

ARBITRATION DECISION NO.:

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UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Retardation
and Developmental Disabilities,
Broadview Developmental Center

DATE OF ARBITRATION:

February 18, 1987 and
March 6, 1987

DATE OF DECISION:

March 11, 1987

GRIEVANT:

Broadview Layoffs

OCB GRIEVANCE NO.:

G-86-0020

ARBITRATOR:

Jonathan Dworkin

FOR THE UNION:

Daniel Scott Smith

FOR THE EMPLOYER:

Barbara A. Serve

KEY WORDS:

Layoffs
Arbitral Authority

ARTICLES:

Article 18 - Layoffs
 §18.01-Layoffs
 §18.04-Bumping In
The Agency Geographic
Jurisdiction
 §18.06-Geographic Divisions

FACTS:

This grievance involved the layoff of twelve (12) individuals by the Ohio Department of Mental Retardation and Developmental Disabilities' Broadview Developmental Center effective July 20, 1987. The layoff was due to elimination of entire classifications at Broadview.

There were two (2) issues which were in dispute at the arbitration of these layoffs. The first issue was whether the layoffs were even necessary. The burden of proof pursuant to the Ohio Revised Code was on the employer to demonstrate the rationale for the layoff decisions. It was the Union's position that the reasons for the layoffs were inadequate.

A second issue was whether Section 18.04 and 18.06 of the contract was violated. The layoffs in question affected only employees at Broadview; it did not involve similarly situated employees in the contractual geographic grouping laid out in Appendix J of the Collective Bargaining Agreement including Cleveland Developmental Center and Warrensville Developmental Center.

Prior to the effective date of the contract, Broadview encompassed its own layoff jurisdiction. The other two institutions were added when the new contract was enacted, which made the geographic district larger for purposes of layoff and bumping. One problem is that Appendix J was not yet promulgated when the layoff was announced on July 3, 1986. It was promulgated and Appendix J became effective after the layoffs were announced but before they were implemented. It was the position of the Union that even though Appendix J wasn't formalized on July 3rd, the district in which Broadview was included was fully recognized by the parties.

ARBITRATOR'S OPINION:

There were a great number of difficult issues involved in this arbitration which need not be discussed here. Suffice it to say, the Arbitrator attempted to induce the parties to settle by offering his view and a range of possible awards. Mediation was unsuccessful and the parties agreed to expand the Arbitrator's authority to include technically unorthodox remedies somewhat outside of contractual provisions.

The award ordered the Agency to reinstate the seven laid-off Teacher Aide 1's to Hospital Aide positions in the geographical district. The Teacher Aide 2 was reinstated as a Therapeutic ****S2****Program Worker. The Therapy Aide was reinstated to a Hospital Aide position. With respect to one of the Stationary Engineer 1's, the Agency was given the option of honoring Grievant's bumping rights as if Appendix J had been part of the Agreement on the day he was laid off or without displacing any other employees, placing Grievant in a position not lower than pay range 06 within the geographical district. The other Stationary Engineer 1 did not have sufficient seniority to bump or otherwise retain active employment. The Auto Body Repair person forfeited the right to an award by declining an opportunity to bump.

The Arbitrator's Award also ordered that the Grievant retain full seniority as if there had been no break in their employment and 50% back pay from the date the layoffs were grieved.

AWARD:

The grievance is sustained in part and denied in part.

TEXT OF THE OPINION:

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CONTRACTUAL GRIEVANCE PROCEEDINGS ARBITRATION OPINION AND AWARD

In The Matter of Arbitration
Between:

**STATE OF OHIO
Department of Mental Retardation
and Developmental Disabilities**

-and-

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION OCSEA/AFSCME,
AFL-CIO Local 11, Broadview Chapter

Case No.:
AFSCME JD 87-1

Grievance Nos.:
G86-0020

Decision Issued
March 11, 1987

REPRESENTATIVES

FOR THE EMPLOYER

Barbara A. Serve,
Assistant Attorney General
John Alexander,
Assistant Attorney General

FOR THE ASSOCIATION

Daniel Scott Smith,
OCSEA Legal Counsel
Marc Myers,
Attorney for the Association

ISSUE: Article 18 -- Layoffs

Jonathan Dworkin, Arbitrator
16828 Chagrin Boulevard
Shaker Heights, OH 44120

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APPEARANCES

FOR THE EMPLOYER

Robert Shipka, Deputy Director
Eugene Brundige, Deputy Director, Labor Relation
Purcell Taylor, Jr., Superintendent
Dwight Roach, Assistant Superintendent
Robert Dively, Assistant Superintendent
John Beattie, Chief, Labor Relations
Chu Ho Chung, M.D., Medical Director
James Flewellen, Personnel Officer
Dorothy Civic, Personnel Officer
Marilyn Reiner, Labor Relations Consultant

FOR THE ASSOCIATION

Russ Murray, Executive Director
Jennifer May, Staff Representative
Helen Moore, Local President
Bill Clepper, Local Vice President
Ignacy Gorka, Grievant
Karen Dubese, Grievant
Bessie Senter, Grievant
Fontelle Burley, Grievant
Sharon Jones, Grievant
Laurletta Wright, Grievant
Sandra Colosimo, Grievant
Kevin Byrd, Grievant
Claytus Jones, Grievant
Louise Hoychick, Grievant
Maurice Phillips, Grievant
Johanna Johnson, Grievant
Raymond Poole, Grievant
Linda Perry, Witness
Emma Benson, Witness

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BACKGROUND OF DISPUTE

On July 20, 1986, the Ohio Department of Mental Retardation and Developmental Disabilities permanently laid off several entire classifications of employees at the Broadview Developmental Center in Broadview Heights, Ohio. A grievance was initiated on behalf of the affected members of the Bargaining Unit. It was processed through the contractual dispute resolution procedures and appealed to arbitration. A hearing convened on February 18, 1987 in Broadview Heights. Testimony and evidence were partially received, and the hearing was adjourned before completion. It reconvened in Columbus, Ohio on March 6, 1987.

