

#1916

IN THE MATTER OF ARBITRATION
BETWEEN
THE STATE OF OHIO
AND
THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION

Before: Robert G. Stein

PANEL APPOINTMENT

CASE #02-10-(06-04-11)-0101-01-03

Advocate(s) for the UNION:

**Sandra F. Bell
OCSEA Local 11, AFSCME, AFL-CIO
390 Worthington Rd.
Westerville OH 43082**

Advocate for the EMPLOYER:

**Michael Duco
Office of Collective Bargaining
100 East Broad Street, 18th Floor
Columbus, Ohio 43215**

INTRODUCTION

This matter was submitted to the arbitrator pursuant to an agreement (herein "Agreement") between the State of Ohio (herein "Employer") and the Ohio Civil Service Employees' Association (herein "Union"). The Agreement includes the conduct that is the subject of this grievance.

Because of the nature of this dispute a hearing on this matter was waived at the request of the arbitrator. The parties were given a full opportunity to submit documentation supporting their respective positions. The parties have also agreed to the arbitration of this matter pursuant to Article 25 of the Agreement.

ISSUE

Were all Attorneys properly placed in the bargaining unit as of March 5, 2006 and were they properly compensated, pursuant to the settlement agreement, for any losses sustained as a result of their displacement from the bargaining unit? If not, what shall be their remedy?

BACKGROUND

This case involves the implementation of the terms of an Agreement that placed certain Attorney classifications into the bargaining unit. They were officially placed in the bargaining unit as of March 5, 2006 after they were

removed on May 17, 2003. As a result of the Agreement, 247 individual Attorneys, who were functioning within the Attorney classifications, were placed into the bargaining unit. The implementation of the Agreement caused these Attorneys to be placed at a level/pay range that would be comparable to where they would have been had they never left the bargaining unit.

The parties attempted to anticipate the various contingencies but some individual questions/issues arose. This Grievance consolidated all of these issues (claims) into one Union grievance. The purpose of this arbitration is to determine which issues were covered by the Agreement and to determine if the terms of the Agreement were properly applied. If the terms were not properly applied, the task of this arbitration proceeding is to determine the impact of the failure to properly implement the Agreement and correct those errors.

It should be noted that the parties agreed to allow the Arbitrator to determine the applicability of the Agreement and if the Agreement does not apply to the selected issue, the assumption is that the Employer properly implemented the Agreement regarding issue.

EMPLOYER'S POSITION

The Employer's position is straightforward. While it is willing to adjust any computational errors, the Employer's position is that it has not made any computational errors regarding the aforementioned employees. It firmly

contends that it has properly implemented the Agreement regarding all applicable issues.

UNION'S POSIITON

It is the Union's vigorously asserts that the Agreement was not properly applied. It argues that the following individual circumstances need to be addressed:

1. The Employer did not properly consider the automatic probationary step advancement for the District Hearing Officers 1's and 2's in the Industrial Commission.
2. The Employer did not consider step movement occurring between July 1, 2005 and March 5, 2006.
3. The Employer did not properly calculate yearend cash-in balance for sick and personal leave.
4. The Employer did not address and properly calculate the correct amount of service compensation for those employees who separated between March 18, 2003 and March 5, 2006.
5. The Employer did not properly calculate cash-in balances for vacation balances removed due to the change from exempt to bargaining unit status.
6. The Employer did not properly account for advance step placement for Attorneys who were initially hired at an advanced step and subsequently

placed into the bargaining unit entered into between May 17, 2003 and March 18, 2006.

7. The Employer improperly violated agreements, written or verbal, entered into between an employee and the Employer relating to terms and conditions of employment.

DISCUSSION AND AWARD

After careful consideration of the evidence I find:

1. The Employer did not consider the automatic probationary advancement for some District Hearing Officers 1's and 2's. Evidence regarding all District Hearing Officers 1's and 2's was considered and the following employees shall have the appropriate adjustments made during the pay period ending March 3, 2007.

Name	Classification	Step	Step Indicator	New Rate	Back Pay
Karen Asbury	DHO – 2	2	22	Current Rate	\$ 377.60
Darren Biery	DHO – 2	2	22	Current Rate	\$ 332.80
Jon Grandon	DHO – 2	8	19	\$39.01	\$1,948.80
Joseph Meyer	DHO – 2	9	10	Current Rate	\$ 158.40
Tommie Marsilio	DHO – 2	2	22	\$29.14	\$ 313.60
Matthew Tyack	DHO – 2	5	22	\$33.64	\$2,319.20

No adjustments are necessary for the remaining District Hearing Officers 1's and 2's.

