In the Matter of Arbitration Between the	:	Grievance Number: JFS-2018-04483-09
	:	
STATE OF OHIO, DEPARTMENT OF JOB AND FAMILY SERVICES,	:	Grievants: Dawn Hunley and Melissa Ervin
Employer	:	
and the	:	
	:	Date of Arbitration Hearing: January 15, 2020
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 11, AFL-CIO,	:	Howard D. Silver, Esquire
Union	:	Arbitrator

DECISION AND AWARD OF THE ARBITRATOR

APPEARANCES

For: State of Ohio, Department of Job and Family Services, Employer

Kevin Whaley
Labor Relations Officer 3
Employee and Business Services
Ohio Department of Job and Family Services
30 East Broad Street, 30th Floor
Columbus, Ohio 43215
Kevin.Whaley@jfs.ohio.gov

For: Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, Union

Monty Blanton
Staff Representative
OCSEA/AFSCME, Local 11, AFL-CIO
390 Worthington Road, Suite A
Westerville, Ohio 43082-8331
mblanton@ocsea.org

TABLE OF CONTENTS

PROCEDURAL BACKGROUND

This matter came on for an arbitration hearing on January 15, 2020 at 9:00 a. m. within the Union Hall of the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO at 390 Worthington Road, Westerville, Ohio 43082. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The arbitration hearing concluded at 4:00 p. m. on January 15, 2020 and the evidentiary portion of the hearing record was closed at that time.

Each of the parties submitted a post-hearing brief to the arbitrator by February 18, 2020 and the arbitrator exchanged the briefs between the parties on February 18, 2020.

This matter proceeds under a collective bargaining agreement in effect between the parties from May 12, 2018 through February 28, 2021, Joint Exhibit 1.

The parties have stipulated to the arbitrability of the grievance. Based upon the language in the parties' collective bargaining agreement and in accordance with the parties' stipulation, the arbitrator finds the grievance at issue in this proceeding arbitrable and properly before the arbitrator for review and resolution.

JOINT ISSUE

As presented by the parties to the arbitrator, their joint issue statement reads as follows:

> "Under the 2018-2021 Collective Bargaining Agreement between OCSEA and the State of Ohio, was article 13 of the contract violated
> if not what shall the remedy be?"

The arbitrator understands the issues in this case to be, based on the parties' joint issue

statement, whether the Employer violated Article 13 of the parties' 2018-2021 collective bargaining agreement, and if such a violation is found to have occurred, what remedy is to be fashioned to heal this breach of the parties' collective bargaining agreement.

STIPULATIONS

The parties have stipulated to the following:

1. The grievance is properly before the arbitrator.
2. This grievance arose under the 2018-2021 contract between OCSEA and the State of Ohio.

JOINT EXHIBITS

1. 2018-2021 Contract
2. Grievance Trail
3. Headquarter County Consent Form Agreement dated March 14, 2013 with attachment
4. Office of Local Operations Teleworking Terms and Conditions – Dawn Hunley
5. Office of Local Operations Teleworking Terms and Conditions – Melissa Ervin
6. Email from Tiffany Richardson dated May 1, 2018
7. Email from Rebekah Wright dated May 7, 2018
8. Email dated 2/19/16 from Julie Smith subject: Conference Call Business Support
9. Ohio's Local Workforce System Map
10. Dawn Hunley EHOC
11. Melissa Ervin EHOC

STATEMENT OF THE CASE

The parties to this arbitration proceeding, the State of Ohio, Department of Job and Family Services, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement in effect from May 12, 2018 through February 28, 2021, Joint Exhibit 1. Within the parties' collective bargaining agreement is

Article 13, Work Week, Schedules and Overtime. Article 13, section 13.06, Report-In Locations, reads as follows:

> All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.
>
> Employees who must report to work at some site other than their normal report-in location, which is farther from home than their normal report-in location, shall have any additional travel time counted as hours worked. Employees who work from their homes, shall have their homes as a report-in location. For all other employees, the report-in location shall be the facility to which they are assigned.

The grievants in this proceeding, Dawn M. Hunley and Melissa D. Ervin, are both long-term, full-time, permanent employees of the Ohio Department of Job and Family Services. Ms. Ervin was hired effective April 2, 2001 to serve in an Accountant/Examiner 4 position and assigned to a headquarters in Athens County and a report-in location in Athens County.

