ARBITRATION DECISION NO.:
483

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Natural Resources,
Hocking Hills State Park

DATE OF ARBITRATION:
October 23, 1992

DATE OF DECISION:
January 5, 1993

GRIEVANT:
Kenneth Hilliard

OCB GRIEVANCE NO.:
25-12-(91-11-18)-0150-01-06

ARBITRATOR:
Rhonda Rivera

FOR THE UNION:
Patrick Mayer
Jamie Parsons

FOR THE EMPLOYER:
Jon E. Weiser
Michael P. Duco

KEY WORDS:
Job Abolishment
Licensure
Rationale

ARTICLES:
Article 18 - Layoffs
§18.01-Layoffs
Article 37 - Training/
Continuing Education/Tuition
§37.03-In-Service Training
§37.04-Leave for Training/
Continuing Education Programs
§37.08-Accreditation,
Licensure or Certification
Requirements

FACTS:

The grievant was employed as a Treatment Plant Operations Coordinator at Hocking Hills State Park, in the Ohio Department of Natural Resources (ODNR). His position was abolished in November of 1991. The grievant was given the option to bump the Treatment Plant Operator at Hocking, who had obtained licensing. After accepting that bump, the grievant was informed that he could not bump the Treatment Plant Operator because the grievant did not have the appropriate licenses. He was then offered the option to bump into a Treatment Plant Operator Aide position, which he subsequently did.

The licenses required are the product of the Ohio EPA requirements that persons who run water and waste treatment facilities must be licensed, and that the type of license required an depended on the classification of the system. On August 22, 1991, the OEPA classified Hocking as a Class 1 Public Water System and Class 1 Water Distribution System, and thus required licenses specific to this rating.

ODNR's efficiency rationale for the abolishment was that the Treatment Plant Operations Coordinator position did not require an operator's license as stated in the job specification, and because Coordinators need to be licensed, the position would be abolished. In addition, ODNR stated that the duties of the Treatment Plant Operations Coordinator would be picked up by Maintenance Repair Worker 3 (MRW3) and Maintenance Repair Worker 2 (MRW2), and by the Treatment Plant Operator.

EMPLOYER'S POSITION:

The Employer stated that the facility was just as efficient after the abolishment as beforehand, and that the MRW3, MRW2, and Treatment Plant Operator took over substantially all of the Treatment Plant Operations Coordinator functions. The duties picked up by these positions did not create an undue burden or go outside those duties listed in each classification specification, nor did they create additional overtime.

The grievant, along with the Treatment Plant Operator, received memos informing him of training opportunities for licensing. The Treatment Plant Operator chose to undertake the training and receive licensing. The grievant did not. It was not the responsibility of Management to inform the grievant of his employment situation regarding licensure.

UNION'S POSITION:

The Union contends that the Employer did not offer the grievant training to obtain licenses, as it had for the Treatment Plant Operator, and that no one ever told him he needed a license to keep his job. The efficiency rationale was not substantiated by the Employer, particularly because the grievant was the only one qualified at the Hocking Hills facility to operate the heating and air conditioning systems.

The MRW3's duties changed substantially after the abolishment, and the duties of the Auto Mechanic 3 changed to include some building maintenance and swimming pool work. In addition, at the time the grievant's job was abolished, only 15 percent of his work was related to water treatment, and therefore, the requirement of licensure was not credible. Finally, the Employer should have applied Article 37.08 to the grievant and trained him accordingly.

ARBITRATOR’S OPINION:

The grievant admitted that at the time of the abolishment, he did virtually nothing with regard to the water system, water treatment system, or the sewage system. The Treatment Plant Operator was self-sufficient, and the grievant only did extremely routine tasks in this area when the Treatment Plant Operator was absent. The parties stipulated that the Treatment Plant Operations Coordinator and the MRW3 have many comparable tasks, and the MRW2 performed some of these same tasks under the direction of the MRW3. The redistribution did not add an inordinate amount of work to their job duties, which was shown in part by testimony that overtime has not increased. The Union's contention that two exempt workers and one bargaining unit employee were doing the work of the grievant was without basis, as was the Union's contention that the grievant's work had to be contracted out after abolishment. Therefore, the Employer has shown that the elements of the Treatment Plant Operations Coordinator position have been permanently deleted and redistributed and/or consolidated within the job duties of the Treatment Plant Operator, the MRW3 and the MRW2, without any undue burden on them.

