

**ARBITRATION DECISION NO.:**

467

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Rehabilitation  
and Corrections,  
Marion Correctional Facility

**DATE OF ARBITRATION:**

June 8, 1992

**DATE OF DECISION:**

August 18, 1992

**GRIEVANT:**

Fran Reisinger

**OCB GRIEVANCE NO.:**

27-16-(90-03-02)-0290-01-06

**ARBITRATOR:**

John E. Drotning

**FOR THE UNION:**

Butch Wylie

**FOR THE EMPLOYER:**

Thomas E. Durkee

**KEY WORDS:**

Bargaining Unit Work  
Overtime  
Vocational Training Programs  
Erosion of Bargaining Unit  
Inmate Work

**ARTICLES:**

Article 1 - Recognition  
    §1.03-Bargaining  
Unit Work  
Article 13 - Work Week,  
Schedules and Overtime  
    §13.07-Overtime

**FACTS:**

The Marion Township Fire Marshalls reports in 1989 and 1990 directed the Marion Correctional Institution to renovate its Education Department due to existing fire hazards. Inmates were assigned to a vocational masonry instructor and a vocational building maintenance instructor, both OEA employees, and two

apprenticeship inmates were assigned to do most of the renovation work. The project took approximately one year to complete and the work was done from Monday through Friday between 8:15 a.m. and 3:30 p.m.

**UNION'S POSITION:**

Management eroded Bargaining Unit 6 by using apprenticeship program inmates and vocational instructors to renovate the Education Department. This task should have been performed by the Maintenance Department who are members of Bargaining Unit 6. By using the guise of vocational training, management eroded the bargaining unit and attempted to avoid paying overtime to bargaining unit employees.

**EMPLOYER'S POSITION:**

Management has the right to assign inmates to programming activities to rehabilitate offenders. Section 1.03 of the Contract limits the ability of management to assign supervisors to do Bargaining Unit 6 work, not the ability to assign inmates or vocational teachers. The assignment was justified given that there was no adverse impact on the bargaining unit: there were no layoffs, no hours were reduced, and there was no avoidance of overtime because of the assignments. Moreover, maintenance workers and vocational workers worked side by side inside and outside the institution on various projects.

**ARBITRATOR'S OPINION:**

The work of Bargaining Unit 6 included some of the tasks involved in the renovation. However, such extensive renovation was not part of the normal work load of the Maintenance Department, and the Department did not have sufficient staff to carry it out. There was no proof that supervisors did bargaining unit work during this project. The use of inmates to do the renovation work in no way eroded the bargaining unit since Unit 6 has increased by almost 100 employees between 1986 and 1990.

There was little proof that using the renovation as a vocational training experience was a sham. There were educational opportunities and goals in assigning inmates to do the work. In addition, this did not involve the transfer of work normally done by the bargaining unit, as described in Article 1.03, but rather it constituted new work. Since the work was carried on during the regular work day, Unit 6 employees did not lose work or overtime opportunities. Thus there was no violation of Articles 13.07 or 1.03.

**AWARD:**

The grievance is denied.

**TEXT OF THE OPINION:**

IN THE MATTER OF ARBITRATION  
BETWEEN

**OFFICE OF COLLECTIVE BARGAINING,  
DEPARTMENT OF REHABILITATION  
AND CORRECTIONS,  
MARION CORRECTIONAL FACILITY**

AND

**OHIO CIVIL SERVICE  
EMPLOYEES ASSOCIATION  
AFSCME, LOCAL 11**

**ARBITRATION AWARD**

**CASE NUMBER:**

27-16-900302-0290-01-06

**HEARING DATE:**

June 8, 1992

**ARBITRATOR:**

John E. Drotning

**I. HEARING**

The undersigned Arbitrator conducted a Hearing on June 8, 1992 at the Marion Correctional Facility, Marion, Ohio. Appearing for the Union were: Butch Wylie, John Feldmeier, Esq., and the grievant, Fran Reisinger. Appearing for the Employer were: Thomas E. Durkee, Margaret Lee, Dick Daubenmire, Dean Millhone, and Norris McMackin.

The parties were given full opportunity to examine and cross-examine witnesses and to submit written documents and evidence supporting their respective positions. Post hearing briefs were filed on or about July 17, 1992 and the case was closed. The discussion and award are based solely on the record described above.