Dawn M. Hunley was originally employed by the Ohio Department of Job and Family Services effective December 16, 2002 in an Accountant/Examiner 3 position with a headquarters in Athens County and a report-in location in Athens County.

Both grievants reside in Athens County - Ms. Ervin in Athens, Ohio and Ms. Hunley in Nelsonville, Ohio.

Both Ms. Ervin and Ms. Hunley continued in their employment by the Department in their respective positions until August 19, 2007 when each underwent a change to their report-in location. Their headquarters remained in Athens County but their report-in location was changed to The Plains, Ohio.

Effective December 20, 2009 each grievant was demoted to a classification having a lower pay range, Customer Service Representative. Neither grievant suffered a reduction in pay as a result of the

demotion. Each grievant had assigned to her a headquarters in Athens County and a report-in location in The Plains, Ohio.

Each grievant continued in her employment as a Customer Service Representative with a headquarters in Athens County and a report-in location in The Plains, Ohio until August 13, 2012 when Ms. Ervin accepted teleworking terms and conditions that resulted in Ms. Ervin commencing teleworking duties from her home.

Ms. Hunley signed a similar acceptance of teleworking terms and conditions on April 12, 2013 that resulted in Ms. Hunley commencing teleworking duties from her home.

On March 14, 2013 an agreement was reached by and between the Ohio Department of Job and Family Services, the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, and one hundred fifty-nine (159) employees of the Ohio Department of Job and Family Services identified on an attached list. This agreement allowed the Employer to change an employee's assigned headquarters; the agreement prohibited a change to an employee's current pay rate as a result of a change to an employee's assigned headquarters; the changes to the assigned headquarters permitted by this agreement were declared not to violate the parties' collective bargaining agreement. Ms. Hunley and Ms. Ervin appear on the attached list of 159 departmental employees, with both showing a change to their assigned headquarters to 4020 East Fifth Avenue, Columbus, Ohio 43219.

Effective June 16, 2013 both Ms. Ervin and Ms. Hunley underwent an official headquarters change to JFS Air Center, 4020 East Fifth Avenue, Columbus, Ohio 43219. Due to the teleworking duties being carried out by each grievant at that time, each grievant's report-in location was changed to home.

In early 2016 the Department found itself on the verge of a significant reorganization that included moving business support functions from the Office of Unemployment Insurance Operations

(OUIO) to the Office of Workforce Development (OWD). To this end an email was issued by Julie A. Smith, Deputy Director, Office of Unemployment Insurance Operations on February 19, 2016 that included the following:

> **Good morning. This will confirm our conversation this morning regarding the business support responsibilities currently housed in OUIO.** Now that OUC, OLO and OWD has realigned our business models, it has been determined that the business function of assisting employers with job matches through OhioMeansJobs would be a better fit within Office of Workforce Development. As we discussed, the vision is for the business support function to transform into more of a state wide resource as opposed to the centralized model we now have and thus, business support center resources will exist within the local OMJ centers located throughout the state. Of course, this transition will take time and will be dependent upon available space, workload and existing staff in each of our OMJ centers.
>
> As we take steps to make this vision a reality, effective March 7th, the business support function will move to OWD. The 8 OUIO staff currently performing this function will have the option of continuing the work but as a part of OWD or remain with OUIO and resume their normal duties prior to taking on this project. As we discussed, the plan is for the four individuals housed at 4020 to move into the OWD area of the building but open conversations will be had about the possibility of moving into an OMJ center either in franklin (sic) county or another county closer to their home and based on operational need. While not ideal, those individuals currently teleworking will be permitted to continue to telework so as to not to endure the commuting hardship brought on by prior office closures, but also could be considered for current vacancies in local OhioMeansJobs Centers within reasonable commuting distance from their residence.
>
> **Staff are asked to respond to this email by close of business Wednesday, February 24 with their decision as to whether they wish to follow the duties and move to OWD or continue with OUIO. If you have any additional questions or concerns, please feel free to contact either Julie, John or Ryan Thompson.**
>
> (Bold in original)

See Union Exhibit Binder, pages 4 and 81.