The Employer justified its rationale of improved efficiency. There is little need for a position where the alleged lead worker does not have the appropriate license to lead his subordinate, and if the various plants can be run by the Treatment Plant Operator without direct supervision of the Treatment Plant Operations Coordinator, then the latter position becomes unnecessary.

The Union's contention that the Employer acted in bad faith by failing to adequately warn the grievant of the importance of licensure and to offer him appropriate training is unfounded. The grievant should have known about the training, as he was notified of it, and he had numerous opportunities to understand that as a Treatment Plant Operations Coordinator, he needed an appropriate license. An employee has some duty of inquiry and investigation about his own position and its requirements. Failure to discuss training and licensure with the grievant, while not desirable, does not rise to the level of bad faith on the part of the Employer.

Finally, Article 37.08 does not apply because, strictly speaking, a change in licensure had not occurred since July 1, 1986. The classification specification for the position of Treatment Plant Operations Coordinator carried from its inception a licensure requirement. Therefore, 37.08 does not apply to the grievant's situation.

AWARD:

The grievance is denied in its entirety.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

OCSEA Local 11
AFSCME, AFL-CIO
Union

and

State of Ohio
Department of Natural Resources
Employer.

Grievance No.:
25-12-(91-11-18)-150-01-06

Grievant:
K. Hilliard
Hearing Date:
October 23, 1992
Briefs Date:
November 23, 1992
Award Date:
January 5, 1993

Arbitrator:
R. Rivera

For the Employer:
Jon E. Weiser

Michael P. Duco

For the Union:
Patrick Mayer
Jamie Parsons

Present at the Hearing in addition to the Grievant and Advocates were William F. Demidovich Jr., Labor Relations Coordinator, ODNR, Donald N. Starr, Labor Relations Coordinator, Parks and Recreation (witness), Charles E. Schultz, Chief, Employee Services, ODNR, Stephen P. Bennett, Park Manager-Hocking Hills State Park (witness), Tony Neece, Maintenance Repair Worker 3 (witness), David Runkle, Auto Mechanic (witness), Miles Reichling, Water Treatment Plant Operator (witness).

Preliminary Matters

The Arbitrator asked permission to record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

Stipulated Facts

1. The Treatment Plant Operations Coordinator Classification was established as a result of the determination of exempt/non-exempt classifications for collective bargaining purposes.
2. The pay range for Treatment Plant Operations Coordinator and the Plant Maintenance Engineer 1 classification is pay range 09.
3. The Treatment Plant Operations Coordinator classification was placed into a holding classification status as a result of the joint classification modernization study of 1989.

Issue

Did Management violate the 1989-1991 OCSEA labor agreement when it abolished the Treatment Plant Operations Coordinator position at Hocking Hills State Park? If so, what shall the remedy be?

Joint Exhibits

1. 1989-1991 OCSEA Labor Agreement
2. Department of Natural Resources Rationale for Abolishment
3. Grievance Trail

    a. Grievance
    b. Letter Scheduling Step 3 Meeting
    c. Step 3 Response
    d. Step 4 Response
    e. Demand for Arbitration

4. Section 124.321-.327 Ohio Revised Code (Layoffs)
5. Administrative Rule 123:1-41-01 through 22. (Layoffs)
6. Chapter 1541 Ohio Revised Code (Division of Parks & Recreation)
7. Administrative Rule 3745-7-01 through 16 (Water/Wastewater Certification)
8. Treatment Plant Operations Coordinator Classification Specifications

