

ARBITRATION DECISION NO.:

478

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

The State of Ohio

DATE OF ARBITRATION:

October 8, 1992

DATE OF DECISION:

November 30, 1992

GRIEVANT:

David L. Slone, ET.AL

OCB GRIEVANCE NO.:

23-12-(91-11-27)-0282-01-03

ARBITRATOR:

Marvin J. Feldman

FOR THE UNION:

Bob J. Rowland,
Staff Representative

FOR THE EMPLOYER:

Michael P. Duco, Chief of
Contract Compliance, OCB

KEY WORDS:

Job Abolishment
Layoff
Bargaining Unit Erosion

ARTICLES:

Article 1 - Recognition
 §1.03-Bargaining
Unit Work
Article 18 - Layoffs
 §18.01-Layoffs
Article 43 -
 §43.02-Preservation
of Benefits

FACTS:

On November 19, 1991, the Union received notice that 27 bargaining unit positions at the Oakwood Forensic Center were being abolished; the Union did not grieve 3 of these abolishments. As its rationale for the layoffs, the State relied upon economy, efficiency and/or permanent lack of work. The abolished

positions and the specific rationale are set forth below:

1. The Training Officer 3, Public Information Specialist, Administrative Asst. 2, Storekeeper 2, Administrative Asst. 3, and Delivery Worker positions were abolished for economy. These positions were reduced by 50% to part-time positions, and there was no evidence that any part of these workloads was transferred to non-bargaining unit employees.

2. The Computer Operator 2 and Clerk 3 positions were abolished for economy. Respectively, 80% and 75% of the workload was maintained and redistributed to other bargaining unit employees.

3. The Licensed Practical Nurse (83609.0), the Deliver Worker and Clerk 3 positions were abolished for economy; there was no evidence that any part of these workloads was transferred to non-bargaining unit employees.

4. Four Corrections Officer positions were abolished.

5. The Administrative Asst. 1 position was abolished due to permanent lack of work; however, the State subsequently decided to retain 20% of the duties. The Arbitrator regarded this percentage as negligible and unimportant.

UNION'S POSITION:

The State failed to adequately support its decisions to abolish the grieved positions, particularly with respect to the Administrative Assistant 1, the Psychiatric Attendant Coordinator and the secretary positions. The majority of the bargaining unit duties of these three positions were transferred to exempt employees, and the remaining employees were being subjected to an excessive amounts of weekend overtime.

Moreover, the Union alleged that mismanagement and overspending were at the heart of the abolishments. The Union also maintained that the State intentionally misrepresented the facility's payroll. The Chief Financial Officer at Oakwood testified that budget surpluses could be consolidated which would have reflected a total budget surplus of \$300,000.00 rather than the \$56,000.00 figure the State reported. The Union emphasized that even the Executive Committee itself conceded that the layoffs were unwarranted in light of these budgetary surpluses.

STATE'S POSITION:

Primarily, the State argued that it could no longer justify retaining the full-time status of many of the abolished positions given the current level of the work force. The State justified these abolishments and/or reductions on the basis of economy, efficiency and/or permanent lack of work. In the alternative, the State alleged that because the work was merely being redistributed to other bargaining unit employees, there was no erosion of the bargaining unit. Further, the State maintained that it saved \$500,000.00 by abolishing and/or reducing the unneeded positions.

ARBITRATOR'S OPINION:

Pursuant to Article 1.03 of the Contract, the Arbitrator stated that where job abolishment resulted in erosion of the bargaining unit because bargaining unit work was assigned to exempt personnel, the abolishment was improper.

As a whole, the Arbitrator was persuaded by the State's rationale for the abolishments and/or reductions except with respect to the Administrative Assistant 1, the Secretary and 1 Psychiatric Attendant Coordinator. In these positions, the Arbitrator found that there was a continuation of the majority of the bargaining unit employee's work and that this work was being delegated to non-bargaining unit personnel. Therefore, the Arbitrator found that abolishment of the Administrative Assistant 1, the Secretary and 1 Psychiatric Attendant Coordinator constituted impermissible erosion of the bargaining unit and a clear violation of the Contract.

Consequently, the Arbitrator directed the State to fill these positions.

Specifically, the State abolished 5 of the 9 Psychiatric Attendant Coordinator positions and redistributed the duties to the remaining 4 coordinators. This left no coverage on the third shift. Apparently, the third shift Psychiatric Attendant Coordinator's duties were improperly absorbed by an exempt employee. Therefore, the Arbitrator concluded that the State must re-hire the abolished Psychiatric Attendant Coordinator with the most retention points for third shift. In addition, the Arbitrator concluded that re-hiring the Administrative Assistant 1, the

Secretary and 1 Psychiatric Attendant Coordinator would place no financial hardship on the State since the facility had more than \$300,000.00 in budgetary surpluses.

Finally, the Arbitrator upheld the abolishment of the Licensed Practical Nurses because ORC 4723.02(F) prohibits LPN's from exercising independent nursing judgment. The Arbitrator held that ORC 4723.02(F), coupled with the economy rationale was sufficient justification for the abolishments. With respect to the Corrections Officers, the Arbitrator decided to postpone decision until the pending grievance was resolved.

AWARD:

The grievance was granted in part and denied in part. The Arbitrator directed the State to re-hire an Administrative Assistant 1, a Secretary and one Psychiatric Attendant Coordinator.

NOTE: Because of lack of clarity in the arbitrator's award, the determination of which individuals should be placed in the affected positions is currently being determined in light of the contract and the code by the Union and the State.