On February 24, 2016 at 3:31 p. m. Ms. Hunley directed to Ms. Ervin and other employees an email that includes the following:

* * *

> John isn't Julie and this is how it will go
> When the time comes after all the research and determining need and if it is determined that more staff is needed which in turn means we do additional duties out of a county OMJ office John's word is this-
> If the need they have cause harm to us then he would allow us to stay teleworking until we change jobs or retire from the state[.]
>
> See Union Exhibit Binder, page 83.

On February 24, 2016 at 3:46 p. m., fifteen minutes after sending the above-cited email, Ms. Hunley directed an email to Deputy Director Julie A. Smith accepting an offer to move to the Office of Workforce Development (OWD).

Ms. Ervin also accepted a move to the Office of Workforce Development.

Effective March 7, 2016 business support functions that had formerly been conducted from the Office of Unemployment Insurance Operations were moved to the Office of Workforce Development. At the time of this change each grievant continued to perform teleworking duties from her home, her report-in location..

On April 21, 2017 the Employer directed to the Union correspondence that cited Appendix Q, an appendix attached to the collective bargaining agreement then in effect between the parties. Appendix Q allowed the Employer to order the elimination of teleworking duties among bargaining unit members so long as the Union was provided with forty-five (45) days of advance notice of the elimination of this work. The Employer's April 21, 2017 correspondence directed to the Union notified the Union that the Employer intended to eliminate teleworking beginning November 1, 2017.

On November 21, 2018 a letter from the Employer was directed to Ms. Hunley advising her that teleworking duties were ending and Ms. Hunley was to report to her headquarters location at 4020 East

Fifth Avenue, Columbus, Ohio 43219 beginning on December 10, 2018.

Ms. Ervin too had her teleworking duties eliminated and was told to report for duty at her assigned headquarters location at 4020 East Fifth Avenue, Columbus, Ohio 43219 effective December 10, 2018.

From March 7, 2016 to December 10, 2018 both grievants had been paid mileage and travel time for travel from their homes in Athens County to their headquarters location in Columbus, Ohio, and had been paid mileage and travel time for travel from their headquarters location to their homes. Effective December 10, 2018 neither mileage nor travel time was paid to the grievants.

On December 31, 2018 a grievance was filed on behalf of the grievants alleging an improper change to the headquarters assigned to the grievants. The statement of the grievance presented on the grievance report form filed by the Union with the Employer on December 31, 2018 reads as follows:

> Improper change of headquarter office location. Headquarter office under OWD is OMJ Athens County. Report in location were in our homes until the end of teleworking. When teleworking ended headquarter office was changed without consent and mileage to report at a location other than our headquarter was denied.

The grievance report form filed by the Union on behalf of Ms. Hunley and Ms. Ervin on December 31, 2018 presents the remedy sought through this grievance as:

> Placed in proper headquarter office/county or a mutually agreed upon suitable office location closer in proximity to home and listed headquarter office which is OMJ Athens County. Mileage and time made whole for duration of time made to report to a different location other than our listed headquarter office. Cease and desist and make whole.

The class action grievance filed by the Union on behalf of grievants Hunley and Ervin was considered by both the Employer and the Union under the parties' contractual grievance procedure, Article 25, but the grievance remained unresolved. The unresolved grievance was directed on to final

and binding arbitration at the direction of the Union pursuant to Article 25, sections 25.01 and 25.02.

The arbitration hearing was scheduled for, convened, and completed on January 15, 2020. Post-hearing briefs from the parties were received by the arbitrator by February 18, 2020.

This matter is properly before the arbitrator for review and resolution.

POSITIONS OF THE PARTIES

Position of the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, Employer

The Union understands the ultimate issue before the arbitrator in this case to be whether the Employer violated the collective bargaining agreement between the parties by withholding rights to which the grievants are entitled under that collective bargaining agreement through forcing an improper change of headquarter location for each of the grievants. If such a violation is found, the Union understands that a remedy is to be fashioned for this violation of the parties' collective bargaining agreement.