**II. ISSUE**

The parties jointly agreed on the issue which is as follows:

“Did management violate the contract between the State of Ohio and the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO Section 1.03 - Bargaining Unit Work and Section 13.07 Overtime? If so, what should the remedy be?”

**III. STIPULATIONS**

The parties jointly submitted exhibits identified as Joint Exhibits #1-#16. The parties also stipulated the following seven fact statements.

1. The grievance is properly before the Arbitrator to make a decision on the merits.
2. Lowell Baxter, Herman Clark and Gary Beery are in Unit 10 covered by SCOPE/OEA.
3. The renovation project in the Education Department took approximately one year interrupted only by a delay in supplies.
4. The maintenance employees and education employees work Monday through Friday on first shift.
5. Gary Beery, a teacher, escorted inmates with Class A tools a few times.
6. Inmates assigned to maintenance do the majority of work supervised by paid staff.
7. Butch Wylie requested documents on the Apprenticeship Program and evaluation during summers of 1990 and 1991 and Management has given all that it has discovered.

**IV. TESTIMONY, EVIDENCE, AND ARGUMENT****A. UNION****1. TESTIMONY AND EVIDENCE**

The Union called Mr. Thomas Boykin, a Management person, who testified that he was a Training Deputy and he supervised vocational education as well as food service and maintenance. Boykin said he reported to the Warden of the Marion Correctional Facility.

Boykin testified he was a Social Worker 2 in 1984 and then became a Social Worker 3, a Project Specialist, a Unit Manager, and then a Deputy. Boykin went on to say he was a retired New York City police

officer.

Boykin said that in March 1990, a fire marshal told him that there had to be an effort to clean up violations in the school area.

Boykin said that Mr. Robert Hansen reported to him and Boykin told the Warden about the need for the renovation.

Boykin said no one gave him any information in writing and he did not participate in any grievance process on this issue.

Boykin testified that a work order is designed to get something done.

The Union called Mr. Robert Hansen who testified he had been at the Marion Correctional Facility for about 13 years and was first hired in 1979 and became school principal in 1987.

Hansen said that the fire marshal cited the Facility for problems in the office, lab, and the educational department. He said the marshal's evaluation took place between April and June of 1989. Hansen said that he notified all the appropriate people about the various problems. The fire marshal returned in 1990 and all the issues noted in 1989 were cited again.

Hansen said he was told to take on the task of renovating the Education Department. Hansen asked the building maintenance supervisor what was needed and the supervisor told Hansen he did not have sufficient employees to do the work. Hansen said he asked a building maintenance teacher, Mr. Clark, to work on re-doing the lab area.

Hansen said inmates worked in the lab area and Mr. Clark supervised the inmates. He went on to say that he and a correction officer supervised inmates.

Hansen testified he picked up inmates and brought them upstairs and put them to work and he checked on their work periodically.

Hansen said the inmates worked Monday through Friday from 8:00 a.m. to 3:20 p.m. and that job lasted about one year. He said Class A tools were used by inmates, namely screwdrivers, hammers, saws, etc. and all these tools must be accounted for, noted Hansen.

Joint Exhibit #5, said Hansen, was a document which noted that he supervised five academics, six vocational teachers, and one supervisor.

Hansen testified that he was not certified to teach masonry work or building maintenance.

Hansen restated that he supervised two inmates on the twelve month project and he went on to say that some inmates did electrical work and he also supervised them as well. Inmates also did some carpentry work, said Hansen. However, he said he did not supervise inmates who did outside brick work.

Hansen said he evaluated inmates but he did not evaluate apprentices.

Mr. Larry Wright testified that he was a Carpenter 2 and he worked in Maintenance. Wright said he did some concrete work and, in effect, he said he did whatever was needed.

Wright said he built the entrance building and was in charge of the unit management offices as well as living quarters and the dairy barn. In fact, he said he also built the dairy barn.

Wright said he did some tuck pointing and built offices at Lima and he also said he poured concrete for a roof job. In essence, Wright noted that he did work which was not carpentry work.

On redirect, Wright said there are a host of Class A tools.

The Union called Steward Paul Clark who testified that he had been at the Marion Correctional Facility for about eleven years and he was a Plumber 1, then became a Painter 2. Clark said he did some plumbing work at the Dairy Barn.