TEXT OF THE OPINION:

VOLUNTARY ARBITRATION PROCEEDINGS

THE GRIEVANCE OF
DAVID L. SLONE, ET AL.
CASE NO.
23-12-911127-282-01-03

THE STATE OF OHIO
The Employer

-and-

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11,
A.F.S.C.M.E., AFL-CIO
The Union

OPINION AND AWARD

APPEARANCES

For the Employer:
Michael P. Duco, Chief of
Contract Compliance, OCB
Rachel Livengood,
Assistant Chief of
Arbitration Services, OCB
Teri Decker, Ohio
Department of Mental Health

Rick Mawhorr, Labor
Relations Office, Observer
John Allen, CEO,
Oakwood Forensic Center
Ted Smith, Chief Clinical Officer,
Oakwood Forensic Center

For the Union:

Bob J. Rowland,
Staff Representative
David L. Slone,
Chief Steward
Michael J. Burden,
Local Union President
Dima Snyder,
Training Officer 2
Marsha Bradford,
Computer Operator 2
Larry Converse,
Public Information Specialist
Melavee Benjamin,
Administrative Assistant 1
Mary Mayes, LPN
Sue Suever, Secretary
Sandra K. Stratton,
Administrative Assistant 2
Anthony Haithcock,
Delivery Worker
Norma Jean Ward, Clerk 3
Jackie Burden,
Storekeeper 2
Richard Maye,
Business Administrator 3
Alexander G. Thiry,
Administrative Assistant 2

MARVIN J. FELDMAN
Attorney-Arbitrator
1104 The Superior Building
815 Superior Avenue, N.E.
Cleveland, Ohio 44114
216/781-6100

I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties and pursuant to the selection processes of the parties relevant to such matters, the parties having been unable to resolve this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted at the Oakwood Forensic Center, Lima, Ohio, on October 8, 1992, at the conference facility of the employer whereat the parties presented their evidence in both witness and document form.

The parties stipulated and agreed that this matter was properly before the arbitrator. Further, the union

agreed and stipulated that the rationale for the abolishments are in dispute while there being no procedural argument regarding the displacement of employees resulting from the abolishments. The parties also stipulated and agreed that due to the unique situations surrounding the abolishments of the position of Bailey, Cotterman and Tregila, the union is not challenging those abolishments. The parties further stipulated and agreed that the witnesses should be sworn and sequestered and that post hearing briefs would be filed.

It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

II. STATEMENT OF FACTS

The parties had entered into a contract of collective bargaining and three sections of that contract were provided as a backdrop to the dispute at hand. One such section is found at section 1.03 and that stated as follows:

"§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: in cases of emergency; when necessary to provide break and/or lunch relief; to instruct or train employees; to demonstrate the proper method of accomplishing the tasks assigned; to avoid mandatory overtime; to allow the release of employees for union or other approved activities; to provide coverage for no shows or when the classification specification provides that the supervisor does, as a part of his/her job, some of the same duties as bargaining unit employees.

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."

Article 18.01 of the contract revealed the following:

"§18.01 - Layoffs

Layoffs of employees covered by this Agreement shall be made pursuant to Ohio Revised Code Sections 124.321-.327 and Administrative Rule 123:1-41-01 through 22, except for the modifications enumerated in this Article."

Section 43.02 of the contract revealed the following:

"§43.02 - Preservation of Benefits

To the extent that State statutes, regulations or rules promulgated pursuant to Ohio Revised Code Chapter 119 or Appointing Authority directives provide benefits to state employees in areas where this Agreement is silent, such benefits shall continue and be determined by those statutes, regulations, rules or directives."

It might be noted there is a reference to certain Ohio Revised Code sections and administrative rules. Pertinent to this matter is section 124-7-01 of the administrative rules and it revealed the following:

"124-7-01 Job abolishments and layoffs

(A) Job abolishments and layoffs shall be disaffirmed if the action is taken in bad faith. The Employee must prove the appointing authority's bad faith by a preponderance of the evidence.

(1) Appointing authorities shall demonstrate by a preponderance of the evidence that a job abolishment was undertaken due to the lack of the continuing need for the position, a reorganization for the efficient operation of the appointing authority, for reasons of economy or for a lack of work expected to last more than twelve months.

(2) Appointing authorities shall demonstrate by a preponderance of the evidence that a layoff was undertaken due to a temporary lack of work or funds expected to last less than twelve months.

(3) Layoffs and abolishments may only be affirmed if the appointing authority has substantially complied with procedural requirements set forth in section 124.32 of the Revised Code, et seq., and the administrative rules promulgated pursuant to these statutes.

(B) Certification of lack of funds or lack of work is not required for job abolishments.

(C) When a position is abolished or an employee is laid off, displacement rights, as set forth in division (C) of section 124.321 of the Revised Code, shall be afforded the incumbent employee.

(D) Layoffs are governed by division (C) of section 124.321 of the Revised Code and any layoff rules which apply to a particular appointing authority. In the absence of superseding rules, the layoff rules promulgated by the director of administrative services shall be followed."

Section 124.321 of the Ohio Revised Code stated as follows:

"124.321 Layoff procedures; lack of funds for work; abolishment of positions

(A) Whenever it becomes necessary for an appointing authority to reduce its work force the appointing authority shall lay off employees or abolish their positions in accordance with sections 124.321 to 124.327 of the Revised Code and the rules of the director of administrative services.

(B) Employees may be laid off as a result of a lack of funds within an appointing authority. For appointing authorities which employ persons whose salary or wage is paid by warrant of the auditor of state, the director of budget and management shall be responsible for determining whether a lack of funds exists. For all other appointing authorities which employ persons whose salary or wage is paid other than by warrant of the auditor of state appointing authority shall itself determine whether a lack of funds exists and shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the layoff notice.

A lack of funds means an appointing authority has a current or projected deficiency of funding to maintain current, or to sustain projected, levels of staffing and operations.

The director of budget and management shall promulgate rules, under Chapter 119, of the Revised Code, for agencies whose employees are paid by warrant of the auditor of state, for determining whether a lack of funds exists.

(C) Employees may be laid off as a result of lack of work within an appointing authority. For appointing authorities whose employees are paid by warrant of the auditor of state, the director of administrative

services shall determine whether a lack of work exists. All other appointing authorities shall themselves determine whether a lack of work exists and shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the notice of layoff.

A lack of work, for purposes of layoff, means an appointing authority has a current or projected temporary decrease in the workload, expected to last less than one year, which requires a reduction of current or projected staffing levels. The determination of a lack of work shall indicate the current or projected temporary decrease in the workload of an appointing authority and whether the current or projected staffing levels of the appointing authority will be excessive.