Employer's Exhibits

1. IOC to District Supervisors dated September 21, 1988
2. IOC to District Supervisors dated March 16, 1989
3. IOC to District Supervisors dated December 7, 1988
4. Service Contract and Invoices dated July 10, 1990 to September 4, 1992 between General Temperature Control, Inc. and Hocking Hills State Park
5. Invoices of General Temperature Control Inc. for Hocking Hills State Park dated December 29, 1987 to February 15, 1989
6. Grievant's Performance Reviews

    a. June, 1990
    b. July, 1991
7. Classification Specification for Maintenance Repair Workers 1, 2, and 3
8. Classification Specification for Treatment Plant positions
9. Summary of work done by General Temperature Control, Inc. from October 20, 1990 through October 20, 1992 with invoices attached
10. Ohio EPA certificate of classification for Hocking Hills State Park Public Water System dated August 22, 1991, effective September 23, 1991 for Class 1 Public Water System and Class 1 Water Distribution System with letter of August 22, 1991 attached
11. a. OEPA Permit No. OPP0016*AD
    b. OEPA Permit No. OPP0017*AD
12. a. Letter to Grievant from ODNR dated November 6, 1991
    b. Displacement List
    c. Displacement Form
    d. Displacement Form
    e. Letter to Grievant dated November 14, 1991
    f. Displacement List
    g. Displacement Form
    h. Letter to Grievant dated November 21, 1991
    I. Letter to Scott dated November 27, 1991 with displacement forms attached
13. a. Letter to OCSEA Chapter President from Office of Executive Director dated June 28, 1991
    b. Letter to Young from ODNR dated November 21, 1991 with displacement form attached
14. ORC 4117.08
15. a. OEPA Certificate as Class 1 Operator Water Supply issued to Miles J. Reichling on December 20, 1988
    b. OEPA Certificate as Class 1 Operator Wastewater Works issued to Miles J. Reichling on July 25, 1988
    c. OEPA Certificate as Class 3 Operator Wastewater Works issued to Miles J. Reichling on December 28, 1989
16. Employee Training Survey by Grievant, undated

Union Exhibits

1. Job Audit Summary for Grievant's position dated March 3, 1989 with supporting documents
2. Class Specification for Automotive Mechanic 3
3. Grievant's personal documentation for grievance issues
4. OEPA Certificate of Approval for Chemical Analyses on Potable Water for Hocking Hills State Park -- for the following analyses: "Operational" Turbidity, Chlorine (DPD) dated June 20, 1989 to June 20, 1992
5. Certificate of Completion of First (Basic) Operator Training Course on Water Plant Operation dated April 14, 1980 and issued to Grievant

Relevant Contract Sections

18.01 - Layoffs

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

ARTICLE 37 -- TRAINING/CONTINUING EDUCATION/TUITION

37.03 - In-Service Training

Whenever employees are required to participate in in-service training programs, they shall be given time off from work with pay to attend such programs, including any travel time needed. Any costs incurred in such training shall be paid by the Employer. Every reasonable effort shall be made to notify employees of training opportunities through available channels of communication.

37.04 - Leave for Training/Continuing Education Programs

The Employer may grant permanent employees paid leave during regular work hours to participate in non-agency training/continuing education programs which are directly related to the employee's work and will lead to the improvement of the employee's skills and job performance. Reasonable effort will be made to equitably distribute such training opportunities among employees.

37.08 - Accreditation, Licensure or Certification Requirements

If accreditation, licensure or certification requirements of a position are changed and an employee serving in such a position does not possess the requirements, the affected employee shall meet such requirements as soon as reasonably possible.

If meeting the requirements requires additional in-service training and/or leave for training/continuing education programs, Sections 37.03 and 37.04 may be applied.

If an employee does not meet the requirements within a reasonable period of time, the employee shall be moved into another position. If that position pays less than the employee's present salary, the employee's salary shall be frozen until such time as the employee's new pay schedule catches up with the frozen salary.

