-02

Sent to Step 3

CERTIFIED MAIL #: 7099340000255784724

**MANSFIELD CORRECTIONAL INSTITUTION
CHAPTER 7010, OCSEA/AFSCME, LOCAL 11, AFLCIO
P.O. BOX 788
MANSFIELD, OHIO 44901-0788**

STEP THREE HEARING OFFICER
OHIO DEPT. OF REHABILITATION AND CORRECTIONS
1050 FREEWAY DRIVE
COLUMBUS, OHIO 43215


DATE: 11/4/02

SIR,

ENCLOSED YOU WILL FIND GRIEVANCES FOR YOUR REVIEW AND TO SET UP A MEETING FOR A STEP THREE HEARING. PLEASE CONTACT OUR OFFICE IF YOU HAVE ANY QUESTIONS OR NEED MORE INFORMATION.

PLEASE FAX LIST OF STEP THREE GRIEVANCES NUMBERS TO BE HEARD AT
LEAST SEVEN (7) DAYS BEFORE HEARING DATE.

GRIEVANCE #: 27-20-02-11-1-5688-01-03


R. BRADSHAW

Roger Ingram
R. INGRAM

[illegible]



Ohio Department of Rehabilitation and Correction

Bob Taft, Governor

www.drc.state.oh.us

1050 Freeway Drive North
Columbus, Ohio 43229

Reginald A. Wilkinson, Director

STEP THREE RESPONSE

Schumacher/ MANCI 27-20-021101-5688-01-03

January 2, 2003

A grievance was filed by the above-named in accordance with Article 25 of the collective bargaining agreement between the State of Ohio and OCSEA Local 11.

Therein it is alleged that management has violated the following Articles (s) and Section (s): 2.02, 17.05.

A Step 3 Hearing was held at the facility on 12/10/02.

To the question of procedural objection, the parties had none.

FACTS: N/A

UNION CONTENTION: the grievant, through the union, argues that the contract was violated when he was not awarded the position of Safety Coordinator. Because the position is in pay range 32 his qualifications, education, and experience should have been the determining factors. The grievant asserts that he is more than substantially equal than the successful applicant.

REMEDY: "That I be awarded above vacancy, with all necessary back pay and made whole."

DISCUSSION AND DECISION: the institution has determined that the successful applicant was more than substantially equal than the grievant. A review of the documents used to make that determination supports management's selection. The grievance is denied at step three of the grievance procedure.

Teri Decker
Bureau of Labor Relations
TLD: DJB

David J. Burrus
Step 3 Hearing Officer

C: OCB, Labor Relations Officer, and Union, file