(D) Employees may be laid off as a result of abolishment of positions. Abolishment means the permanent deletion of a position or positions from the organization or structure of an appointing authority due to lack of continued need for the position. An appointing authority may abolish positions as a result of a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work. The determination of the need to abolish positions shall indicate the lack of continued need for positions within an appointing authority. Appointing authorities shall themselves determine whether any position should be abolished and shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the notice of abolishment. If an abolishment results in a reduction of the work force, the appointing authority shall follow the procedures for laying off employees, subject to the following modifications:

(1) The employee whose position has been abolished shall have the right to fill an available vacancy within the employee's classification;

(2) If the employee whose position has been abolished has more retention points than any other employee serving in the same classification, then the employee with the fewest retention points shall be displaced;

(3) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall have the right to fill an available vacancy in a lower classification in the classification series;

(4) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the employee with the fewest retention points in the next or successively lower classification in the classification series.

(E) The director of administrative services shall promulgate rules, under Chapter 119, of the Revised Code, for the determination of lack of work within an appointing authority, for the abolishment of positions by an appointing authority, and for the implementation of this section."

Section 124.322 of the Ohio Revised Code is also important to the matter at hand and it stated as follows:

"124.322 Classifications affected; length and efficiency of service

Whenever a reduction in the work force is necessary, the appointing authority of an agency shall decide in which classification or classifications the layoff or layoffs will occur and the number of employees to be laid off within each affected classification. Employees shall be laid off using systematic consideration of length of continuous service and efficiency in service. Credit for relative efficiency shall not exceed ten per cent of total retention points. The director of administrative services shall promulgate rules, under Chapter 119, of the Revised Code, for the determination of the length of service and efficiency in service of employees."

It might be further noted that administrative rule 123:1-41-01 revealed the following:

"123:1-41-01 Layoffs

(A) Employees in the classified civil service of state and county offices and state-supported colleges and

universities may be laid off whenever a reduction in force is necessary due to a lack of funds, lack of work, or the abolishment of positions.

(B) If it becomes necessary for an appointing authority to reduce its work force, the appointing authority shall lay off employees in accordance with sections 124.321 to 124.327 of the Revised Code and the rules of this chapter of the Administrative Code.

(C) If an appointing authority abolishes positions in the civil service, the abolishment of positions and any resulting displacement of employees shall be made in accordance with sections 124.321 to 124.327 of the Revised Code and the rules of this chapter of the Administrative Code."

It might be noted that administrative rule 123:1-41-04 revealed the following:

"123:1-41-04 Abolishment of positions in the classified service

(A) Reasons for abolishment. An appointing authority may abolish positions in the classified civil service for any of the following reasons: as a result of a reorganization for the efficient operation of the appointing authority; for reasons of economy; or for lack of work which is expected to be permanent. A lack of work shall be deemed permanent if it is expected to last more than one year.

(B) Determination and filing a statement of rationale and supporting information. The determination to abolish positions shall be made by the appointing authority.

State agencies and county offices. The appointing authorities of state agencies whose employees are paid by warrant of the auditor of state and of county offices shall file with the director a statement of rationale and supporting information for the determination to abolish positions. The statement of rationale and supporting information shall contain information as is available prior to the time the layoff notices are mailed or delivered to the employees to be laid off as a result of the abolishments."

With that background it might be noted that the bargaining unit herein received notice on November 19, 1991, by way of letter from the chief executive officer of the Oakwood Forensic Center that twenty-seven members of the OCSEA/AFSCME bargaining unit at Oakwood would have their positions abolished. The union did not dispute three of those abolishments and the persons affected with their PCN number and class are listed as follows:

"NAME
PCN#
and CLASS

Alexander Thiry
2032.0
Administrative Asst. 3

Paul Ely
83025.0
Administrative Asst. 1

Dixianna Ross
83409.3
Administrative Asst. 1

Melavee Benjamin

2020.0
Administrative Asst. 1

Susan Suever
18020.0
Secretary

Marsha Bradford
83814.0
Computer Operator 2

Letha Towns
83030.0
Clerk 3

Norma Ward
18025.0
Clerk 3

Joyce Freed
83609.0
Licensed Practical Nurse

Mary Mayes
83605.0
Licensed Practical Nurse

Patrick Wilson
83853.0
Psych. Attendant Coord.

Howard Youngblood
83723.0
Psych. Attendant Coord.

Thomas Baxter
83717.0
Psych. Attendant Coord.

James Ladden
83714.0
Psych. Attendant Coord.

Ronald Allen
83702.1
Psych. Attendant Coord.

Donell Howard
83348.0
Correction Officer

Dean Clement

83324.0
Correction Officer

Stephen Patton
83235.0
Correction Officer

Carl Jones
83274.0
Correction Officer

Sandra Stratton
18022.1
Administrative Asst. 2

Dimale Snyder
2040.0
Training Officer 2

Jacqueline Burden
20227.0
Storekeeper 2

Larry Converse
83490.0
Public Info. Specialist

Thomas Haithcock
27270.0
Delivery Worker"

It might be further noted that that letter of layoff revealed the following:

"The rationale to abolish positions at Oakwood Forensic Center will vary with the position. The abolishment rationales are due to one or more of the following reasons or combination thereof:

1. Reasons of Economy
2. Reorganization for Efficiency
3. Permanent Lack of Work"

To that event and on November 27, 1991, a grievance form was filed and it revealed the following:

OCSEA, Local 11, AFSCME grieves management is in violation of the Preamble, Article 18, and all other pertinent Articles and Sections.

OCSEA, Local 11, AFSCME makes such claim when, on 11-26-91, 27 Bargaining Unit employees was (sic) improperly abolished at Oakwood Forensic Center."

It might be noted that on October 30, 1991, or approximately four weeks prior to the notice of intent to abolish, a personnel administrator of the department of health issued an abolishment plan for the Oakwood Forensic Center and that plan is attached hereto, made part hereof as if fully rewritten herein and consists of

three pages and it is marked Exhibit A.

Also attached hereto as an exhibit is the step three grievance response to the instant grievance that was filed in this particular matter. The reader should be cognizant of that response. It is marked Exhibit B and consists of seven pages and is attached hereto, made part hereof as if fully rewritten herein.