Facts

The Grievant in this case was classified at the time of the events which lead to the Grievance as a Treatment Plant Operations Coordinator at the Hocking Hills facility of the Department of Natural Resources. This position was abolished on November 6, 1991 (see Joint Exhibit #9).

Grievant began working for the Department of Natural Resources sometime in 1975 as a Maintenance Repair Worker 2. He was subsequently promoted to a Maintenance Repair Worker 3. In 1981, the Grievant became a Plant Maintenance Engineer, an exempt position. In 1986, collective bargaining came into being. As a part of that process, Grievant was classified as a Treatment Plant Operations Coordinator a non-exempt position, a position within the bargaining unit. This position has PCN #15640.0; this position was the only one of its kind within the state system (see Joint Exhibit 8). The Classification Specification for that category states that the function of the Treatment Plant Operations Coordinator is to act as a lead worker over maintenance repair workers doing two (2) types of work 1) operation and maintenance of water treatment and/or sewage plant and, 2) maintenance of mechanical equipment. The Job Duties are essentially three fold:

1. 28-38% Operate as a lead worker (see above).
2. 22-28% Coordinate purchases of items used in the two main functions.

3. Operate, inspect, trouble shoot and maintain a variety of mechanical equipment: motors, blowers, pumps, chemical feeders, compressors, dovers, heating and cooling systems, swimming pools and furnaces. Treatment Plant Operations Coordinator also determines reasons for any malfunction of these items, ensures their proper installation and makes repairs.

The Class Specification states the minimum class requirement as "appropriate treatment plant operator's certificate for class and type of plant operated and maintained." This licensing requirement subsequently became an important issue with regard to the abolishment of the position. The Grievant said that as a Plant Maintenance Engineer he was primarily responsible for 1) the heating and cooling system in the Hocking Hills Park Lodge, 2) the swimming pool (in season), and 3) the water, water treatment, and sewage systems. These responsibilities continued after he was classified as a Treatment Plant Operations Coordinator but changed as a result of a co-worker's change of Status. Miles Reichling began at Hocking Hills as a Treatment Plant Operator Aide, a position that does not require any license. In this capacity, Mr. Reichling was trained in treatment plant and water system operation by two persons -- the Grievant and a Engineering field representative. The Grievant testified that as Miles Reichling became more competent to run the water and sewage operations, he (the Grievant) concentrated his talents primarily on the heating and cooling system in the lodge. He testified that, by the time of the job abolishment, the substantial part of his work was with the heating and cooling system and that Miles Reichling ran the water, water treatment, and sewage operations. The Grievant said that on Mr. Reichling's days off he did monitor some meters and did some chemical tests (these later tests he said he performed "under Miles' license"). Reichling testified that he had the required licenses and became a Treatment Plant Operator in 1988. Presumably then, by beginning of 1989, the responsibility for water and sewage rested primarily in Miles Reichling's hands.

The licenses in question are the product of the Ohio EPA requirements. Employer testimony indicating that during 1985 the OEPA made clear that requirements for operating water and sewage plants were about to become stricter. In fact, effective April 17, 1986, by statute (see Joint Exhibit 7) the Ohio EPA imposed new regulations which included a requirement that persons who ran water and waste treatment be licensed. The type of license required was dependent on the classification of the system. The OEPA was required to "classify" each system. Employer witnesses testified that the purpose of the minimum qualification of the Treatment Plant Operations Coordinator which stated that the person in the position had to have appropriate license was to ensure that the Treatment Plant Operations Coordinator was properly licensed under the OEPA scheme. The Treatment Plant Operations Coordinator was the "lead worker" over Treatment Plant Operators who also had to be licensed. Miles Reichling, Treatment Plant Operator, testified that using training offered by ODNR he received the appropriate licenses. He said this training had been offered to him by Mr. Bennett who put training information in his (Miles') in-basket or handed it to him.