The Union notes that the Employer maintains nine (9) separate offices that are distinct in their policies, work responsibilities, operations systems, and funding. The Union notes that the Office of Unemployment Insurance Operations (OUIO), which at one time operated nineteen offices statewide, was absorbed by the Office of Workforce Development which operates from nine offices statewide. The Union points out that the Office of Workplace Development contributes to a work location in Athens County, a conglomerate OhioMeansJobs office that must attract state personnel to maintain itself. The Union notes that there are county OhioMeansJobs (OMJ) centers in all of Ohio's eighty-eight counties, and state employees work in all of them.

The Union argues that the correct headquarters office for the Office of Workplace Development

and the grievants is an OMJ center located in Athens County. The Union points out that the grievants' report-in locations had been their homes until teleworking duties in the Office of Unemployment Insurance Operations (OUIO) were terminated.

The Union refers to the language of Article 13, section 13.06, Report-In Locations, which reads:

> All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.
>
> Employees who must report to work at some site other than their normal report-in location, which is farther from home than their normal report-in location, shall have any additional travel time counted as hours worked. Employees who work from their homes, shall have their homes as a report-in location. For all other employees, the report-in location shall be the facility to which they are assigned.

The Union notes that the grievants had agreed to move from the Office of Unemployment Insurance Operations to the Office of Workforce Development, and from March 27, 2016 to mid 2019 their headquarters office had been an OhioMeansJobs center in Athens County. The Union notes that this was reflected in OAKS, the record-keeping system utilized by the State of Ohio, and all other documents. The Union notes that the Employer had started to change the grievants' headquarters but the grievants continued to work from their homes, and the provisions of Article 13, section 13.06 continued to be applied properly. The Union notes that until December 10, 2018, the grievants were paid from the time they left their homes to the time they reported for duty at the 4020 Building in Columbus, Ohio and for the time it took to travel back to their homes from their headquarters. The grievants were also paid mileage for this travel.

The Union claims that an agreement was reached in 2016 for the grievants to be moved from OUIO to OWD. The grievants' headquarters in 2016 was reported by OAKS, correctly, argues the Union, as OMJ Athens, and the grievants were paid for their travel to and from the 4020 Building in

Columbus, Ohio. The Union argues that this was in full compliance with the language of Article 13, section 13.06.

The Union notes that in March 2016 OUIO-OWD ceased to be an office and the OUIO teleworking policy ceased to apply. The Union argues that the Employer has attempted to force the grievants back to their OUIO headquarters "... simply because it met their plan." See Union's post-hearing brief, page 3. The Union points out that the grievants in this case had substantiated clearly dates and locations of their employment and the Union argues that the Employer has been confused on many aspects of this information, as was demonstrated at the arbitration hearing.

The Union points out that the grievants have been harmed by being forced to drive long distances at their own expense to an old headquarters office that dates back to when the grievants were employed within OUIO, that is, prior to March 7, 2016. The Union argues that the grievants should have been moved to the Office of Workforce Development and its headquarters county, operating from an OMJ Athens center, as had been agreed. This would result in a less than thirty-mile drive for the grievants and the Union points out that the Employer has made similar accommodations to similarly situated employees in the past. The Union points out that there continues to be space available at the Athens OMJ office, and contends that establishing said office as the report-in location for the grievants would be cost effective for the Employer.

The remedy sought by the Union in this case includes assigning to each of the grievants her proper headquarters county or a suitable office location mutually agreed by the parties. The Union seeks an order from the arbitrator directing the Employer to compensate the grievants for mileage and travel time for the time period that the grievants were required to report, improperly argues the Union, to the 4020 Building in Columbus, Ohio, for mileage, for overtime hours incurred in such travel, and describes how the overtime hours may be credited to the grievants as compensatory time. The figures

presented by the Union are for the period from December 10, 2018 through January 15, 2020, showing travel costs for Ms. Hunley amounting to $14,591.20, and travel costs for Ms. Ervin amounting to $19,784.88. As to overtime hours worked, Ms. Hunley under this remedy would be credited with 690 overtime hours, translating to 1035 hours of compensatory time. Ms. Ervin would be credited with 928 overtime hours, translating to 1392 hours of compensatory time.

In addition to the compensation presented above, the Union seeks a cease and desist order declaring that bargaining unit members are not to be moved improperly.