Finally and on January 21, 1992, the chief of the contract compliance department of the Ohio Department of Administrative Services wrote a letter denying the grievance and it stated as follows:

"This office has reviewed the above-referenced grievance alleging violation of Sections 1.02, 18 and 43.02 of the labor agreement. This class grievance arises from the fact that on November 26, 1991, twenty-seven (27) OCSEA bargaining unit positions were abolished. As a remedy, the grievants request that all the affected employees be returned to work (full time) and made whole.

Management's decision to abolish the 27 positions was for reasons of economy and for the maximum utilization of available fiscal and human resources. The procedure which Management utilized to execute the abolishments, by the Union's own admission, were in accordance with Article 18 of the Agreement, the Ohio Revised Code Sections 124.321-327, and Administrative Rule 123:1-41-01 through 22.

As no contract violation has occurred, your grievance is denied."

There was an effort to settle this matter but to no avail. The letter of the union in that regard directed to a labor relations officer

dated December 11, 1991, revealed the following:

"Chapter 1487 is willing to discuss the possibility of grandfathering in the psych attendant and psych attendant coordinator schedules. We are willing to allow anyone who wishes to give up their schedule, to do so. Also, we understand that all new postings may be posted with a different schedule. It is also understood that all PA's and PAC's who wish to remain on their present schedule will be allowed to.

We also hope that reaching this agreement will save the psych attendant coordinators' positions, as well as any other positions that management sees fit. We hope by doing this, it will be an effective measurement towards saving positions at Oakwood.

Thank you for your consideration in this matter. If you should have any further questions or comments, please feel free to contact me."

Many union witnesses testified. The chief executive officer of the facility testified. Their testimony dealt with the various PCN numbers that were abolished and the remaining duties thereunder. That combined and relevant testimony revealed the following:

1. It was first noted that PCN number 2040 was abolished because of the economy. That position class title was known as a training officer 2. The facility testified that it could no longer support that current level employee work force nor justify a full-time training officer 2. It might be noted that the training officer 2 was reduced to a part-time fifty percent, twenty hour per week job and that that part-timer is a member of the bargaining unit.

2. There was testimony concerning PCN number 83814 known as a computer operator 2. It was noted that the abolishment was for reasons of economy in that the employer was no longer able to support the then current level of that employee in the work force. It might be known however that eighty percent, by the employer's own testimony, of the workload was maintained and spread to bargaining unit people namely an admission secretary, a data systems coordinator, a medical records secretary, a medical records technician, and a nursing secretary. The duties in other words were spread to many, all of whom were bargaining unit

employees.

3. The next position that was discussed was PCN number 83490, the position class title being known as public information specialist. That job was abolished for reasons of economy. Those functions, in addition to the combined work of an EAP officer, were to be performed on a part-time basis. (See PCN 2032, paragraph number 11 herein)

4. The next PCN number that was discussed was 2020, a position class title being known as administrative assistant 1. The reasons given for the abolishment of that job was reasons of economy in that the employer was no longer able to support the current level of the employee work force generally or that PCN number specifically. It be noted that the work however was retained and that the employer by his own admission indicated that some of the work would be passed on to exempt employees, namely an executive secretary, an administrative assistant 3 and a security director. There was no indication that any of the work would be deleted but that those three people in addition to an administrative assistant 3 and storeroom personnel who are members of the bargaining unit would be accomplishing that duty. Thus, in this particular activity there was a continuation of work the majority of which apparently was accomplished by non-bargaining unit personnel.

5. The next activity that was discussed was PCN number 83605. (See also PCN 83609.0) The position class title concerning that particular job was a licensed practical nurse. It might be noted that Ohio Revised Code section 4723.02 at paragraph (F) stated as follows:

"(F) 'The practice of nursing as a licensed practical nurse' means providing to individuals and groups nursing care requiring the application of basic knowledge of the biological, physical, behavioral, social, and nursing sciences at the direction of a licensed physician, dentists, podiatrist, or registered nurse."

It might be noted that in that particular code section that LPN's take their direction from licensed physicians, dentists, podiatrists and registered nurses. While the employer abolished that position because of reasons of economy in that the employer was unable to maintain the level of employee work force in that PCN, the employer also announced that this particular classification cannot exercise independent nursing judgment in assessing and determining the courses of nursing care without clinical supervision because of the statute.

6. The next classification that was covered was PCN number 18020. That position title was secretary. That position was abolished because of reasons of the economy and because the employer was no longer able to support the current level of employee work force. In this particular activity it might be noted that the function of the secretary's position which was abolished, continued. The work was assigned to some non-OCSEA personnel, notably the psychiatric social workers and some of the work to the executive secretaries both classifications being non-bargaining unit. There was some testimony that as a matter of fact, the workload had now increased even though the patient count was down.

7. The next position covered was PCN number 18022. That position class title was known as an administrative assistant 2. The job was abolished because of reasons of economy and the maximum utilization of available fiscal and human resources, the function was continued but on a part-time basis. There is not any indication that there was any transfer of workload to non-bargaining unit people.

8. Another position that was transferred to half time by a bargaining unit person was a position class title of delivery worker, PCN number 27270. The full-time position was abolished because of alleged reasons of economy. Because of that workload being curtailed, however, mail at the facility is being delivered one day late.

9. PCN number 18025 was abolished by reason of economy. There is no evidence in this particular case that any of the work was transferred to non-bargaining unit personnel.

10. PCN number 20227 with the position class title of storekeeper 2 was retained after being abolished for a full-time position because of reasons of economy to a part-time fifty percent position. None of the work was transferred to non-bargaining unit people.

11. Another PCN number was discussed at hearing namely PCN number 2032 with the position class title of administrative assistant 3 and the job was abolished to a half time job now known as an EEO and EAP

related to the training officer 2 position. Some of the work was also transferred to a public information specialist who is also a bargaining unit member. (See PCN 83490, paragraph number 2 herein)

12. The evidence further revealed that as to the correction officers namely PCN numbers 83348, 83324, 83235 and 83274, that much of the work was being done by supervisors since four such correction officers were abolished. The evidence in that regard was not specific. Supervisors are non-bargaining unit people. The record does not reveal which person, i.e., Howard, Clement, Patton or Jones have the highest retention points. The seniority date however points to Jones. The evidence further revealed that there was a grievance filed in that regard for that alleged contract violation and that it is still pending.