Clark said he represented maintenance employees in the unit and he received work orders from Management.

Ms. Fran Reisinger, a Correction Officer, testified she had been at the Marion Facility and Chief Steward and on a state-wide committee.

Reisinger said she met with Management about renovation and she talked to Mr. Hansen and others and they told her that the fire marshal said they had to fix up the work.

Reisinger said that she told Management they could not use inmates to do that work.

Reisinger was asked what Boykin told her and she said Boykin indicated that letting inmates do the work in question was a Contract violation because Management knew the work should be done by employees, not

inmates.

Reisinger testified that Joint Exhibit #2B indicated that the Union felt that the work was Maintenance Department work. She said no overtime was Involved.

Reisinger was asked whether Management approached her to resolve the issue and she said No.

Reisinger said that she asked Management who did the work In question and she said she was also concerned about the tools used as well as the hours worked and if there was any overtime for instructors who were supervising inmates. She went on to say she had not received appropriate information from Management.

Reisinger said that at a labor-management meeting, the parties did not discuss the apprenticeship program at the level 2 grievance meeting nor was it discussed at step 3.

Reisinger said that the Union argued that inmates had to be supervised by bargaining unit employees.

On redirect, Reisinger said that bargaining unit work was a sensitive issue and she has been involved in bargaining unit work issues.

Mr. Herman Clark testified that he had been at the Marion Correctional Facility for about 13 years and he was a building maintenance teacher with AFSCME and is in OEA and is a vocational teacher.

Clark said that in the renovation process, he tore down some walls and he used four or five inmates which lasted about four days and that is all he did.

Clark said he had no apprentices assigned to him although two inmates were supposed to be assigned to him.

Clark testified that he was a certified vocational maintenance teacher and has a eight year certificate.

The Union called Mr. Lowell Baxter, a vocational masonry teacher, who said he was involved in the renovation. He said he thought Bob Hansen asked him to cut out doors and block in a doorway. He said he thought. he was overseeing two or three inmates and it took about six or seven days.

Baxter said he was not asked to evaluate the project.

The Union called Michael Hill, a correction officer who had been at the Marion Facility for 17 years. Hill said that he and Deputy Warden Tom Boykin talked and Boykin told him that Management was violating the Contract and they argued over that situation.

Hill testified that the bargaining unit did not do the work because Boykin told them there was not sufficient funds and since supervisors were not actually doing the work, what was done was okay.

On redirect, Hill testified that his job is safety.

Hill said he did not know any correction officers who do heating work.

The Union cross-examined Management witness John R. Scott who said that the apprenticeship program did not start with Mr. Boykin. He went on to say that Mr. Boykin tried to get everyone in compliance with the apprenticeship program.

Scott testified that he played no role in the apprenticeship program. He said he always had a problem with the Union over money.

Scott said that as a correction officer, he was not involved in the apprenticeship program.

On recross, Scott said that correction officers are not assigned to do heating and air conditioning work.

## 2. ARGUMENT

The Union asks whether the Employer violated Section 1.03 of the Collective Bargaining Agreement? The Union cites the first and last paragraphs of Article 1.03. The Union also cites Attachment A (not included in the Post Hearing brief). The Union also cites New Britain Machine Company 8LA721 arbitrated by Saul Wallen in 1947 (see Attachment B also not included in the post hearing brief). The Union cites Arbitrator Wallen as follows:

“Job security is an inherent element of the labor contract, a part of its very being. If wages is the heart of the labor agreement, job security may be considered its soul..... The transfer of work customarily performed by employees in the bargaining unit to others outside the unit must therefore be regarded as an attack on the job security of the employees whom the agreement covers and therefore on one of the contract's basic purposes.”

The Union asserts that "supervisors may not assign work designated for one bargaining unit to another bargaining unit and supervisors are also prohibited from performing bargaining unit work".

The Union in a prior settlement agreement claimed that OCB and OCSEA agreed that if duties of one bargaining unit are then assigned to another bargaining unit, that situation violates Article 1.03 of the Contract and that, argues the Union, is precedent setting.

The Union argues that the Employer violated Section 1.03 by assigning supervisors as well as OEA bargaining unit members to do renovation project work.