Position of the Ohio Department of Job and Family Services, Employer

The Employer understands the issue in this case to be whether Article 13 of the parties' collective bargaining agreement has been violated. The Employer's position is that no violation of the parties' collective bargaining agreement occurred from the assignment of a headquarters county to each of the grievants.

The Employer begins its arguments with the March 14, 2013 Headquarter County Consent Form Agreement that was agreed by both parties and approved by Ms. Hunley and Ms. Ervin, an agreement that reassigned each of the grievants to a headquarters facility in Franklin County at 4020 East Fifth Avenue, Columbus, Ohio 43219. The Employer points out that but for the authorization to perform teleworking duties from their homes, their headquarters and report-in location would have been one and the same, 4020 East Fifth Avenue, Columbus, Ohio 43219 in Franklin County. Because the teleworking duties assigned to Ms. Hunley and Ms. Ervin permitted a report-in location for each grievant of her home, the travel time and mileage otherwise required to report at the 4020 East Fifth Avenue building was avoided.

The Employer points out that when teleworking duties ended, each grievant no longer had a

report-in location of her home but was to report to her assigned headquarters facility as her report-in location.

The Employer points out that there is no reason to question the validity of the March 14, 2013 agreement on assigning a headquarters county to each of the 159 departmental employees affected by office closures in southeast Ohio. The Employer claims there is no reason to question this agreement's continuing effect as it relates to the employment history of each grievant.

The Employer points out that there is in the hearing record no agreement, no memorandum of understanding, no agreed language of any type that indicates the parties agreed to have the headquarters county assigned to each grievant through the March 14, 2013 consent agreement changed.

The Employer points out that within the parties' collective bargaining agreement there is in Article 17, section 17.07 a permanent transfer process set out through which a headquarters county may be changed. There is also language in Article 18, Layoffs, under which headquarter county changes may occur through bumping rights exercised as a result of displacement. Those circumstances are not presented in the case herein. The Employer notes that Article 17, section 17.08 allows the Employer, under certain circumstances, to permanently relocate an employee to another location within the same headquarters county, but there is no language that would allow either party the unilateral authority to change an employee's headquarters county.

In the absence of the conditions described above, the only remaining way to change the assigned headquarters county of an employee is through agreement by and between the Employer and the Union. The Employer points out that such an agreement was reached on March 14, 2013 at which time the headquarters county assigned to each grievant became 4020 East Fifth Avenue, Columbus, Ohio 43219 in Franklin County. The Employer argues that there has been no process or agreement between the parties that has made any change to the grievants' headquarters county assigned on March

14, 2013.

The Employer points out that Article 5 of the parties' collective bargaining agreement reserves to the Employer the right to: “13) establish, expand, transfer and/or consolidate, work processes and facilities; 14) consolidate, merge, or otherwise transfer any or all of its facilities, property, processes or work with or to any other municipality or entity or effect or change in any respect the legal status, management or responsibility of such property, facilities, processes or work.”

The Employer points out that when a number of offices were closed, 159 departmental employees were displaced as a result of those closings. These are the 159 departmental employees who were part of the March 14, 2013 agreement that allowed the Employer to reassign a headquarters county to each of the 159 employees affected, including grievants Hunley and Ervin. The Employer points out that a total of twenty-eight employees impacted by the closure of The Plains, Ohio office were assigned to Franklin County as their headquarters county at the Air Center at 4020 East Fifth Avenue, Columbus, Ohio 43219, including Ms. Hunley and Ms. Ervin.

The Employer points out that the effect of the change of headquarters among the grievants was not felt directly by the grievants because of their teleworking duties which allowed them a report-in location of their homes. The Employer points out that the home report-in location remained in effect for each of the grievants until teleworking duties were eliminated whereupon each grievnat's report-in location became each grievant's assigned headquarters facility, the Air Center at 4020 East Fifth Avenue, Columbus, Ohio 43219 in Franklin County effective December 10, 2018.

The Employer points out that there is agency-specific language in the parties' collective bargaining agreement that states that a teleworking arrangement does not alter the terms and conditions of appointment, including an employee's headquarters county, report-in location, salary, benefits, individual rights, or obligations. The Employer notes therefore that the teleworking arrangement in no

way changed the headquarters county assigned to each grievant.