13. Evidence was offered by the employer showing the five psychiatric attendant coordinators had been released, namely PCN numbers 83853, 83723, 83717, 83714 and 83702.1. The record revealed that this particular position title had an inordinate amount of overtime assigned to cover weekends.

14. The work duties of PCN number 83025 known as an administrative assistant 1 revealed that that position had been abolished. The employer offered the thought that the education department functions would no longer be offered at Oakwood Forensic Center and that only twenty percent of the duties remain. It is apparent therefore that the substantial portion of those duties retained is of a diminutive amount.

15. Also placed into evidence as an abolishment of position, was PCN number 83409. The union offered no evidence contesting the employer's abolishment of this position. The work it appears, will be done by the psychologist and he will not only administer the tests, but score them as well.

16. PCN number 83030 known as a clerk 3 was also abolished by reason of the economy and it is apparent that there was seventy-five percent of this work maintained at Oakwood which was distributed to four other bargaining unit people. The union offered no evidence contesting that reassignment.

Another important piece of testimony in this particular matter was revealed by the chief financial officer at the institution, who testified on cross-examination. He testified that surpluses on the Oakwood budget could be transferred from one fund to another. In other words, the surplus in the payroll account could be commingled with the surplus in the supply account (account number 100 and account number 200). If that were accomplished the surplus then, of the payroll, would have been much greater (\$300,000.00) instead of the \$56,000.00 surplus that was testified to by the chief executive officer of the facility. The chief financial officer further testified that the executive committee (of which he was a member) of the facility thought that doing away with that amount of personnel that had their positions abolished was quite heavy handed especially in light of the surpluses that the facility had. The record does reveal that there was some five hundred thousand dollars saved by virtue of the economy move. Evidence further revealed that two Positions had been abolished prior and were reinstated by arbitral award when it was found that the employer acted improperly under the terms of the administrative rules, the statutes and the contract.

It was upon that multitude of evidence that this matter rose to arbitration for opinion and award.

III. OPINION AND DISCUSSION

The activity of abolishing jobs and therefore laying off personnel at the facility is circumscribed by the administrative rules, by the contract of collective bargaining, by the statute and by arbitral decision. The employer therefore must meet all of the criteria of contract, rule and statute before a job may be abolished. If that job is abolished and the bargaining unit becomes eroded as a result by way of that workload being assigned to exempt personnel, the abolishment is not proper. It is in light of all of the documents and exhibits and writings in addition to the briefs and record, upon which this award is based.

It is clearly noted at section 1.03 of the contract that the employer will recognize the integrity of the bargaining unit and will not take any action for the purpose of eroding the bargaining unit. Upon review of the layoffs in this particular matter, it is noted that PCN 18020, entitled secretary, was abolished by reason of economy and that thereafter all of the work remained and that a substantial portion of it was reassigned to non-union personnel. That is a clear erosion of the bargaining unit contrary to contract and therefore disallowed. The employer further abolished PCN number 2020 entitled administrative assistant by reason of economy. The record revealed that the work remained but that a substantial portion of it was again assigned

to non-bargaining unit personnel. As to those activities, it is apparent that that was a clear violation of the contract. The job was abolished, a savings was established but that work was bargaining unit work and if the work remained, a reassignment to non-bargaining unit personnel is clearly inappropriate. That is a clear erosion of the bargaining unit and something clearly protected against within the four corners of the agreement.

Another position that was given attention was known as a psychiatric attendant coordinator. That position had five layoffs out of nine individuals and it is noted that the four remaining psychiatric coordinators would absorb the duties of the nine. That is apparently somewhat difficult according to the evidence revealed in the case especially when it was revealed that there were none scheduled for duty on the third shift. It is apparent that someone absorbed the duty on the third shift. If the third shift duty was necessary, the record is unclear as to whether an exempt person or not absorbed the duty of the bargaining unit member. The proper psychiatric attendant coordinator who had the most retention points therefore should be retained so as to place someone on duty on the third shift so that exempt personnel do not perform the work.

The record is clear that the three individuals spoken to, PCN 2020, or PCN 18020 and a psychiatric attendant coordinator if reinstated would have sufficient payroll to support those positions. That is true since the chief financial officer indicated that line 100 and line 200 could be grouped for the purpose of payroll use. There were some twenty-seven layoffs and three were not contested by the union. That left a total of twenty-four to be concerned with and in placing three back to work there now seems to be twenty-one left. Of that group some were placed on half-time. The balance of sixteen, it appears, had their jobs abolished in a proper manner by the employer under and by virtue of the appropriate rules, statutes and contract clauses.

The layoffs concerning the licensed practical nurses were correct in light of the fact that they must take their direction from the nurses who were retained. The correction officers have a grievance pending concerning supervisors working and it may be that that particular matter will necessitate a return to work of one or two more of the corrections officers. That will have to await a decision in that matter. The evidence as to the other PCN numbers that were placed into the record in this particular case were all considered, but there is insufficient evidence in the record to grant those grievances. Simply put, it is apparent that patient count went down; that the employer is hard pressed for funds throughout the State of Ohio and that the layoffs in fact caused substantial savings even taking into account those that this arbitrator will order back to work some of the people for reasons stated herein.

Layoffs, either on a full-time basis or half-time basis are difficult but so are the times in which we live. The employer must accomplish its governmental duties with the funds available and it cannot support a staff that is too great. While the union has offered to negotiate, the employer did not see fit to do so at this time. As long as the criteria of the statute, contract and rules are met, an arbitrator cannot enforce negotiations unless the negotiation activity is a condition precedent to an abolishment of a position. Such activity is not indicated in the four corners of the instant contract of collective bargaining. While I am ordering three people back to full-time employment for reasons stated, those reasons are indicated in the four corners of the contract and those three people meet the criteria of reinstatement therefore. The others do not and therefore those abolishments due to economics, etc., stand. The evidence does not reveal any inappropriate activity by the employer under the contract, the administrative rules or the statute with reference to the balance of the abolishments.

