

ARBITRATION DECISION NO.:

256

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Ohio Veterans Children's Home

DATE OF ARBITRATION:

April 17, 1990

DATE OF DECISION:

May 7, 1990

GRIEVANT:

Brian Olson

OCB GRIEVANCE NO.:

G-87-1552

ARBITRATOR:

Linda DiLeone Klein

FOR THE UNION:

Yvonne Powers

FOR THE EMPLOYER:

Tim Wagner

KEY WORDS:

Working Out Of Class

Job Classification

ARTICLES:

Article 5 - Management

Rights

Article 11 - Health and Safety

§11.03-Unsafe Conditions

Article 43 - Duration

§43.02-Preservation

of Benefits

§43.03-Work Rules

FACTS:

The grievants were Child Care Workers at the Ohio Veterans Children's Home. They claimed that they were working out of their classification by being asked to supervise the recreational period. Management had instituted a more involved recreational program for the children and the grievants were being ordered to supervise the children during these recreational periods. They claimed that they are working out of their job classification. The issue is whether the employer by having Child Care Workers supervise the recreational

period are in violation of Section 123:1-17-16 of the Ohio Administrative Rules which states:

“No person shall be appointed or employed under any title not appropriate to the duties to be performed, and no person shall be assigned to perform duties other than those properly belonging to the position to which he has been legally appointed, except as may be required because of temporary characteristics of the work situation.”

UNION'S POSITION:

The Child Care Workers have been assigned inappropriate duties and are working out of their job classification. There is no longer the time available to individually counsel the children since the grievants must supervise recreational activities. Supervising and implementing a recreational program is the duty of a Recreational Aide not a Child Care Worker. The assignment is not temporary and is placing an extra burden on the grievants. One of the full-time Recreation Aides has resigned and has not yet been replaced, thus the Child Care Workers have been absorbing the inappropriate duties of this position.

EMPLOYER'S POSITION:

Child care Workers have always been involved in supervising the children and their job description has not changed. Management believes that a better recreation program will be beneficial to the children and it needs, for safety reasons, adequate supervision of the children. Child Care Workers do not plan, implement or participate in the recreational activities and are not working out of classification.

ARBITRATOR'S OPINION:

The employer did not violate Section 123:1-17-16 of the Ohio Administrative Code. The Child Care Workers were present during the recreational periods to monitor and insure the safety of the children. They were not required to plan or implement recreational programs or even participate in the recreational events activities which would be classified as duties of the Recreational Aide. The Child Care Workers previously supervised the children during special events. There have been changes in management's attempt to institute a recreational program, but supervision still falls within a Child Care Workers' job description. There was no significant change in their duties.

AWARD:

The grievance is denied.

TEXT OF THE OPINION:

**Arbitration Proceedings
Before
Linda DiLeone Klein**

In The Matter of Arbitration

between

**State-of Ohio, Ohio
Veterans Children's Home**

and

**OCSEA, Local 11
AFSCME, AFL-CIO**

Grievance No.:
G87-1552

(G87-25)

Grievance of Brian Olson**Heard:**

April 17, 1990

APPEARANCES**For the Employer**Tim Wagner,
Chief of Arbitration Services**For the Union**Yvonne Powers,
Associate General Counsel**ISSUE**

Did the Employer violate the collective bargaining agreement by assigning the "Child Care Worker" to attend and supervise the recreational period? If so, what shall the remedy be?

Facts and Contentions

The Ohio Veterans Children's Home (OVCH) is a residential facility which is responsible for the care of approximately 250 children between the ages of 6 and 18. The children are generally referred to the home through juvenile court, children's services or parental agreement. OVCH is organized in a campus style setting with numerous residence halls, or cottages. The children are grouped in the cottages according to age and grade; the average child is two years behind in school.

The purpose of OVCH is to provide a safe, stable living environment for the children, to educate them and to prepare them to be productive citizens.

The Child Care Worker, or houseparent, is essential to the operation of the facility. The Child Care Worker spends considerable "home-like" time with the children; he/she is a surrogate parent who is involved in all aspects of the children's lives. As set forth in the Child Care Worker position description, he/she is responsible for the supervision and guidance of children, as well as discipline and counseling. The Child Care Worker also helps with homework, accompanies children to church, accompanies children to meals in order to supervise their conduct, implements a cottage recreation program, sets a good example, insures that the cottage is neat and clean and performs other duties as required. As set forth in the classification specification for the Child Care Worker position, he/she oversees and monitors social and recreational activities and escorts children to and from activities.

Each cottage has two sections housing about 12 or 13 children per section. There is one Child Care Worker per shift assigned to each section; however, at night, there is only one Child Care Worker per cottage.