Mr. Bennett testified that he offered the same training to both the Grievant and Miles Reichling. The Employer introduced three I.O.C.'s dated September 21, 1988, March 16, 1989, December 7, 1988 (see Employer Exhibits 1, 2, 3) which offered training in Water/Water Treatment. Mr. Bennett testified that he either placed the IOC's in the Grievant's in-basket or handed them to him. All three memos bear a handwritten and dated note from Mr. Bennett indicating the distribution of the memo to both the Grievant and Mr. Reichling. Employer Witness Bennett testified that to the best of his knowledge the Grievant never availed himself of this training.

The facts show that at the time of the job abolishment the Grievant did not possess the necessary licenses. The Grievant testified that 1) no one ever told him to get a license and that 2) he was never offered training. In addition, the Grievant testified that he "was not specifically aware" of the various OEPA licensing regulations. He said he "did not recall" the three IOC's put into evidence by the Employer (Employer Exhibits 1, 2, and 3). However, the Grievant did say that once Mr. Reichling was licensed that he (the Grievant) could do tests "under Miles' license."

The position held by the Grievant was the subject of a job audit in 1989 (with two job site visits) (see Union Exhibit 1). The Employer attempted, according to the testimony of Mr. Bennett, to have the Grievant's position reclassified as a Maintenance Repair Worker 3 (MRW3) which more clearly reflected what the Grievant did. The MRW3 did not require an OEPA license. The job audit was opposed by the Grievant. The

Grievant testified that a change to a MRW3 would have cost him $1-$2 per hour in wages. The job audit found that "no current specification better represents the duties [of the Grievant] than the present classification." This audit took place between March 3, 1989 and October 30, 1989. The Grievant said that at the time of the job audit he reviewed his classification specification for Treatment Plant Operations Coordinator and that he "supposed" that he knew of the licensure requirement. The Grievant said that he did know that Mr. Reichling was promoted on the basis of his licensure.

The position of Treatment Plant Operations Coordinator was also effected by the class modernization project. The job was placed in a "holding" position under class mod. A job classification in a holding was one that could not be refilled if vacated. However, while the incumbent held the job, the job continued, and the occupant had the same promotional and layoff rights as prior to class mod. (see Employer Exhibit 13).

The ODNR implemented a reorganization of the organization and pursuant to this reorganization abolished the Grievant's job. ODNR provided a justification for the reorganization and the consequent abolishments in a memo of October 11, 1991 (Joint Exhibit 2). The rationale for the abolishment of the Treatment Plant Operations Coordinator at Hocking Hills was treated in that memo. The memo (relevant part) reads as follows:

"The Division has been under close scrutiny by the OEPA to hire qualified operators at our treatment plants . . . the aforementioned positions do not have operator licenses as stated in the job specifications. Due to a need for our operators to be licensed, the positions are being abolished." The duties of the Treatment Plant Operations Coordinator #PCN 15640-0 at Hocking Hills will be abolished by the following Union classifications in accordance with the class specifications PCN 15623.0 MRW3, PCN 15612.5 Treatment Plant Operator and PCN 15625.5 MRW2... The repair duties of the chiller unit and cooling tower will be abolished." (Joint Exhibit 2)

On November 6, 1991, the Grievant received a letter from ODNR telling him that "for reasons of efficiency" his position was abolished (Employer Exhibit 12). Attached to that letter was a form showing that the Grievant could "bump" Miles Reichling, the Treatment Plant Operator. However, when the Grievant accepted that "bump" he was informed by letter of November 14, 1991 that since he did not have the requisite OEPA license for Treatment Plant Operator he could not bump Reichling (Employer Exhibit 12); rather, he could chose to bump one of three Treatment Plant Operator Aides at other State Parks which are positions which require no license. The Grievant chose to "bump" Mr. Young, a Treatment Plant Operator Aide at the Pike Lake State Park.

On November 15, 1991, the Grievant filed a grievance with regard to the abolishment. He claimed that "efficiency" had not been proven and that he was the sole employee at the Hocking Hills facility qualified to operate the heating and air conditioning systems (see Joint Exhibit 3). The Grievance proceeded through Step 3 (December 11, 1991) and Step 4 (December 30, 1991), and arbitration was requested (January 10, 1992) (Joint Exhibit 3). An arbitration hearing was held before Arbitrator Rivera on October 23, 1992.