The Employer points out that the termination of teleworking duties was done in compliance with agreed language in Appendix Q, an appendix attached to the parties' collective bargaining agreement that had been in effect from July 1, 2015 through February 28, 2018. The Employer argues that while the grievants moved from the Office of Unemployment Insurance Operations (OUIO) to the Office of Workforce Development (OWD), this in no way affected the assignment their headquarters county, as had been agreed on March 14, 2013 through the consent agreement.

The Employer points out that an opportunity was offered to each employee to report to the closest available office. For example, Ms. Ervin was offered the opportunity to report to an office in Chillicothe, Ohio rather than the 4020 Building in Columbus, Ohio. This offer was declined by Ms. Ervin.

The Employer points out that OhioMeansJobs (OMJ) centers are owned and operated by the counties. To secure office space in an OMJ center for use by state personnel requires negotiations and agreements on all aspects of renting such space.

The Employer contends that because Ms. Hunley and Ms. Ervin were not reporting to "some site other than their normal report-in location," they were required to report for duty as scheduled at their headquarters facility and were not entitled to reimbursement for travel time or mileage in reporting for scheduled duty or for traveling home after scheduled duty.

The Employer acknowledges that Ms. Hunley spoke of an agreement or understanding that when she moved from OUIO to OWD her headquarters county location would change to Athens OMJ. The Employer notes that there is no written evidence corroborating this assertion, no formal writing indicating that such a change had been agreed by both parties.

The Employer also addresses what the Employer understands to be error in the Ohio

Administrative Knowledge System (OAKS) as it relates to the headquarters county assigned to Ms. Hunley and Ms. Ervin. The Employer notes that changes were made in OAKS on April,3, 2017, over one year after the March 14, 2013 consent agreement by and between the parties and the grievants that each grievant's headquarters county was to be Franklin County. The Employer argues that the April 2017 changes were in no way connected to the March 14, 2013 consent agreement but arose from mistaken entries in OAKS by a Human Capital Management Senior Analyst who had been initially given report-in locations for Ms. Hunley and Ms. Ervin rather than the headquarters counties for Ms. Hunley and Ms. Ervin that had been requested. This interchange of information, argues he Employer, became slightly askew resulting in an entry of Athens OMJ in the OAKS record effective April 2, 2017. The Employer points out that while such an entry can be observed in OAKS, none of the accompanying electronic documents that would be expected to accompany such a notation are found. The Employer claims that this was because the indication of Athens OMJ as a "position location change" on April 3, 2017 was done in error. The Employer notes that the error occurred on April 3, 2017, and was discovered on March 3, 2019 and corrected.

The Employer states that the burden of proof in this case must be borne by the Union as the initiator of the grievance. The Employer argues that the Union has not carried its burden of proof in establishing the Employer's actions violated Article 13, section 13.06. The Employer contends that there is a preponderance of evidence in the hearing record indicating that the assignment of a headquarters county to each of the grievants was appropriate under the parties' collective bargaining agreement, that nothing has been agreed between the parties to change the assigned headquarters county to each grievant, and nothing in the actions of the Employer violated the parties' collective bargaining agreement. The Employer urges the arbitrator to find no violation of Article 13 has been proven in this case and deny the grievance in its entirety.

DISCUSSION

The grievance procedure agreed by the parties is presented in Article 25 of the parties' collective bargaining agreement. Article 25, section 25.01(A) defines grievance "... as any difference, complaint or dispute between the Employer and the Union or any employee regarding the application, meaning or interpretation of this Agreement."

Article 25, section 25.03, Arbitration Procedures, includes the the following language:

> Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms in this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of this Agreement.

The grievance at issue in his case does allege a violation of a provision of the parties' collective bargaining agreement, that provision being Article 13, section 13.06, Report-In Locations. Article 13, section 13.06 reads as follows:

> All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.
>
> Employees who must report to work at some site other than their normal report-in location, which is farther from home than their normal report-in location, shall have any additional travel time counted as hours worked. Employees who work from their homes, shall have their homes as a report-in location. For all other employees, the report-in location shall be the facility to which they are assigned.

