**OCB AWARD NUMBER: 2175**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2175** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **35-18-20110720-0046-06-10** |
| **DEPARTMENT:** | **Youth Services** |
| **UNION:** | **OEA/NEA** |
| **ARBITRATOR:** | **Robert Brookins** |
| **GRIEVANT NAME:** | **Gretchen Zart** |
| **MANAGEMENT ADVOCATE:** | **Pat Mogan** |
| **UNION ADVOCATE:** | **Bonnie Joseph** |
| **ARBITRATION DATE:** | **05/29/2012** |
| **DECISION DATE:** | **08/24/2012** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Article 3.01 – Management Rights; Article 6.05 Arbitrator Limitations; Article 17.06 Reassignment** |
| **OCB RESEARCH CODES:** | **119.21 – Reassignment; 2.01 – Management Rights** |

**HOLDING: Grievance denied. The Arbitrator found that Management acted within its rights under the collective bargaining agreement to reassign the grievant. The grievant was originally an English and Social Studies teacher at Circleville Juvenile Correctional Facility (CJCF) and was reassigned to teach Reading 180 because she was the most certified English teacher at the facility and because the current Reading 180 teacher had resigned. The Arbitrator states that per the contract, Management has to the right to reassign and modify the reassignment within a facility regardless if the position is temporary or permanent.**

The grievant is an English Teacher III with over 6 years of experience and no prior disciplines. DYS announced that reductions in funding would force CJCF to discontinue the class Reading 180, effective June 30, 2011. At the time of this announcement the grievant taught English and Social Studies. In April of 2011, the grievant was asked by then Principal Kirk Cameron to teach Reading 180 because the current teacher was leaving. The grievant agreed to teach the class until June 30, 2011, at which time she would resume teaching English and Social Studies. Principal Cameron resigned before June 30, 2011 and the new Principal kept the grievant teaching Reading 180 past the June 30th date and did not return the grievant to teach English and Social Studies. The grievant objected to continuing to teach and unsuccessfully applied for a posted position in English.

The Union argues that Article 17, (17.06), limit the Agency’s rights under Article 3, (3.01), of the Management’s Rights Clause. The Union argues that Article 3.01 does not authorize DYS to unilaterally convert the grievant’s temporary assignment into a permanent one. The Union further argues that Management never gathered information regarding the grievant’s knowledge regarding her agreement with Principal Cameron or her testimony. The Union states that if DYS decided to discontinue Reading 180, it should have invoked Article 18 (18.12), which has a two year recall window for either B.U. members laid off or those holding recall rights. Those rights would have been extended to June 2013. If a recall list is exhausted, DYS must post openings pursuant to Article 17 (17.02).

Management argues that funding for Reading 180 ceased on June 30, 2011, but DYS continued the program. The agreement that the grievant had with Principal Cameron is hearsay and there is no evidence of this agreement. Principal Cameron did not testify at the hearing or at any time regarding this agreement and there was no corroborative evidence brought forth by the Union that supports an agreement ever having existed. Assistant Principal Blevins is on record stating that the first time he had heard of Principal Cameron’s alleged agreement was during grievance negotiations in this case. Management also states that under Article 17.06, they have the right to unilaterally reassign employees temporarily or permanently within the same work facility and that Management is not contractually prohibited from: interchanging temporary and permanent work assignments, or extending temporary work assignments.

The Arbitrator found that no language cited by the Union in Articles 3.01 or 17.06 prohibit or prevent Management from reassigning or modifying a reassignment for an Employee. The Arbitrator found that because Principal Cameron did not testify at the arbitration hearing, the grievant’s alleged agreement with the Principal can only be heard as hearsay and taken for face value. Due to the fact that there was no corroborative evidence to support this verbal agreement, it does not merit much weight regarding the argument. The Arbitrator states that regardless of duration of the working assignment (Permanent or Temporary), the language clearly states that it is upon the Employer’s initiative to assign (reassign) employees and that that authority lies solely with the Employer. The grievance was denied.