The bargaining unit witnesses testified as to much needed duties that will be missed if the abolishments stand. The bargaining unit also testified as to some mismanagement and overspending, all of which could have been used for a more meaningful budget in order to keep the abolished bargaining unit member on duty instead of a layoff condition. However, under the terms of the contract, management has retained all of the inherent rights and authority to operate its facilities and programs in a manner not inconsistent with the contract of collective bargaining. (See Article 5). The union has not placed any evidence into the file revealing any inconsistent activity of management so as to be considered contrary to the contract other than as to the three classes that are revealed in the award section, as hereinafter stated.

IV. AWARD

The following shall be returned to full-time work at the facility:

1. Administrative Assistant 1, PCN number 2020.
2. The proper Psychiatric Attendant Coordinator.
3. One Secretary, PCN number 18020.

These individuals are returned to work for reasons stated. All of the other abolishments shall have their grievances denied. Those returned to work shall receive their appropriate back wage at straight time less any moneys they earned during the period of layoff and their proper seniority.

MARVIN J. FELDMAN, Arbitrator

Made and entered this 30th day of November, 1992.

Ohio Department of Mental Health
30 East Broad Street
Columbus, Ohio 43266-0414

October 30, 1991

TO: Timothy Williams, Deputy Director
Department of Administrative Services
30 East Broad Street, 28th Floor
Columbus, Ohio 43215

FROM: D. Brad Rice, Personnel Administrator
Department of Mental Health

SUBJECT: Abolishment Plan - Oakwood Forensic Center

The Oakwood Forensic Center is requesting authorization to conduct a job abolishment. This action is necessary due to:

1. Reasons of economy in that the hospital's fiscal resources are insufficient to support the current employee workforce.
2. A continued decline in the average daily resident population at Oakwood from 102 patients in FY 1986 to 53 in FY 1991, combined with a low employee attrition rate resulting in a need to adjust hospital staffing patterns.

BACKGROUND

Oakwood Forensic Center (OFC) is the Ohio Department of Mental Health maximum security facility located in Lima, Ohio that serves severely mentally ill persons who meet commitment criteria transferred from Ohio's adult correctional facilities. Oakwood is part of a system of care for psychiatrically impaired persons that includes the Office of Psychiatric Services to Corrections (OPSC). Oakwood operates the inpatient component of that system of care and OPSC operates the other components within the majority of prisons in the state.

Since the early 1980's, there has been an expansion in the services provided by the Department's Psychiatric Services to Corrections. This service is provided within the prisons and, in some cases prevents,

or lessens the need for transfer to the acute services provided by Oakwood. This has helped to support Oakwood's transition from a long-term care psychiatric hospital to a changed role as a short-term acute care maximum security psychiatric hospital. The major impact that these units have had on OFC has been in reducing OFC's average daily resident population from 102 patients in FY 1986 to 53 in FY 1991. It is anticipated that this

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shall be the level of inpatient services that OFC will be providing in the future. Because of the impact OPSC units have had on OFC, a change in the number and type of staff needed to deliver services is needed.

RATIONALE TO DETERMINE POSITIONS TO BE ABOLISHED

The Area Deputy Director met with the Chief Executive Officer to identify the number of jobs that needed to be abolished to achieve a balanced FY 1992 and FY 1993 hospital budget and to adjust the hospitals staffing patterns to reflect the level needed to serve the clients being admitted to Oakwood. The members of the hospital's Executive Council were involved in the process to restructure the staffing pattern and to identify the positions to be abolished. Each Executive Council member reviewed the staffing in his/her respective areas to determine which staff reductions could be made in the departments he/she supervised and the effect on overall department operations. The Executive Council reviewed the overall plan and examined and discussed the impact on clinical and support services prior to reaching consensus. During that meeting, particular attention was given to current and staffing needs necessary to continue the delivery of quality inpatient services to patients and to support operations required to fulfill the responsibilities set forth by the Ohio Revised Code and the standards set by the Joint Commission for the Accreditation of Health care organizations.

Throughout this review process all positions at Oakwood were considered, including unclassified, exempt, bargaining units, and personal service contractors. Reductions were identified in all categories. Personal service contractors have been notified of either reductions in or cancellations of their contracts.

The primary rationale for identified positions to be abolished is for reasons of economy and for the maximum utilization of available fiscal and human resources. Direct care, supervisory and support staff are affected by the need to continue to down-size brought about by a continued reduction in the budget allocation and in the patient population. Therefore, it is necessary that the hospital adjust staffing patterns to achieve a balanced budget, while maintaining quality treatment services for patients and the required support to meet operational needs for the future.

While the hospital has been trying to adjust to the changing staff needs through natural attrition, the implementation of job abolishments, and the offering of an Early Retirement Incentive Plan in FY '91, the employee turnover rate has not kept pace with the reduction in the hospital's annual allocation and in patient population. The average years of state service for Oakwood employees is 15 years and this factor has had a negative impact on employee attrition.

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Therefore, a declining patient population, a low employee turnover rate, and reduced hospital funding allocation have made the following request for abolishment imperative:

- 27 full-time classified positions
- 1 part-time classified position

- 1 full-time unclassified position
- 7 full-time classified positions reduced to half-time.

In addition to the abolishments to adjust staffing patterns, it will be necessary to establish six (6) part-time positions (5 Psychiatric Attendants and 1 Phlebotomist) - which are all direct care staff. Also, Oakwood will be sharing staff with a nearby institution (Toledo Mental Health Center in Toledo) for its EEO function.

Oakwood has taken several initiatives to economize. Personal service contracts have been reduced by over \$21,000 which represents a 22% reduction. Because of the number of positions to be abolished (which is greater than 10% of Oakwood's total employee workforce), a mandatory two-year Early Retirement Incentive (E.R.I.) will be offered. As many as twenty-one (21) employees are eligible for this program. Three of the people affected by the job abolishments are eligible for the E.R.I.

