

ARBITRATION DECISION NO.:

458a

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Ohio Bureau of Employment Services

DATE OF ARBITRATION:

September 29, 1992

DATE OF DECISION:

September 30, 1992

GRIEVANT:

Lula Smith,
Duane Tinkler and
David Epstein

OCB GRIEVANCE NO.:

11-05-(91-08-13)-0123-01-09,
11-09-(91-09-11)-0195-01-09 and
11-09-(91-08-28)-0190-01-09

ARBITRATOR:

John E. Drotning

FOR THE UNION:

Brenda Goheen

FOR THE EMPLOYER:

Janice L. Viau

KEY WORDS:

Clarification of
Arbitrator's Award
Layoff
PASO
ERI Rights

ARTICLES:

Article 25 - Grievance
Procedure
§25.01-Process
Article 43 - Duration
§43.02-Preservation
of Benefits

FACTS:

In September of 1991, approximately 96 Public Assistance Service Operations (PASO) program positions were eliminated from OBES. As a result, the State offered the PASO employees who were targeted for abolishment an Early Retirement Incentive (ERI) plan. Some of the targeted employees exercised their contractual bumping rights which resulted in the displacement of employees outside of the PASO unit. The employees outside of PASO who were bumped were not offered ERI participation. The PASO layoffs were caused by the termination of an inter-agency agreement between OBES and ODHS. The agreement was entered into as a means of reducing long-term dependence upon the State's welfare system. The PASO program received federal funds which accounted for 84% of the program's funding.

Initially, the Arbitrator held that the State must offer the ERI plan to any eligible OBES/ES employee outside the employing unit who was laid off as a result of the PASO job abolishments. In a subsequent proceeding on the same issue, the parties asked the arbitrator to clarify the issue of whether persons outside of the PASO employing unit have a contractual right to be offered ERI.

UNION'S POSITION:

The grievances were arbitrable. The present dispute conformed to the Article 25.01 definition of an arbitrable grievance. The Union contended that the Contract and the applicable Code sections complemented each other. ORC Sections 145.297 and 145.298 provided retirement benefits to state employees and Article 43.02 incorporated these benefits into the Contract. Therefore, the disputes regarding ERI benefits were properly before the Arbitrator and subject to the grievance procedure.

The Union also argued that the State improperly created an employing unit exclusively for PASO employees. The Union defined employing unit as the unit from which the employees' payroll was paid. PASO employees were paid out of the Employee Services (ES) division of OBES; PASO had no separate payroll of its own. The Union claimed that PASO employees performed the same function as ES employees. Therefore, the Union contended that the State violated ORC 145.297 by offering the ERI to the targeted PASO employees only. The Union contended that the ERI should have been made available to all eligible employees or, alternatively, to all ES division employees.

EMPLOYER'S POSITION:

The grievances were not substantively arbitrable. The State argued that the subject of the ERI's was not contained within the four corners of the Contract nor did it fall within the "maintenance of benefits" language of Article 43.02. Because the grievances did not conform to the definition specified in Article 25, the Arbitrator would exceed his authority by reading retirement language into the Contract. The ERI plan did not exist as a benefit when the preservation of benefits language was negotiated. The State contested the validity of the Epstein grievance because the grievant failed to indicate which article(s) the State allegedly violated; the State also argued that the filing of the grievance was redundant since the Smith grievance was filed as a class action.

In the alternative, the State argued that the grievances should be denied on their merits. Designation of the employing unit was a managerial right in accordance with Article 5 of the Contract. Moreover, the State disputed the Union's claim that PASO and ES employees were paid from the same payroll and performed the same duties. The PASO employees were paid from the WIN payroll; therefore, there was no error in declaring the PASO unit as the employing unit for the purposes of the ERI plan. Finally, the State cited ORC 4117.10(A) as protecting the ERI from arbitrable interpretation and ORC 145.297 and 145.298 as providing for arbitration of disputes concerning application of these provision. Based upon these statutes and related cases, the State argued that the Arbitrator lacked the authority to review the grievances.

ARBITRATOR'S OPINION:

In this clarification, the Arbitrator reversed his earlier holding. The Arbitrator stated that because there was no language in the Contract which specifically defined ERI plans, the 1989-1991 Contract did not support the claim that people outside the PASO unit have a contractual right to be offered the ERI.

AWARD:

Initially, the grievance was granted in part, but it was denied entirely with this subsequent holding.

NOTE: Please place this summary in front of arbitration summary 458.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION

BETWEEN

**OFFICE OF COLLECTIVE BARGAINING
STATE OF OHIO**

AND

OCSEA/AFSCME LOCAL 11

**ARBITRATION AWARD
CLARIFICATION**

CASE NUMBER:

11-05-910813-0123-01-09 (Smith)
11-09-910911-0195-01-09 (Tinkler)
11-09-910828-0190-01-09 (Epstein)

ARBITRATOR:

John E. Drotning

HEARING DATE:

January 31, 1992

AWARD DATE:

July 9, 1992

CLARIFICATION:

September 30, 1992

I. REQUEST FOR CLARIFICATION

On September 29, 1992, the Arbitrator met with the parties at the Offices of Collective Bargaining, Columbus, Ohio.

The parties submitted the following request:

“The parties agree that the Arbitrator clarify the Award; specifically, whether the people outside the employing unit of PASO have a contractual right to be offered ERI?”

II. CLARIFICATION

There is no language in the Collective Bargaining Agreement which specifically defines early retirement incentive plans. The 1989-1991 Collective Bargaining Agreement does not support the claim that people outside the PASO unit have a contractual right to be offered Early Retirement Incentives.

John E. Drotning
Arbitrator

September 30, 1992