Ms. Reisinger, Chief Steward and Corrections Officer, testified about a conversation with an employer during a labor-management meeting and she said that Deputy Boykin admitted that by not allowing bargaining unit members to do renovation work, the Employer essentially violated 1.03 of the Contract. Reisinger claimed she told Boykin that the work belonged to the Maintenance Department and Reisinger claims that Boykin acknowledged that fact and essentially asked for the Union's indulgence in order to allow supervisors, inmates, as well as bargaining unit members to perform the work in question.

The Union said that Chapter President Mike Hill corroborated Reisinger's testimony. Hill said that Boykin told him that Management was aware of the Contract violations but supervisors and OEA members had to perform the work anyway. The Union emphasizes that Boykin testified that he did not deny making such statements to Mr. Hill and Ms. Reisinger.

The Union argues that the Employer violated Section 1.03. Principal Hansen, notes the Union, testified that Boykin told him to do the renovation project expediently. Hansen went on to say that Herman Clark, a building maintenance teacher and an OEA member, supervised the removal of walls within the Educational Department by some inmates.

The project in question, notes the Union, is such that Hansen said that he and a correction officer supervised this project with the inmates for about one year. The Union goes on to say that Hansen said he was not certified to teach masonry work or building maintenance and his normal duties do not include the supervision of inmate work projects.

In short, the Union argues that correction officers are not qualified to supervise and evaluate maintenance work.

The Union states that the Employer violated Section 1.03 of the Contract by using supervisory employee Hansen to perform bargaining unit work - the kind of work which traditionally should have been done by Carpenter Larry Wright and a member of OCSEA.

Herman Clark, a building maintenance teacher, testified that Hansen told him to remove the walls in the Education Department even though Clark is not in the apprenticeship program. Moreover, Lowell Baxter, a vocational masonry teacher and OEA member, said Hansen asked him to do some masonry work with inmates.

The Union argues that the most frightening aspect of the case is that inmates were often left unsupervised with Class A tools and were only checked on occasionally. The Union points out that no inmate can use a Class A tool unless they are accompanied by a supervisor and it cites Joint Exhibit #16.

The Union argues that the Employer ignored the claim that the OCSEA members of the Maintenance Department should have been doing the kind of work that apparently was done by inappropriate persons. In short, the Employer assigned work to employees and supervisors who should not perform such functions. Thus, Section 1.03 has been violated.

The Union goes on to argue that if the bargaining unit work has been assigned to either supervisors or another unit, the burden then shifts to the Employer.

The Union argues that the Employer can use supervisors to train employees in bargaining unit work but these employees were doing more than simply being trained; they were doing bargaining unit work.

The Union also argues that the Employer's effort to further the apprenticeship program is what the Union calls a joke.

The Union also said Management's claimed its past practice was to provide work for vocational student inmates to apply their classroom training yet the Employer's advocate said that the renovation work which was involved was unskilled and semi-skilled and did not require any specialized training.

In this case, the Union argues that the Employer assigned work in the Education Department with total disregard for the principles of Section 1.03. Hansen, himself, said he was told by Boykin to complete the project "in the most expedient way possible".

Moreover, the Union argues there was no great emergency because it took two reports from the fire marshal between 1988 and 1990 before any action was taken to remedy the deficiencies in the Education Department. Moreover, the project took about a year and if it were such an emergency, why were not more employees and inmates assigned to the project. In any event, the work was always done between 8:30 a.m. and 3:30 p.m., the normal work, and there was no overtime pay so there was no real emergency.

The Union argues that Boykin was aware of the Union's objections and he did nothing to remedy the situation.

The Union points out that given the settlements between OCB and OCSEA, it is obvious that reassigning one bargaining unit's work to another violates Article 1.03.

The Union asks that the remedy by such that all employees be compensated for the work that they should have been doing.

## B. MANAGEMENT

### 1. TESTIMONY AND EVIDENCE

Management called Ms. Luana Mathew, a personnel officer, who testified that she supervised personnel and payroll and has written position descriptions since 1981.

Mathew testified that she was trained by her supervisor and she also took a position description course. Masonry, said Mathew, is not a job description.

Mathew said that since 1985, the number of maintenance employees has remained about the same.

Mr. John R. Scott testified he was a correction officer and that he "sort of knew" about the apprenticeship program.

Scott said that inmates earn \$17 a month and up to \$24.

Correction officers, said Scott, are responsible for controlling inmates and he supervised inmates on work details.