There are a number of things that can and will be done to aid and assist employees. These include:

1. Outplacement assistance both through direct contact with other state facilities (particularly, the Ohio Department of Rehabilitation and Corrections) and with local community agencies and the posting of available state job announcements.
2. Announcement and implementation of a two-year E.R.I. program
3. Provide/coordinate in-house services from other agencies (e.g., O.B.E.S., P.E.R.S., etc.)
4. Assist staff in preparing for job interviews, in resume writing, and in completing job applications.
5. Identify key local support agencies and refer staff as needed.

If more information is needed, please contact me at 466-0222.

DBR:j
Attachments

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Ohio Department of Mental Health
30 East Broad Street
Columbus, Ohio 43266-0414

DATE: December 31, 1991

TO: Gary Hobbs, Local President
OCSEA Chapter 1487
Oakwood Forensic Center

FROM: George R. Nash, Step III Designee

SUBJECT: Step III Grievance Response

GRIEVANCE: 23-12-911127-0282-01-034 (Class Action)

DATE OF MEETING: December 12, 1991

PRESENT: Gary Hobbs (OCSEA Local President), Bob Rowland (OCSEA Staff Representative), John Allen (CEO, OFC), Rick Mawhorr (LRO, OFC), and George Nash (Step III Designee).

Also in attendance when their classification was discussed were: Alexander Thiry (Admin. Asst. 3), Susan Suever (Secretary), Marsha Bradford (Computer Operator 2), Letha Towns (Clerk 3), Norma Ward (Clerk 3), Mary Mayes (LPN) and Dimale Snyder (Training officer 2).

NOTE: This class action grievance includes twenty-seven (27) positions of OCSEA in bargaining units 3, 4, 6, 9, 13, and 14. (List Attached)

ISSUE: Is there a violation of Contract Articles 1.03, 18, or 43.02 when certain positions were abolished at the Oakwood Forensic Center?

DISCUSSION: Management presented to the Union a memo dated December 12, 1991, which showed the Hospital Budget Breakdown for Fiscal Years, 1990, 1991, and 1992. The Union has requested more specific information concerning personal service contracts, payroll breakdown, and a Quarter-to-Quarter report of the budget. The Union presented a memo dated December 11, 1991, which concerns a proposal to discuss Psychiatric Attendant and Psychiatric Attendant Coordinate schedules.

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The Union Made the following claims. The twenty-seven (27) positions to be abolished are violations of Articles 18 (Layoffs), 43.02 (Preservation of Benefits), and 1.03 (Bargaining Union Work). It was agreed that Management was procedurally correct in the abolishment process, but it is argued that the abolishment itself is unjust. Article 1.03 is violated because some of the duties are being distributed to exempt persons or to members of other bargaining units; which is eroding of the bargaining unit. It is also argued that OCSEA members could perform the duties at a substantially lower cost. The Union presents Articles 43.02 to protest against any benefits provided by the Civil Service Laws where the Agreement is silent. An example is in the Administrative Assistant 3 position, where it is argued that a bump into an exempt position should be permitted using the reverse opinion in Arbitration Award #583. The Union further feels that they are being singled out since most employees affected by the abolishment were OCSEA members. Its argued that the patient population is not decreasing but nearly the same. Average Daily Resident Population (ADRP) numbers were presented for each month from January 1990 to October 1991 to support this argument. It was also noted that if Management does in fact assign duties of the abolished to others that there will very possibly be an Article 19 (Working Out of Class) grievance.

Management discussed the rationale to abolish positions at the Oakwood Forensic Center, and stated that the abolishment was for reasons of economy and for the maximum utilization of available fiscal and human resources. None of these abolishments were for lack of funds nor due to permanent lack of work. The population at Oakwood has continually declined over the years and the required number of staff likewise needs to decline to economize. This is necessary due to budgetary constraints placed upon the Department, not only now; but in the future so that programs can be provided and the Department can function within a balanced budget; and to continue to maintain a therapeutic environment while insuring a safe and healthful facility for both patients and staff. This rationale was first presented to the Union in a memo dated October 30, 1991; entitled Abolishment Plan - Oakwood Forensic Center.

All of the above arguments pertain to all the following classifications affected. Each classification was discussed individually and if they chose, the affected employees attended and discussed the following:

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Training Officer II - PCN 2040.0, Ms. Dimale Snyder (Attended).

There is a concern that when this position is reduced to part-time that there will not be enough time in which the mandated training programs can be accomplished. Training is considered to be critical to staff. It helps to prevent injury and time off as a result of any injuries. Training is now provided on the respective shift of the employee, but again, there will not be enough time to do this in the future. The Training Officer is also involved in life safety and disaster drills on all shifts. Ms. Snyder introduced documentation which reflect a 95% completion rate of training she provided for the past five years; which was higher than other training persons. The Union argues that infection control is the only program Ms. Snyder does not do, however, it could be performed by any registered nurse. At the time we are reducing the hours on Ms. Snyder the Union argues that we are adding additional duties of EEO, for which she needs training to perform. Discussed also was a self-defense course at the Correctional Training Academy in February 1992. For a five week period, Ms Snyder will be required to work full time to complete this training. The Union argues that after this five week period Management will be required to go through this procedure again to reduce her hours.

Public Information Specialist - PCN 83490.0

The concern is that this position is going to part-time status and is being given additional duties of the Employee Assistance Program. It is believed that when employees need to discuss personal problems no one will be there for them to go to. As a result, the employees problems may become worst, and could result in time off. Also pointed out was that many duties now performed by this individual will not be done. Those duties, although not in the position description, are assisting in training and helping to provide relief for ones to go to training.

Licensed Practical Nurse - PCN's 83609.0, 83605.0, Ms. Mayes (Attended)

Ms. Mayes explained that LPN's perform the same duties as RN's except for the Qualified Mental Health Professional (QMHP) duties, and intravenous injections which is not permitted by an in-house policy. It's pointed out that LPN's are important because they are all assigned to the Medical Union where direct care is given to the most acute patients. Ms. Mayes also references that in the early 1980's she developed programs and policies still utilized today. It's argued that more sense would have been to keep the LPN's to perform the work, and have a few RN exempt supervisors to have supervised their work.