The grievants in this proceeding, Ms. Hunley and Ms. Ervin, are long-term employees of the Ohio Department of Job and Family Services who have provided service from their respective positions for almost two decades. This case in no way addresses the work performance of the grievants but

confines itself to an inquiry into whether that which was guaranteed to the grievants by the parties' collective bargaining agreement had been withheld from the grievants by action of the Employer in violation of the parties' Agreement. The grievance filed by the Union on behalf of the grievants refers to an improper assignment of a headquarters county to each grievant, describing this action as a mistake by the Employer that has caused significant expense for each grievant in terms of the time and energy required to be expended for travel and the costs of that travel.

The employment of Ms. Ervin dates to April 2, 2001 and the employment of Ms. Hunley dates to December 16, 2002. Ms. Ervin began her employment with the Department in a position classified Accountant/Examiner 4. Ms. Hunley started her career with the Department from a position classified Accountant/Examiner 3. Their career paths with the Department proceeded in parallel, changing to Customer Service Representative effective December 20, 2009. Until March 14, 2013, each of the grievants had a report-in location of The Plains, Ohio and an assigned headquarters located in Athens County.

By the Spring of 2013 a number of local offices operated by the Department were closed, including the office located at The Plains, Ohio. Each of the 159 employees directly affected by an office closure was a party to a consent agreement that was approved by the Employer and the Union, allowing the Employer to assign a headquarters county to each of the 159 employees. Ms. Hunley and Ms. Ervin were among the 159 employees affected by an office closing and were parties to the March 14, 2013 consent agreement that allowed the Employer to assign a headquarters county to these employees.

On March 7, 2016 the Department's table of organization underwent an official reorganization that eliminated some administrative offices and created others. The reorganization ordered by the Employer transferred certain business support functions from the Office of Unemployment Insurance

Operations (OUIO) to the newly formed Office of Workforce Development (OWD). Each of the grievants had been able to choose whether to remain with OUIO or make the move to OWD. Each grievant accepted the move to OWD effective March 7, 2016.

The Union has implied that the March 14, 2013 consent agreement about assigning headquarter counties to 159 employees, including the grievants, is affected by the change from OUIO to OWD effective March 7, 2016. There is no question that the closing of a number of local offices by the Employer, including the office formerly operated in The Plains, Ohio, were connected to the Department's reorganization, giving rise to the March 14, 2013 consent agreement.

The arbitrator however fails to find a connection between moving from OUIO to OWD on March 7, 2016 and the effect and continuing validity of the March 14, 2013 consent agreement.

The arbitrator finds nothing in the hearing record that would diminish or truncate the validity of what was agreed through the March 14, 2013 headquarters county consent agreement. The assignment of Franklin County as the headquarters county to each grievant through the March 14, 2013 consent agreement appears to the arbitrator to have remained unchanged, with no indication of any of the parties challenging its validity or continuing authority. The arbitrator finds nothing in the hearing record that would avoid the agreed status arising from the March 14, 2013 agreement, namely the assignment of Franklin County as the headquarters county to each grievant.

The hearing record indicates that no grievance was filed as to the headquarters county assigned to each grievant until December 31, 2018, five and three-quarters years after each grievant, the Union, and the Employer had agreed that the grievants' headquarters county would be Franklin County. The time period from March 14, 2013 through December 10, 2018 had produced no grievance on behalf of the grievants because until December 10, 2018 the grievants had had a report-in location of their homes, requiring no travel to report to a duty station. On December 10, 2018 the grievants' report-in

location became the grievants' assigned headquarters at 4020 East Fifth Avenue, Columbus, Ohio 43219 in Franklin County. So long as the report-in location had been each grievant's home, the assigned headquarters county had had no impact, either because in-home teleworking duties required no daily travel or because if a trip to the assigned headquarters was required, the travel time and mileage for such a round trip was compensated pursuant to the language of Article 13, section 13.06.

The teleworking duties assigned to each grievant lasted until December 10, 2018. Those teleworking duties formerly assigned to the grievant had been terminated under the authority of Appendix Q, an appendix attached to the parties collective bargaining agreement then in effect. No issue has been raised in the proceeding herein as to any procedural or substantive impropriety in the termination of teleworking duties by the Employer, and none is found. The Employer had the right to terminate the teleworking duties and did so by carrying out the agreed procedures expressed in Appendix Q.