Management also cross-examined witnesses called by the Union.

Mr. Thomas Boykin, a Management employee, testified on cross that one of his roles is to try to train and educate inmates, presumably so that when they leave they are able to take on some kind of work.

Boykin said he also trains apprentices. He said renovation projects give inmates a chance to learn. He went on to say that the work at the institution is done by inmates and staff.

Boykin said he uses inmates for renovation work and such work also sharpens up the inmates' skills.

Boykin was recalled and he said that he was not involved in negotiations in either 1986 or 1989. He also stated he had no formal training in contract development or interpretation.

Mr. Robert Hansen was examined by Management after being called as if on cross by the Union. Hansen said there are six vocational programs and one of the tasks is to try to make inmates productive by having them do projects around the facility. Hansen said he supervised inmates and right now he has two clerks and he also supervised two other inmates and there was a correction officer supervising those inmates.

Hansen said that he escorted inmates who used Class A tools. He also pointed out that the apprenticeship program started back in 1978.

Mr. Larry Wright, Union representative, testified on cross that he is very busy in summers and he noted that was the case in 1990. He also pointed out that his work day runs from 7:15 a.m. to 3:45 p.m.

Wright said he supervised inmates as does every employee and he is aware of the Class A tool policy.

Mr. Paul Clark, a Union steward, testified he is not busy all the time and he went on to say that his normal work hours are between 7:30 a.m. and 4:00 p.m. Monday through Friday.

Clark said his brother did the plumbing.

Fran Reisinger on cross testified that she asked Management for some documents and she also said that

she has filed thousands of grievances.

Reisinger said that she was not involved in the second collective bargaining agreement.

She also testified that correction officers are assigned to do various jobs.

Mr. Herman Clark testified on cross that inmates do project work and he also noted that he teaches roofing. He testified he does some mock up work and they also do some hands-on work.

H. Clark said the inmates did tear down the renovation project and he said that did not require a great deal of skill.

H. Clark said he used inmates for tuck pointing and he also had inmates do concrete work and some landscaping. Clark said he did ceiling work and also worked in the training room.

Mr. Lowell Baxter, a vocational masonry teacher, testified on cross that inmates complete projects in his class program and he has been doing projects with inmates since 1977.

Baxter said he has done auto mechanic work, welding, communications and electronics work all around the power house.

He said two inmates did ordinary labor work. He said the inmates that he used only did unskilled work.

Mr. Michael Hill on cross testified that he filed some grievances. He said he has held all correction officer jobs except education and food service. He said that correction officers as well as others are involved in security.

Hill said that correction officers supervise inmates in limited areas.

## 2. ARGUMENT

The Employer states that the question is whether Management eroded the bargaining unit by using inmates in an apprenticeship program to renovate the Education Department.

Management points out that the Union grieved Management's use of two inmates in an apprenticeship program along with two vocational instructors in order to renovate the Education Department.

This was the result of the Marion Township Fire Marshal's reports in 1989 and 1990 (see Joint Exhibit #3A and #3B).

Inmates were assigned to Lowell Baxter, a vocational masonry instruction, and Herman Clark, a vocational building maintenance instructor, and they tore down wooden offices, broke through a block wall, tore down some plasterboard and wood studs. Two apprenticeship inmates were assigned to do most of the renovations that lasted about one year and the work always was done Monday through Friday between 8:15 and 3:30 (see Joint Stipulations 3, 4, and 6).

Management summarizes its case by the following points:

1. Inmates perform the work within institutions.
2. Inmates assigned to the classification of student vocational are assigned to the Education Department.
3. Inmates assigned to the classification of Maintenance Repair Worker are assigned to many other departments including education, food service, etc.
4. All staff, exempt and bargaining unit, are responsible for security of the institution and supervise inmates.
5. The vocational teachers supervised inmates inside and outside the institution in new construction, renovation and repair pre and post contract.
6. The position description of vocational teacher, correction officer, and maintenance staff contain supervision of inmates.
7. There was a correction officer in the immediate vicinity of inmate apprentices (Barr and Strickland) and vocational students to supervise their activities.
8. The apprenticeship program is assigned through the Deputy Warden of Training Industries and Education to the Principal and Assistant Principal.
9. The vocational education and apprenticeship program serves a rehabilitative purpose and is a program activity of the employer.
10. The work performed by the inmates were unskilled to semi-skilled work.
11. The duties of block laying, concrete, and masonry are not included within the job description



classification specification of grievants Larry Wright, Carpenter 2 or Paul E. Clark, Painter 2.