At the hearing, the Employer introduced the following evidence to support the propriety of the abolishment: Mr. Steven Bennett, manager of the Hocking Hills facility since March 1982, testified that his facility was just as efficient subsequent to the job abolishment as prior to it. In particular, that the MRW3 and the Treatment Plant Operator took over substantially all of the Treatment Plant Operations Coordinator functions. The Employer put into evidence the classification specifications for Maintenance Repair Workers. Mr. Bennett pointed out that the MRW3 was a lead worker (just like the Treatment Plant Operations Coordinator) and must be able to perform skilled and semi skilled work in carpentry, plumbing, equipment maintenance and repair. Equipment covered includes heating and air conditioning equipment as well as pumps, valves, etc. (e.g., in swimming pools) (see Employer Exhibit 7). The Treatment Plant Operator (see Employer Exhibit 8) operates water and sewage treatment plants, maintains related equipment, performs daily chemical tests, maintains plant records and reports, and performs general maintenance. This class specification requires the proper OEPA certificate.

Mr. Bennett said that both before the abolishment and after the abolishment Hocking had a contract with General Temperature Control to service the heating and cooling system of the lodge. In the past, the

Grievant called the contractor when relevant and often signed the work orders (see Employer Exhibits 4 and 5). Bennett noted that before abolishment, the Grievant had been urged to utilize park employees more and the sub-contractor less to keep contract costs down (see Employer Exhibit 6). The Employer submitted a summary of costs of utilizing the General Temperature Control Company for the purpose of showing that both pre and post abolishment such a service contract existed (Employer Exhibit 9). Bennett testified that OEPA had finally classified Hocking as a Class 1 Public Water System and Class 1 Water Distribution System on August 22, 1991 (see Employer Exhibit 10) and gave Hocking the proper permits (see Employer Exhibits 11(a) and 11(b)). He said some parks had received their ratings earlier. Treatment Plant Operator Miles Reichling had the appropriate licenses to handle these OEPA ratings. The Employer entered into evidence copies of Reichling's licenses i.e., Class 1 Operator Water Supply (December 20, 1980), Class 1 Operator Wastewater Works (July 25, 1985), and Class 3 Operator Wastewater Works (December 28, 1989) (Employer Exhibit 15). Mr. Bennett testified that while the Grievant was by virtue of his classification the "lead worker" over Mr. Reichling, that with his licenses and his knowledge Reichling was self-sufficient.

Mr. Bennett said that overtime had not increased since the abolishment. He said two exempt employees did do some minor parts of Grievant's work. The Maintenance Supervisor 2 did, on some occasions, locate maintenance problems and then refer them to MWR3. In emergency situations, MS2 might check equipment or supervise the Treatment Plant Operator but with no regularity. The seasonal Natural Resources Aide who is an exempt employee worked June 1991 to September 1991 and June 1992 to September 1992, two days a week. When Treatment Plant Operator had days off, NRA would read meters and do tests that did not require certification. For other tests, he took the samples to other parks.

Mr. Bennett in response to cross examination said he had never warned the Grievant that his job was in danger due to lack of licenses. Moreover, Mr. Bennett maintained -- job audits to the contrary -- that the Grievant's job was better described as a MRW3. Mr. Starr, in ONDR personnel since 1986, testified that since 1986 training to meet OEPA standards had been available to employees. He referenced Employer Exhibits 1, 2, and 3. He testified that Miles Reichling had used this training to become licensed. Charles Schultz, ODNR Chief of Employment Services, testified that ODNR had worked hard to get all operators properly licensed. He said only the Grievant had not qualified. Mr. Schultz admitted that the Grievant had, at least on paper, been performing duties without a license.

