

ARBITRATION DECISION NO.:

194

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Transportation

DATE OF ARBITRATION:

DATE OF DECISION:

August 2, 1989

GRIEVANT:

Raymond Schwab

OCB GRIEVANCE NO.:

G-87-1239

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

FOR THE EMPLOYER:

KEY WORDS:

Demotion

Promotion

Position Control Number

ARTICLES:

Article 17 - Promotions
and Transfers

§17.02-Vacancy

FACTS:

The Grievant is employed with the Ohio Department of Transportation as a Design Engineer I and sought a promotion to the position of Design Engineer 2. The Grievant met the minimum qualifications for the Design Engineer 2 position, however, this position was not posted pursuant to Article 17 of the Contract. A non-bargaining unit employee was moved from the position of Project Engineer 3 to a newly created position of Design Engineer 2 with a different position control number. This movement represented a demotion from a non-bargaining unit position into a bargaining unit position.

EMPLOYER'S POSITION:

Management contends that the movement from a Project Engineer 3 position to the Design Engineer 2 position was done by reassignment. Different work was being assigned to the non-bargaining unit employee. The new job assignment did not constitute an additional vacancy, it is simply a demotion. Article 17 of the Contract was not violated because no vacancy existed and no posting was made for promotional purposes, and the collective bargaining agreement did not restrict management from demoting supervisory personnel into bargaining unit positions.

UNION'S POSITION:

The movement of a non-bargaining unit employee from the position of Project Engineer 3 to a position in the bargaining unit of Design Engineer 2 violates the Agreement. The positions had separate position control numbers. In order to move a non-bargaining unit employee into the lower position a separate position was established and filled. The filling of the position represents a vacancy. Section 17.02 defines a vacancy as "an opening in a permanent full-time or permanent part-time position within a specified bargaining unit covered by this agreement that the employer intends to fill." The vacancy of Design Engineer 2 should have been made available as a promotion in accordance with Article 17 of the Contract. The Grievant was in the job grouping and was the most senior individual and therefore would have been appointed to the position.

ARBITRATOR'S OPINION:

Just prior to the beginning of the arbitration hearing settlement discussions commenced with the involvement of the arbitrator. As a result of these discussions an award was prepared by the arbitrator with the agreement of the parties. The award found that the movement of an individual one position control number to another in this case was improper under Article 17 of the Contract. The Arbitrator placed the Grievant in the Design Engineer 3 position effective the date of the original appointment with the related back pay representing the difference between the lower and higher position. The stipulated award is attached to this arbitration summary. As with all arbitration awards, it is precedent setting for the specific facts surrounding the grievance.

NOTE:

It is the position of the Union that the use of separate position control numbers provided clear evidence of the establishment of a separate position. It should be recognized however, that the employer has the right to reassign employees if 50% or more of the duties of the new position are already performed by the individual. Such changes in job responsibilities are consistent with the code and with the Department of Administrative services directives. If done properly it does not constitute a position where a vacancy was created. In this case ODOT attempted to circumvent the agreement by using reassignment and demotion as a disguise for the appointment of a person to a position which would have ordinarily been filled by promotion.

TEXT OF THE OPINION:

August 2, 1989

This case involves Raymond Schwab, Grievance Number G87-1239 between OCSEA, Local 11, AFSCME, AFL-CIO and the State of Ohio, Office of Collective Bargaining, and the Ohio Department of Transportation.

The facts of this case were that a non-bargaining unit employee was moved from the position of Project Engineer 3, PCN 23502.0, to the newly created position of Design Engineer 2, PCN 23226.0.

This movement was improper under Article 17 of the Collective Bargaining Agreement. The remedy agreed upon by the parties and approved by the Arbitrator is that:

1. the grievant will be placed in the position of Design Specialist 3, effective February 15, 1987,
2. the grievant will receive back pay from February 15, 1987 to the present equalling the difference between the amount he would have earned as a Design Specialist 3 and what he earned as a Design Engineer 1,
3. if the Grievant should become properly licensed and meet the qualifications he shall retain Bargaining Unit 13, Cluster 6 bidding rights, and
4. in the situation of a layoff, the grievant would retain the bumping rights he would have had in Bargaining Unit 13, Cluster 6, as a Design Engineer 1.

This stipulated award shall be cited as precedent only in those cases where an employee is demoted from one position control number into a newly created position bearing a different position control number.

Rhonda Rivera
Arbitrator

For the Union

For the Employer

Ohio Dept. of Transportation