Two basic issues are in dispute. The first relates to the necessity for the layoffs. Article 18, Section 18.01 of the Agreement incorporates certain Civil Service statutes and rules, placing a burden upon the Employer to demonstrate rationale for the layoff decisions. According to the Association, the reasons supporting the layoffs were inadequate.

The second issue relates to the fact that the layoff encompassed only employees of Broadview. It did not affect similarly situated employees in the contractual geographic grouping

which, according to Appendix J of the Agreement, includes Broadview Developmental Center, Cleveland Developmental Center, and Warrensville ****3****Developmental Center. Prior to ratification of the Agreement, Broadview encompassed a layoff jurisdiction. Arguably, the scope of this layoff would have been legally defensible prior to the contractual undertaking. However, the new Agreement enacted a fundamental change. Article 18 established broader geographic districts for layoff and bumping. Sections 18.04 and 18.06 provide:

§18.04 - Bumping in the Agency Geographic Jurisdiction

If the affected employee is unable to bump within the office, institution or county, then the affected employee shall have the option to bump a less senior employee in accordance with Section 18.03 within the appropriate geographic jurisdiction of their Agency (see Appendix J).

§18.06 - Geographic Divisions

The jurisdictional layoff areas shall not be utilized. Instead, the geographic divisions of each agency shall be used (see Appendix J).

The difficulty in applying Sections 18.04 and 18.06 is that Appendix J was not yet crystallized when the layoff was announced on July 3, 1986. The precise geographical districts were added to the Agreement later. Coincidentally, negotiations on Appendix J were completed after the layoffs were announced but before they were implemented. However, the particulars were not timely communicated to the Deputy Director of the Department who made the ****4****decision. Because Appendix J was not known to be in existence, the Department determined it was appropriate and in compliance with Article 18, Section 18.01 of the Agreement to follow pre-existing Civil Service layoff jurisdiction. According to the Association, this decision was extra-contractual and in violation of bargaining intent. While some of the districts were not fully identified on July 3, it is contended that the district covering Broadview Developmental Center was fully recognized before formalization of Appendix J.

At the outset of the arbitration, the Representatives of the parties stipulated that the issues were properly joined, the appeal to arbitration was procedurally correct, and the Arbitrator was authorized to issue a conclusive award on the merits. Arbitral jurisdiction is more specifically defined and limited by the following language in Article 25, Section 25.03 of the Agreement:

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 of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement.

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POST-HEARING MEDIATION ATTEMPTS

At the conclusion of the second hearing the Arbitrator directed the Representatives and Principals of both parties to meet with him and informally discuss the potential decision. This case was extraordinarily complex and involved the possibility of awards which could cause undesirable intrusions on the bargaining relationship. These factors were fully explored. The Arbitrator shared his view of the facts and announced a range of possible awards, several of which threatened unnecessary disruptions in both job security and administrative policies.

The discussions included earnest attempts to induce the parties to fashion their own settlement. It was hoped that the parties could devise remedies (such as reinstating employees to positions other than those from which they were laid off) which could not be imposed in an arm's-

length award. The Representatives of the parties rejected these attempts. They did, however, agree to expand the Arbitrator's authority to include technically unorthodox remedies. In accordance with this stipulation, the following Award is issued as a full and final determination of the merits of the grievance.

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AWARD

1. The parties recognize that job security under this Award may be temporary. During discussions, the Deputy Director informed the Association that more extensive layoffs in the geographical district are contemplated.
2. The Department is directed to reinstate the seven laid-off individuals who previously held positions as Teacher Aide 1 to available Hospital Aide positions in the geographical district.
3. The Department is directed to reinstate the laid-off Teacher Aide 2 to an available Therapy Program Worker position.
4. The Department is directed to reinstate the laid off Therapy Aide to an available Hospital Aide position.
5. With regard to Kevin Byrd, a laid off Stationary Engineer 1, the Department is directed to exercise one of two options:
 - a. honor the Employee's bumping rights as if Appendix J had been part of the Agreement on the day he was laid off; or
 - b. without displacing any individual currently employed, place Kevin Byrd in an appropriate position in the geographical district carrying a pay rate not lower than Grade 6.
6. The remaining Stationary Engineer is not entitled to a remedy. He lacked sufficient seniority to bump or otherwise retain active employment.
7. The laid-off Auto Body Repair person forfeited his right to an Award by declining an opportunity to bump.
8. All reinstatements shall include wage restorations equivalent to fifty percent (50%) of the straight-time wages the **7**reinstated employees would have received had they been placed in the positions awarded on July 23, 1986.
9. All Grievants reinstated by this Award shall retain their full seniority in the same manner as would have been the case had they not been laid off and continued working without break in employment.
10. In all respects not specifically addressed, the grievance is denied.

Decision Issued:
March 11, 1987

Jonathan Dworkin, Arbitrator