Mr. Weisner testified as to the meaning of "a holding" classification. On cross examination, he was asked by the Union Advocate why Section 37.08 was not applied to Grievant. Mr. Weisner replied "We believe it was" "we began encouraging him to get his license starting in 1986." "We requested the audits hoping to put him in a position where no license was required, i.e., MRW3, but that approach failed." However, under the reorganization, Hocking already had a licensed Treatment Plant Operator (Reichling) and a MRW3, so Hocking had no need for a Treatment Plant Operations Coordinator."

The Union called the following witnesses:

David Runkle, a Auto Mechanic 3, who had been with ODNR for 20 years, was asked what new tasks, if any, he did since the Grievant's job was abolished. He said he now did some building maintenance and repairs and swimming pool work. He also said that these tasks were not part of his classification specification. He was asked if he was working "out" of his class specification. He said yes. However, he also said he had not filed a grievance, nor was he working more overtime.

Anthony Neece, a Maintenance Repair Worker 3, also testified. The parties stipulated that the duties of a Treatment Plant Operations Coordinator and MRW3 overlap considerably. Mr. Neece claimed that his work had "changed substantially" in that now he was working on the heating and cooling systems in the lodge which he had never done before. On the other hand, he admitted such work was within his classification specification, and he also said he was experiencing no increase in overtime.

Miles Reichling, Treatment Plant Operator, also testified. He identified the certificates of licensure as his (Employer Exhibit 15) and stated that he had not gotten the licenses on his own initiative but that the ODNR has offered the training to him. He said that OEPA had been talking about licenses since 1985 to his knowledge and that after the law in 1986, the OEPA finally certified Hocking in 1991.

The Grievant also testified. His testimony is reflected earlier in these facts (see p. 8). The Grievant

identified Union Exhibit 3. This Exhibit included copies of his notes to the Union about the abolishment. He noted that at the time that his job was abolished only 15% of his work was related to water treatment and, therefore, the requirement of a license was not credible. Attached to his statement were lists of hours worked by exempt and nonexempt employees allegedly to cover the Grievant's previous job duties.

Discussion

Layoffs are covered under Article 18 of the ORC 124.321-327 and OACR 123:1-41-01-22 are incorporated by reference into Article 18. Under ORC 124.321 job abolishment is one form of layoff. Under 124.321(D) "employees may be laid off as a result of abolishment of positions." In that same section, job abolishments are distinguished from other forms of lay off: "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." (124.321(D)) The section also provides the standard for abolishment: "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." (124.321(D)) The decision is left to the Appointing Authority: "Appointing Authorities shall themselves determine whether any position should be abolished and shall file a statement of rationale and supporting documents with the Director of DAS prior to sending the notice of abolishment." (ORC 124.321) The section also establishes the procedures: "if an abolishment results in a reduction in force, the Appointing Authority shall follow the procedures for laying off employees, ..." (124-321(D)(1) - (5))

Job abolishments have been the subject of numerous court cases and arbitrations. These decisions have established some reasonable and appropriate criteria for making judgments about the appropriateness both procedural and substantial of individual job abolishment actions. For example, Arbitrator Pincus said in Grievance No. 24-03-(88-10-25)-0079-01-04 (Caldwell v. MRDD) at p. 90. . . . [N]othing in the abolishment statutes and regulations forbids an appointing authority from consolidating or redistributing some of the employee's duties to other employees. As such, if the specific work in question needs to be performed and it is not accomplished by consolidation or redistributing (sic), the position cannot be legitimately abolished . . . Consolidations take place when job elements are assigned to others within the organization but the consolidated job elements do not represent a substantial percentage of the new position . . ." (emphasis added) This same standard was stated in a different way by Arbitrator Graham in Grievance No. 25-20-(91-08-02)-0001-01-09 (Lacy v. ODNR) at p. 16 where he said the consolidation should not add an inordinate addition to the work load of the continuing employee.