12. The masonry duties were a borderline work assignment and not central to the craft of any bargaining unit member within the maintenance department.

13. Bargaining Unit 6 has increased from 453 position July 19, 1986 to 551 position August 11, 1990, throughout the Agency.

14. The renovation work was required with some urgency due to fire code citation and the threat of closure.

15. Maintenance employees were occupied with other repair tasks and not assigned to the education department.

16. The renovation work was completed Monday through Friday between the hours of 8:30 a.m. and 3:20 p.m.

17. No employee was paid overtime.

18. There was no economic loss to Bargaining Unit 6 members.

19. There were no layoffs.

Management asserts that the Union claims that the issue involves bargaining unit integrity and job security and essentially Management, asserts the Union, transferred work customarily performed by bargaining unit 6 employees to another bargaining unit or exempt employees.

Management argues that the Union wants to tell Management if and how to assign inmates to programming activity so as to rehabilitate offenders. Such a decision would adversely affect the Marion Correctional Institution.

Section 1.03 of the Contract, notes Management, limits its ability to assign supervisors to do bargaining unit work. That is the only limit of Section 1.03. Thus, the Employer argues it must retain the right to re-assign tasks among classifications in the interest of efficiency.

In this case, the Employer acted reasonably in using staff and inmates to renovate the Education Department. In a sense, that was the use of Management's discretion whereas in the past, Management used vocational student inmates as a practical application of classroom training.

Management pointed out that since the language of Section 1.03 only limited the assignment of bargaining unit work to supervisors, the Union raised Principal Hansen's activities as a surprise.

Management argues that the Union did not prove its case in this grievance over the assignment of inmates or vocational teachers since there is nothing in Section 1.03 which supports that claim.

The Employer notes that the job descriptions and classification specifications involve overlapping duties under "the supervision of inmates" in work and program areas and normally a correction officer is not more than ten feet from the work area. Moreover, the Employer points out that the maintenance employees and vocational teachers testified that they work side by side inside and outside the institution both before and after the Contract on various projects.

Management argues that the assignment was justified given the availability of various resources and there was no adverse impact on the bargaining unit since there was no layoffs, no hours were reduced, and there was no avoidance of overtime because of the assignment. Therefore, the grievance must be denied.

## V. DISCUSSION AND AWARD

The parties agreed on the issue which is whether Sections 1.03 and 13.07 were violated.

### 1.03 - Bargaining Unit Work

Supervisors shall only perform bargaining unit work to the extent that they have previously performed such work. During the life of this Agreement, the amount of bargaining unit work done by supervisors shall not increase, and the Employer shall make every reasonable effort to decrease the amount of bargaining unit work done by supervisors.

In addition, supervisory employees shall only do bargaining unit work under the following circumstances:.....

Except in emergency circumstances, overtime opportunities for work normally performed by bargaining unit employees shall first be offered to those unit employees who normally perform the work before it may be

offered to non-bargaining unit employees.

Further, it is the intent of the Employer in the creation and study of classifications to differentiate between supervisors and persons doing bargaining unit work. Whenever possible, such new and revised classifications will exclude supervisors from doing bargaining unit work.

The Employer recognizes the integrity of the bargaining units and will not take action for the purpose of eroding the bargaining units.

### 13.07 - Overtime

[Deals with procedures to distribute available overtime]

The parties also stipulated seven (7) factual statements along with sixteen (16) Joint Exhibits.

The Union argues that Management transferred or assigned Bargaining Unit 6 work to OEA employees as well as to Management and as a result management used a "teacher union person and two inmates to renovate the Education Department because there was insufficient funds to implement the work".

Management put the question as to whether its use of inmates in an apprenticeship program to renovate the Education Department Building violated Contract language. Two inmates along with two vocational instructors carried out the renovation project over about a one year period.

First, while the first two paragraphs of Section 1.03 put constraints on supervisors doing bargaining unit work, there was no evidence that supervisors performed renovation work. Supervisor Boykin assigned the task of correcting the fire code deficiencies to School Principal Hansen. Neither he nor Hansen worked directly on the project by performing tasks which might be considered bargaining unit 6 work.