Recreational activity is an important facet of the children's lives. In May 1987, there was one Recreational Director who planned and implemented recreational activity for the children. He supervised one full time Recreational Aide and one part-time Recreational Aide; in the summertime, additional aides were hired.

Several months prior to May 1987, a new Superintendent began working at OVCH, and he was concerned about the chaotic state of the recreation program; he concluded that there were too many occasions when the Recreational Aide had to supervise 75 to 100 children while also attempting to

implement plans for recreational activities. According to the Superintendent, it was impossible to supervise the children and operate a quality program at the same time. His goal was to change the program and to emphasize quality rather than quantity recreation. To accomplish this goal, he assigned the recreation staff to plan and organize activities, as well as provide necessary equipment. Also, as of May 1987, he required the Child Care Workers to attend recreational activities with the children assigned to their cottages in order to monitor and supervise the children's behavior. As of May 1987, one Child Care Worker from each cottage accompanied the children to recreational activities while the other Child Care Worker remained in the cottage to supervise those who did not want to participate in said activities.

It should be noted that during this same time frame, arrangements were being made for Recreational Director Henry McBeth to assume new duties in an "in-school suspension program". By the time school started in late August, Mr. McBeth was no longer the Recreational Director. His duties were assumed by another administrator, Michael Berner; Mr. Berner retained a second supervisory position as well.

On May 20, 1987, the instant grievance was initiated by Child Care Worker Brian Olson to protest the assignment of Child Care Workers to supervise recreational activities during recreation periods; other Child Care Workers signed a form indicating their support for the grievance.

The Union contends that the Child Care Workers have been assigned to perform duties which are inappropriate to their job classification; the Child Care Workers have improperly been assigned to perform the work of the Recreation Aides. Prior to May 1987, the recreation staff supervised the children in organized recreational activities, but after May 13, 1987, that function was assigned to the Child Care Workers. Assuming the duty of supervising recreational activities has resulted in an added burden to the Child Care Workers, says the Union, and more significantly, it has taken away from the time Child Care Workers can spend with the children in the cottages.

The Union submits that overseeing the conduct of children inside the cottage is the main duty of the Child Care Worker; super-vised and implementing recreational activities is not part of their job. Since the Child Care Workers have assumed recreational responsibilities, they have to put tapes in the VCR for movies, obtain sports equipment and open the den for access to the snack bar; the Union maintains that these duties are not encompassed by the Child Care Worker position description.

The Union claims that Management violated Article 43.02 of the labor agreement and Section 123:1-17-16 of the Ohio Administrative Rules in this case; the cited Administrative Rule is incorporated by reference into the labor agreement, says the Union. In part, Section 123:1-17-16 provides:

123:1-17-16 Appropriateness of duties

No person shall be appointed or employed under any title not appropriate to the duties to be performed, and no person shall be assigned to perform duties other than those properly belonging to the position to which he has been legally appointed, except as may be required because of temporary characteristics of the work situation. The assignment of duties is the responsibility of the appointing authority. It is also his responsibility to see that accurate descriptions of the duties performed are reported to the Director so that proper classification of the positions may be maintained. . . .

The above-quoted rule is relevant here, states the Union, because the assignment in question was not made based upon the "temporary characteristics of the work situation".

In fact, the assignment has been continuous and the work situation has worsened since Mr. McBeth changed jobs. Presently, Mr. Berner is assigned to two jobs and he cannot provide the same leadership as a full time Recreation Director. Also, the full-time Aide resigned and has not yet been replaced. The Union contends that shortly before this arbitration hearing, the other Aide resigned, placing an additional burden on Child Care Workers to absorb the duties of recreational workers.

As it relates to the Child Care Worker classification specification, the Union acknowledges that the Child Care Worker may perform recreational duties in certain "special" events, however, the Union is adamant in its position that all other recreational duties are the function of the Recreation Aide.

The Union further charges the Employer with a violation of Article 11.03, Unsafe Conditions. By assigning inappropriate duties to the Child Care Worker, the Employer has created an unsafe condition because situations arise where an unusually large number of children are under the supervision of one Child Care Worker, while at the same time, one or two children may be with another Child Care Worker.

This is not a matter of the overlapping of duties, claims the Union; the duties at issue clearly belong to the Recreation Aide classification.

The State also violated Article 43:03 by directing the Child Care Worker to accompany children to recreation activities and to supervise them during the recreation periods.

The Union asks that its position be upheld and that OVCH be directed to cease and desist in inappropriately assigning Recreation Aide's duties to Child Care Workers.