The Union points to two years of OAKS entries that listed the report-in location for the grievants as Athens OMJ. The arbitrator acknowledges that these entries were overseen by the Employer and were intended to accurately depict the changing circumstances of each employee's employment history over time.

The Athens OMJ entries referenced by the Union, however, stand alone as proof that the Employer intended either grievant to have a report-in location of an office that was controlled and operated by Athens County. Renting space at the Athens OMJ center may have been an option available to the Employer but there is no other corroborating document, evidence, or exhibit to substantiate that the report-in location was to be assigned to either grievant based on the Athens County OMJ center. There is reason to believe based on evidence in the hearing record that the Athens OMJ entries were made in error, grounded in a miscommunication that conflated report-in location with headquarters

county.

It is important to remember that this is not a case about what is a better solution to the circumstances presented by the facts of this case; this is rather an inquiry into whether the Employer took action that violated the parties' collective bargaining agreement. So long as the Employer has not committed a violation of the parties' collective bargaining agreement, the arbitrator is without authority to order the Employer to take some course of action. A violation of the parties' collective bargaining agreement would empower the arbitrator to fashion a remedy of the breach of the Agreement. In the absence of such a violation, the arbitrator has no alternative but to dismiss the grievance.

The arbitrator finds the assignment of Franklin County to the grievants as their headquarters county pursuant to the March 14, 2013 consent agreement remains valid, continues in its effect, and is entitled to enforcement unless and until a change to these assignments occurs that is in compliance with the language of the parties' collective bargaining agreement. In the case herein, the arbitrator finds no circumstance requiring a change to the headquarters county assigned to each grievant on March 14, 2013, and finds no irregularity in the initial assignment of Franklin County as the headquarters county or in this consent agreement's enduring effect. There has been no permanent transfer of either grievant; there has been no layoff producing a displacement among the grievants; there has been no agreement between the parties that the headquarters county assigned to each grievant should be changed from what had been assigned through the March 14, 2013 consent agreement. There may have been emails and others forms of discussion about the headquarters county assigned to the grievants but the hearing record contains no evidence that the parties agreed to a change to the headquarters county assigned to each grievant.

The arbitrator does not find the Employer's actions in assigning a headquarters county to each grievant to have violated Article 13, section 13.06 of the parties' collective bargaining agreement. The

arbitrator finds no violation of the parties' collective bargaining agreement by the Employer on these facts. Accordingly, the grievance is denied.

AWARD

1. The grievance before the arbitrator in this case is determined arbitrable under the terms and conditions of the parties' collective bargaining agreement.

2. The Employer did not violate Article 13, section 13.06 of the parties' collective bargaining agreement when it assigned Franklin County to each grievant as each grievant's headquarters county.

3. The grievance is denied.

Howard D. Silver

Howard D. Silver, Esquire
Arbitrator
P. O. Box 14092
Columbus, Ohio 43214
hsilver@columbus.rr,com

Columbus, Ohio
March 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that duplicate originals of the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between the Ohio Department of Job and Family Services and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, grievance number JFS-2-18-04483-09, were sent electronically to the following this 18th day of March, 2020:

Kevin Whaley
Labor Relations Officer 3
Employee and Business Services
Ohio Department of Job and Family Services
30 East Broad Street, 30th Floor
Columbus, Ohio 43215
Kevin.Whaley@jfs.ohio.gov

Cassandra Richards
Office of Collective Bargaining
Department of Administrative Services
1602 West Broad Street
Columbus, Ohio 43232
Cassandra.Richards@das.ohio.gov

Monty Blanton
Staff Representative
OCSEA/AFSCME, Local 11, AFL-CIO
390 Worthington Road, Suite A
Westerville, Ohio 43082-8331
mblanton@ocsea.org

Jessica Chester
OCSEA, AFSCME, Local 11
390 Worthington Road
Westerville, Ohio 43082
Jchester@ocsea.org

Howard D. Silver

Howard D. Silver, Esquire
Arbitrator
P. O. Box 14092
Columbus, Ohio 43214
hsilver@columbus.rr.com

Columbus, Ohio
March 18, 2020