2. The Employer did not fully consider step movement occurring between July 1, 2005 and March 5, 2006 for all the subject attorneys. The Union submitted evidence regarding all individual attorneys who are employed in the Attorney Classifications to support its position that these Attorneys did not receive credit for proper step placement. According to the Union such step placement would have occurred between July 1, 2005 and March 5, 2006 had these Attorneys never left the bargaining unit. I find that the evidence submitted regarding this issue supports the Union's position concerning some of the Attorneys. The Employer did not consider step movement that would have occurred between July 1, 2005 and March 5, 2006 for these Attorneys and the appropriate back pay that they should receive is as follows:

Name	Back Pay
James Bartko	\$ 9.60
Rachael Black	\$1,364.00
Barbara Corner	\$1,406.40
James Crump	\$1,293.60
Gary Frame	\$2,352.00
David Greim	\$1,939.20
William Heine	\$1,034.40
Barbara Holyman	\$1,760.80
Bjan Khavari	\$1,473.60
Donald Marshall	\$ 338.40
Karen Mortland	\$ 516.80
Barbara Patsouras	\$1,766.40
Kim Rhoads	\$ 944.80

Laura Schank	\$2,414.40
Nicholas Varveris	\$1,292.00
Judy Velton	\$1,632.80
Milutin Zlojutro	\$ 272.80

I find the evidence submitted in regard to the rest of the Attorneys and the step movement issue does not support the Union's position that these Attorneys are entitled to back pay based upon improper step movement.

3. The Union submitted evidence supporting its position that the Agreement called for recalculating yearend cash-in balance for sick and personal leave on behalf of all Attorneys. However, I find that the Agreement does not address the issue of recalculating yearend cash-in balances for sick and personal leave. Therefore, the Employer's approach to the implementation of the Agreement regarding this issue was proper.

4. The Union presented evidence supporting their position that some Attorneys, who retired during the time they were out of the bargaining unit, were not properly compensated. On behalf of all similarly affected attorneys, I find that the Agreement does not address the issue of employees who may have separated from service with the State of Ohio during or subsequent to the implementation of the Agreement. As such the Employer properly implemented the Agreement for those employees who severed employment with the State.

5. The Agreement was not properly implemented in those cases where an employee was not compensated for removed vacation balances that were found to be above the maximum accrual level for bargaining unit members. Employees who had vacation balances reduced but were not compensated for said hours shall be paid for the removed hours at the rate of pay applicable as of the date of the removal.

6. The Agreement does not address the issue of the use of advance step placement as a remedy to place an employee at a bargaining unit step that is closer to the exempt step at which the employee was hired. As such, the Employer properly implemented the Agreement with respect to any advance step movement.

7. The Agreement specifically relieves the Employer from any potential liability as a result of the voiding of any agreement, written or verbal, entered into between a member and their employer and relating to the terms and conditions of employment, provided that such Agreement was entered into between May 17, 2003 and March 18, 2006.

Respectfully submitted to the parties this 28th day of February 2007.

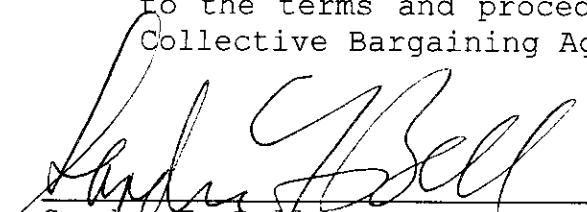



Robert G. Stein, NAA Arbitrator

AGREEMENT TO ARBITRATE

The State of Ohio, Department of Administrative Services and the Ohio Civil Service Employees Association, AFL-CIO agrees to the following:

1. A number of disputes have arisen regarding the implementation of the settlement reached in *State ex rel. Ohio AFL-CIO v. Taft* (04CVH02-1455).
2. While the Court agreement itself does not fall within the definition of a grievance as defined in Section 25.01 of the Collective Bargaining Agreement, OCSEA has filed a class action grievance regarding its implementation.
3. The Parties agree that while the original dispute did not rise from the Collective Bargaining Agreement, the State, the Union and its members agree to be bound by any arbitration award rendered pursuant to this agreement.
4. The Parties agree that the agreement reached in Section 3 above shall not be referred to or introduced into any legal proceeding, arbitration, or any other legal or quasi-legal forum except to enforce the agreement. The parties further agree that this ad hoc appointment shall be used to establish precedent in other matters between the parties.
5. The Parties agree that the arbitration shall be conducted to the terms and procedures set forth in Article 25 of the Collective Bargaining Agreement.


Sandra F. Bell
OCSEA, AFSCME, Local 11


Michael Duco
Office of Collective Bargaining

Date: 2-21-07

Date: 2/21/07