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Clerk 3 - PCN's 83030.0, 18025.0, Letha Towns and Norma Ward (Attended)

It's argued that the Clerk duties are being given to other employees who are gaining many duties as a result of the abolishment. These employees now are required to work 40 hours to perform their own job duties, so it's asked how are they expected to do these additional duties? Duties such as attending Treatment Team meetings, and Treatment Plan Reviews take some time. Reports which must be completed on each patient, Doctor Narrative summaries, and the filing, are all duties which will suffer or not get done. They argue that this position is the only one eliminated completely. The Clerks introduced various documents to show what is required of them.

Medical Lab Technologist 1 - PCN 12120.0

The Union argues that money is available and therefore this position should not be deleted. It is realized that this position is to be performed by a Phlebotomist (PCN 12121.0), 20 hours per week.

Delivery Worker - PCN 27270.0

The Union argument is the same argument as in the previous abolishment of this position. By reducing this position to part-time it will require that all trips for the patient will need to be handled by the various facility departments. While these employees are running errands, clinical time will be taken from the patients. It would be more cost efficient to maintain current status of the Delivery Worker.

Store Keeper 2 - PCN 20227.0

Arguments are the same as for the Delivery Worker. In this situation, many of the duties will go to an exempt supervisor. The Commissary function is a great concern, and it clearly requires over twenty hours per week to perform.

Computer Operator 2 - PCN 83814.0, Marsha Bradford (Attended)

The Union argument will be the same as in the previous abolishment of this position. Ms. Bradford explains that there are more requirements now such as track restraint/seclusion, and with the Incident Review Committee, some requiring daily entries into the computer. She further explained that she is one of two persons given the security level permission for these entries. The Union argues that this area will be comprised of three supervisors, and three bargaining unit

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members, which doesn't appear to be economical. Also questioned is the fact that Ms. Bradford was given her job back by an arbitrator, by a final and binding decision 13 months ago. She questions when final and binding means just that.

Secretary - PCN 18020.0, Susan Suever (Attended)

Ms. Suever is responsible for Patient Levels each Monday, and a Patient Satisfaction Questionnaire Report monthly which is not listed in her job duties. Her duties are being given to several different employees, so she feels that is proof that she is needed. She is convinced that this abolishment is personal. All the executive staff kept their personal secretaries except for the Security Office, whose chief is retiring. She is sure that her duties are being given to others to justify their employment, and at present they waste their time for the bigger portion of the day. The lowest paid being abolished just isn't for economy.

Administrative Assistant 1, PCN's 2020.0, 83409.3, 83025.0

Administrative Assistant 2, PCN's 18024.0, 18022.1

Administrative Assistant 3, PCN 2032.0 (Attended)

A big argument is that duties are going to exempts, or to other bargaining unit members, or bargaining units. The staff receiving these duties are not trained, will not be able to perform these duties in addition to theirs,

and just isn't the most economic way. In the case of the Administrative Assistant 3, the Union argues that the EEO/EAP programs will both suffer as a result of these duties both being given to persons in a part-time status. It's also argued that the position should be able to displace into an exempt position.

Correction Officer - PCN's 83348.0, 83324.0, 83235.0, 83274.0, 83283.0

Great concern that there is not enough correction officers now, was heard. The Department has been running with a "skeleton crew" for a long time. Transportation, increased overtime, the internal area patrol, and backup for crisis intervention to direct care providers, are all concerns. It could have been understood if some supervisors were to have been reduced down, but to abolish these important positions just will add problems.

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Psychiatric Attendant Coordinator - PCN's 83853.0, 83723.0, 83717.0, 83714.0, 83702.1

The Union proposes that Management look at their proposed memo on schedules dated December 11, 1991; to avoid all positions possible for abolishment in the Psychiatric Attendant Coordinator and Psychiatric Attendant Classifications. They again cite that the lowest paid and the ones who provide direct care daily are being abolished. They did suggest that for economy reasons we should have looked at exempt RN Supervisors going part-time. With the end result of five Psychiatric attendants being part-time, the overtime will increase as well as problems when employees need time off for sickness, vacation, etc.

DECISION:

The above 27 identified positions for abolishment are for reasons of economy and for the maximum utilization of available fiscal and human resources. Management did not abolish these positions based on a permanent lack of work nor for a lack of funds. With continued reduction in the budget allocation and the patient population steadily decreasing, it is necessary for the facility to adjust staff patterns to achieve a balanced budget for continued operation of Oakwood for now, and in the future. During this period the facility must maintain quality treatment for patients and a safe and healthful environment for all. The Union objects to the abolishment, but agrees that procedurally Article 18, Layoff, has been followed. The Union offered their input as evidenced above, in ways they thought were cheaper, or a better way to provide services, and ideas as to how to maintain status quo. Their input and concerns have been given, and will continue to be given serious consideration.

In regards to the December 11, 1991, proposal from the Union concerning schedule changes, the same information was presented to Ms. Decker and Mr. Allen on December 2, 1991. At that time the Union was told that more specific numbers of willing employees would have to be presented in order for the Department to discuss the subject. To date, the Union has not presented the requested information. At such time that specific numbers of willing employees are presented, the Department will review the information and contact the Union.

It is a Management right and authority to manage and operate its programs and facilities in the most economical and efficient way possible. Entrusted with this responsibility the decision was made using the best method and means to accomplish the goals of the Department. Management realizes that abolishment

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is not a pleasant choice and we sympathize for those involved, however, Management chose all that was available to them. Article 43.02, Preservation of Benefits, is included to protect any benefits of Civil Service Laws which might apply to members. Article 1.03, Bargaining Unit Work, is argued as violated because duties are being given to other employees and bargaining units. It's Management's decision to govern how services will be provided for economy of their facility as long as they stay within those constraints placed on them by law and by contract. Management has decided that this is the most economical way. For the above reasons I find no violations of Articles 1.03, 18, nor 43.02. Grievance is denied in its entirety.

George R. Nash, Step III Designee

December 31, 1991

Date

GRN/kns

cc: Bob Rowland
Paul Goldberg
Rick Mawhorr
John Allen
John Rauch
Jessica Byrd
OCB
27 Grievants

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