

ARBITRATION DECISION NO.:

471a

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Bureau of Employment Services

DATE OF ARBITRATION:

August 4, 1992

DATE OF DECISION:

October 19, 1992

GRIEVANT:

Barbara Northup

OCB GRIEVANCE NO.:

11-02-(91-10-02)-0112-01-09

ARBITRATOR:

Rhonda Rivera

FOR THE UNION:

Linda Fiely, Esq.

Brenda Goheen

FOR THE EMPLOYER:

Elliot Fishman, Esq.

Tim Wagner

KEY WORDS:

Clarification

Layoff

Abolishments

Intermittents

Bumping Rights

ARTICLES:

Article 18 - Layoffs

Article 43 - Duration

FACTS:

The grievant, a Claims Examiner 2 and a full-time permanent employee, was laid off as a result of the abolishment of the Public Assistance Service Organization (PASO) program within the Ohio Bureau of Employment Services (OBES). The position initially abolished was that of an Employment Services Counselor in Cleveland, who proceeded to bump an Employment Services Interviewer in Cleveland who in turn bumped the grievant in the Sandusky office. The Employer laid off the grievant because there were no full-time less senior positions for the grievant to bump. However, at the time the grievant was laid off,

intermittent employees were employed in the Sandusky office in the same classification of Claims Examiner 2.

Section 124.323(A) of the Ohio Revised Code establishes that employees are laid off in the following order: temporary before intermittent, intermittent before part-time, part-time before seasonal, and seasonal before full-time. Both the Union and State referred this decision back to the arbitrator so that she could clarify the original arbitration award.

CLARIFICATION OF AWARD BY THE ARBITRATOR:

These statements do not modify the Award in any manner; they are solely to clarify the meaning of the Award.

1. When the Arbitrator used the phrase "full-time intermittent," (p. 53), she did not modify nor intend to modify the contractual definition of "intermittent" employees as defined in section 7.03 of the contract. The use of the words "full-time" to modify the word "intermittent" was inappropriate. The purpose of the remedy was to award the Grievant the pay and benefits that an intermittent Claims Examiner 2 (Sandusky OBES Office) earned from 10/5/91 to 11/18/91.

2. Because the seniority provisions of the Contract take precedence, Appointment Categories (types) are irrelevant within the bargaining unit with regard to the order of layoff.

3. When lay-off is proper, bargaining unit employees will first exhaust all bumping rights under the contract. If no bumps are available, they may bump outside the bargaining unit into a lesser appointment category (type) according to the order of layoff provisions found in the Revised Code and Administrative Code and incorporated by reference into the Contract. (See Award 471, itself, at pp. 43-53). Bargaining Unit employees who bump employees in lesser appointment categories (types) which are outside the bargaining unit shall be given the maximum retention points available for their performance evaluations. This award of retention points is to be done under the Code provisions which state that if a performance evaluation is not completed, the employee receives the maximum points available [123:1-41-09(b)(3)]. The remainder of the employee's retention points shall be calculated according to the Code provisions. (See 123:1-41-09.)

4. Once bargaining unit employees bump outside the bargaining unit, subsequent displacements shall occur according to the appropriate provisions of the Revised Code and the Administrative Code.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

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

and

**State of Ohio
Bureau of Employment Services**
Employer.

Grievance No.
11-02-911002-0112-01-09

Grievant:

B. Northup
Hearing Date:
August 4, 1992
Briefs Date:
September 15, 1992
Award Date:
October 19, 1992
Award Date:
October 19, 1992

Arbitrator:
R. Rivera

For the Employer:
Elliot Fishman, Esq.
Tim Wagner

For the Union:
Linda Fiely, Esq.
Brenda Goheen

Clarification of Award
December 31, 1992

Pursuant to a joint request of the parties, I issue the following statements to clarify the Award of October 19, 1992 (Grievance No. 11-02-911002-0112-01-09). These statements do not modify the Award in any manner; they are solely to clarify the meaning of the Award.

1. When the Arbitrator used the phrase "full-time intermittent (at p. 53)," she did not modify nor intend to modify the contractual definition of "intermittent" employees as defined in §7.03 of the Contract. The use of the words "full-time" to modify the word "intermittent" was inappropriate. The purpose of the remedy was to award the Grievant the pay and benefits that an intermittent Claims Examiner 2 (Sandusky OBES office) earned from 10/5/91 to 11/18/91.

2. Because the seniority provisions of the Contract take precedence, Appointment Categories (types) are irrelevant within the bargaining unit with regard to the order of layoff.

3. When lay-off is proper, bargaining unit employees will first exhaust all bumping rights under the Contract. If no bumps are available, they may bump outside the bargaining unit into a lesser appointment category (type) according to the order of layoff provisions found in the Revised Code and Administrative Code and incorporated by reference into the Contract. (See Award itself at pp. 43-53.) Bargaining Unit employees who bump employees in lesser appointment categories (types) that are outside the bargaining unit shall be given the maximum retention points available for their performance evaluations. This award of retention points is to be done under the Code provisions that state if a performance evaluation is not completed, the employee receives the maximum points available [123:1-41-09(B)(3)]. The remainder of the employee's retention points shall be calculated according to the Code provisions. (See 123:1-41-09.)

4. Once bargaining unit employees bump outside the bargaining unit, subsequent displacements shall occur according to the appropriate provisions of the Revised Code and the Administrative Code.

Rhonda R. Rivera

Arbitrator

December 31, 1992

Date