**OCB AWARD NUMBER: 2631**

SUBJECT: Arb Summary # 2631

TO: All Advocates

FROM: Charlotte Robertson

OCB GRIEVANCE NUMBER: DRC-2019-00131-10

DEPARTMENT: State Library of Ohio

UNION: State Council of Professional Educators OEA/NEA

ARBITRATOR: Meeta A. Bass

GRIEVANT NAME: Sharon Douglass

MANAGEMENT ADVOCATE: Thomas Dunn

UNION ADVOCATE: Kerri Hoover

OCB REPRESENTATIVE: Thomas Dunn

ARBITRATION DATE: November 5, 2019

DECISION DATE: November 8, 2019

DECISION: GRANTED

CONTRACT SECTIONS Article 3, Article 17; Article 18

OCB/BNA RESEARCH CODES: 117.101 – Lay Off/Reductions in Force; 117.102 – Re-Employment

KEYWORD SEARCH TERMS: Recall; Layoff; Reemployment Rights; Funding; Back Pay Awards

**HOLDING: Grievance GRANTED.** Grievance granted because Union successfully established violations of the collective bargaining agreement when Employer did not offer recall rights to Grievant. Grievant was reinstated to the position of Librarian 2 with full back pay and benefits from November 16, 2018, subject to standard offsets for outside earnings.

**Facts:** Grievant was an employee of SEO Consortium State Library of Ohio and took a voluntary layoff effective September 2, 2017. Grievant completed a Layoff/Displacement form, ADM 4138, giving her statewide recall rights. Article 18.11 of the Agreement between the State Library of Ohio and OEA/NEA afforded her recall/reemployment rights under the parties’ collective bargaining agreement until September 2, 2019. Subsequently, Grievant’s name was not put on the recall list and Employer posted the position on November 16, 2018. Employer withdrew the posting in December of 2018, but Grievant was not returned to the position.

**The Union argued:** Union argued that Grievant was entitled to the position and should be awarded full back pay from the date she should have been recalled and reinstated—November 16, 2018. Union contends that Employer violated Article 17 and 18 of the parties’ collective bargaining by failing to maintain a proper recall list and failing to recall the Grievant to the position of Librarian 2 before posting the position. Union asserts that Grievant should have been recalled on November 16, 2018 as Employer was financially able to fund the position at that time.

**The Employer argued:** Employer argued that there was no contractual violation because they pulled the position due to financial limitations. Employer also asserts that pursuant to Article 3 they retain rights to hire or transfer employees, and to determine the number of persons employed or laid off. Consequently, Employer argued that it is within management's discretion to determine who is recalled or rehired.

**The Arbitrator found:** Arbitrator determined that Employer violated the collective bargaining agreement because the financial concerns that Employer alleges did not exist at the time the position was posted. Further, Arbitrator determined that Employer violated the language of both Article 17 and Article 18 of the collective bargaining agreement by both failing to maintain an accurate layoff list and by posting the Librarian 2 position. Therefore, the grievance is **GRANTED** and Grievant is entitled to full backpay and benefits from November 16, 2018, subject to offsets.