The normal work of Bargaining Unit 6 members was maintenance work and included a variety of classifications and tasks. Union witness Wright was a Carpenter 2 and P. Clark was a Painter 2. It is clear that Bargaining Unit 6 could perform the tasks involved in the renovation. However, such extensive renovation was not the "normal work load" of the Maintenance Department. When Mr. Hansen asked the Building Maintenance Supervisor about the project, he said that he did not have sufficient manpower to carry out it out.

The Union view is that the Employer assigned the renovation project to teachers within another bargaining unit along with two inmates in order to avoid overtime (See Joint Exhibit #2A). The third paragraph of Section 1.03 notes that:

"Except in emergency circumstances, overtime opportunities for work normally performed by bargaining unit employees shall first be offered to unit employees who normally perform the work before it may be offered to non-bargaining unit employees."

There were no emergency circumstances. The deficiencies had been "on the books" for some time before the administration took action to comply with the fire codes. The project was not on an "as soon as possible" basis but took over a year to complete. The assignment of inmates supervised by various vocational teachers was not done because of an emergency. Furthermore, as noted earlier, the renovation work was not "work normally performed by bargaining unit employees". This was a one time occurrence, not an on-going job.

True, Bargaining Unit 6 job classifications included the tasks involved in the renovation project, but does that mean that it was a Contract violation to consider the work as part of an apprentice or vocational learning experience for inmates under the supervisor of various vocational teachers?

Boykin said that inmates on this project learn about building renovation so that when they leave the correctional facility they will have some useful skills on the outside. The Union suggested that the apprenticeship program was a guise - a sham and that "renovation work" must be done by employees of unit 6, otherwise such "work" becomes a job security issue; i.e., employees in unit 6 not only lose employees but they also lose overtime work.

There may be questions about the legitimacy of the claim that the renovation project was part of an apprenticeship program. H. Clark, a building maintenance teacher, indicated he was not involved in any

apprentice program and there were no apprentices on the job, only two inmates. There may be something to the suggestion that there was little apprentice training going on but work on the project was more or less normal prison work detail which should have been under the supervision of Bargaining Unit 6 personnel. However, while the Union suggested that the training claim was a sham, there was little proof. The teachers presumably did little work themselves but oversaw the work of the inmates. Teacher Clark said he spent four days tearing down walls with inmates and used inmates to tuck point and do concrete work, etc. Baxter noted he oversaw inmates cutting down doors and blocking a doorway. The Inmates were evaluated by the vocational teachers during the year and it seems likely that the inmates learned something although the work was unskilled or semi-skilled. Thus, there were educational opportunities and goals In assigning inmates to do the work.

While Management could have decided to assign the renovation project work to maintenance department employees which may have created overtime opportunities for them, it decided to assign the project to the education department as an instruction project. Arbitrator Wallen talked about the "transfer of work customarily performed by employees in the bargaining unit to others outside the unit" as an attack on the job security of employees covered by the Contract. In this case, the decision involved the assignment of new work not the "transfer of work" customarily done by the bargaining unit. It is not possible to conclude that its decision violated the Contract because potential overtime for Unit 6 employees may have been avoided. Furthermore, since the work was carried on during the regular work day, Unit 6 employees did not lose work or overtime opportunities.

There was no violation of Article 13.07 simply because no overtime existed to be distributed to Unit 6 members.

In summary, the first two (2) paragraphs of 1.03 focuses on the use of supervisors to do bargaining unit work and even the fourth (4th) paragraph of 1.03 excludes supervisors from doing bargaining unit work and no supervisors were used to do such work.

The third (3rd) paragraph's purpose is to give bargaining unit employees first crack before such work goes to non-bargaining unit employees, but in this case, one cannot conclude that inmates were non-bargaining unit employees.

Thus, one must focus on the fifth (5th) paragraph whose purpose is not to erode the unit. However, the use of inmates to do the renovation work in no way eroded the bargaining unit since Unit 6 has increased by almost 100 employees between 1986 and 1990.

Thus, while the Union's concern over the work done by the inmates may be understandable, there simply is nothing in the Contract which supports the Union claim that Unit 6 employees should have either supervised or have done the renovation work of the Education Department building.

John E. Drotning  
Arbitrator

August 18, 1992