The State views this matter differently and denies that a violation of the labor agreement exists. The Child Care Workers were instructed to attend recreational activities with the children of their cottages and they were required to supervise the conduct of their children during the recreation period; they were not required to plan, implement or participate in those activities. The Employer submits that the Child Care Worker's position description and classification specification allow for overseeing and monitoring recreational and social activities. Accordingly, the State asks that the grievance be denied.

OPINION

After evaluating the evidence presented at the hearing and after considering the arguments of the parties, the Arbitrator finds that the Employer did not violate the cited provisions of the labor agreement or Section 123:1-17-16 of the Ohio Administrative Rules.

In May of 1987, the recreation staff consisted of one Recreation Director and two Recreation Aides; the recreation staff was required to plan and implement the recreational activities. On or about May 13, 1987, Child Care Workers were directed to supervise the conduct of their children during the recreation periods, which direction gave rise to the grievance.

Prior to the initiation of the grievance, Child Care Workers were not required to attend or supervise regularly scheduled recreation activities; they did, however, supervise at special events.

Prior to the assignment of Child Care Workers to accompany and supervise the children during recreation periods, there were times when recreation staff members were responsible for supervising a large number of children while they were also trying to implement the recreation program. Management considered the situation to be chaotic as well as potentially unsafe. In exercising the rights granted under Article 5, Management determined that it was necessary to have Child Care Workers or houseparents present during the recreational activity periods in order to monitor the appropriateness of their children's behavior and insure the safety of those entrusted to their care. There was no evidence to show that the Child Care Workers had to plan or implement recreation programs, nor were they required to actively participate. Child Care Workers were instructed to supervise the conduct of their children and encourage the children to participate.

In order to determine whether or not the requirement to supervise children during the recreational period was inappropriate to the Child Care Worker's job classification, it is necessary to examine their position description and classification specification.

Both the job description and classification specification for the Child Care Worker include "recreation-related" duties. The classification specification ranks the overseeing and monitoring of social and recreational activities as one of the most important functions. This document also refers to escorting youths to and from activities and supervising children's conduct. Clearly, the May 1987 assignment to supervise children during the recreation period is encompassed by this classification specification.

The job description provides for supervision and guidance of children, implementing a cottage recreation program and performing "other duties as required and when directed by the immediate super-visor in regard to the care and needs of children in the Home". The Arbitrator is of the opinion that supervising the children during recreation periods falls within this job description. The duty complained of is not abnormal to the place of employment or the position description. The Child Care Workers were not working out of classification when they accompanied the children to recreational activities and supervised their behavior;

the assigned duties were not inappropriate to their classification, consequently it cannot be held that Administrative Rule 123:1-17-16 was violated. There was no significant change in their assignment; it could more appropriately be termed an extension of their duties in accordance with Management's attempt to operate a quality recreation program. The assignment at issue was a "programmatic" change rather than a work rule change; no violation of Article 43.03 exists here.

The Child Care Workers did not assume the duties of the Recreation Aide. They were not required to plan or implement the activities. While it is true that certain changes have occurred in the recreation staff, the fact remains that Child Care Workers were appropriately assigned to monitor and oversee the children's behavior during the recreation period. Having Mr. Berner act as Recreation Director as well as performing other supervisory duties is not a violation of the contract. There was testimony to show that one Recreation Aide has been on disability for approximately one year, but there was also testimony to indicate that another employee was hired on an interim basis. Also, there was testimony to demonstrate that the Employer is currently seeking someone to fill the position.

As it relates to the charge that the Employer violated Article 11.03, there was no evidence to establish the existence of unsafe conditions.

The most compelling argument made by the Union was that Child Care Workers currently must sacrifice time which had previously been devoted to individual counseling when they have to remain at the site where recreational activities occur. This factor by itself, however, cannot be the basis for upholding the Union's position. The Child Care Workers may not be able to spend as much time in the privacy of a cottage environment, but they nevertheless get additional opportunity for contact with the children in a recreational setting. The overseeing and monitoring of behavior at recreational activities is similar to that which occurs in the cottage; in both instances, the Child Care Worker is helping to build character and develop self-esteem.

The Child Care Workers have always been involved in recreation to some degree. In fact, they are required to implement a cottage recreation program. Before and after May 1987, they supervised at picnics, carnivals, dances, ball games, swimming and church.

There was testimony from Mr. McBeth to indicate that when he was still Recreation Director in May 1987, there was no active participation by Child Care Workers in the recreation program; it was supervisory participation.

The Arbitrator finds from the evidence that the Child Care Workers properly performed Child Care Worker duties when they monitored and supervised the children of their respective cottages during recreational activities.

AWARD

The grievance is denied.

LINDA DILEONE KLEIN

Dated this 7th day of May 1990
Cleveland, Ohio