This Arbitrator spelled out some additional standards in Grievance No. 56-00-(91-09-19)-02-01-14 (Throckmorton v. OHSRA): First, the employer "shall demonstrate by a preponderance of the evidence that the job abolishment meets the standards of the statute" (see Admin. Code 124-7-01 and Bispeck v. Trumbull County Bd. of Commissioners 3705 (3rd) 26, 523 N.E. 2d 502 (1988) and Esseburne v. Agriculture Department, 49 App. (3d) 37, 550 N.E.2d 512 (Franklin 1988).

2. The evidence of not having to pay the salary (of the abolished position) BY ITSELF is not sufficient to prove efficiency and/or economy (see Bispeck supra).

3. Abolishments can only be affirmed if the appointing authority has substantially complied with the procedural requirements set forth in Section 121.32 of the Revised Code (124-7-01). (see Throckmorton pp. 24-26)

4. "Job abolishments . . . shall be disaffirmed if the action is in bad faith. The employee must prove the appointing authority's bad faith by a preponderance of the evidence." (OAC 124-07-01(A)). (See Throckmorton at pp. 27-28)

To meet the standards laid out above, the Employer must by a preponderance of the evidence show that the Grievant's job was permanently deleted -- that the tasks were consolidated or redistributed among other workers who according to their job specifications were permitted to carry out such tasks. In the case before us, the Grievant admitted that at the time of the abolishment, he did virtually nothing with regard to the water system, water treatment system, and/or the sewage system. He admitted that Miles Reichling was self-sufficient and that he (the Grievant) only did extremely routine tasks in this area when Mr. Reichling was

absent. His testimony revealed that, in essence, he was no longer acting as a "lead" worker towards Mr. Reichling, the Treatment Plant Operator. Moreover, since the Grievant did not possess the needed licenses to carry out these tasks, the Arbitrator questions whether the Grievant could, in fact, "lead" Mr. Reichling. The Grievant's main area of work, by his own statement, was handling the heating and cooling system in the lodge. The parties stipulated that within job specifications that the Treatment Plant Operations Coordinator and MRW3 have many comparable tasks. MRW3's also are charged specifically with doing repair and maintenance etc. of heating and cooling equipment. Moreover, part of these tasks were also subsumed under the MRW2 working under the direction of the MRW3. Prima facie, the Employer has shown that the job tasks of the Grievant has been re-distributed to the MRW3, MRW2, and the Treatment Plant Operator. This re-distribution has not added an inordinate amount to their tasks as shown in part by the testimony that overtime has not increased. However, the Union attempted to rebut by showing that two exempt workers and one bargaining unit employee are doing the work of the Grievant. With regard to the Natural Resource Aide, the evidence tended to show that such an employee was seasonal and did much the same thing in the '92 summer as he had done in the '91 summer. Since the Grievant worked during the summer of '91 the role of the N.R. Aide seems irrelevant. Testimony showed that the Maintenance Supervisor 2 acted only in emergencies. Lastly, the testimony by the Auto Mechanic was troublesome. The Arbitrator believes it strains reality to say that the Classification Specification of the Auto Mechanic includes on its face repair and maintenance of heating and cooling or swimming pool equipment. The word "equipment" as used in that class specification is much more limited. However, the testimony of the Auto Mechanic was vague as to just how much he was doing. Again, he said he was not putting in any more overtime. The Union also claimed that the Employer had to contract out the Grievant's work. However, the Employer rebutted this claim. The evidence clearly showed that the sub-contractor was used prior to the abolishment and that subsequent to the abolishment no significant increase in use occurred.

The Arbitrator holds that the Employer has shown that the elements of the Treatment Plant Operations Coordinator position have been permanently deleted and redistributed and/or consolidated within the job duties of other bargaining unit employees without any undue burden on them.

The Arbitrator must also ask if the job abolishment was carried out for its stated reason, i.e., efficiency. In its stated rationale, the Employer used the goal of efficiency for its reorganization plan. In the discussion of the job abolishment of the Treatment Plant Operations Coordinator, the Employer pointed out the need for licensure of those who must run the various operations regulated by the OEPA and the lack of licensure of the person holding the Treatment Plant Operations Coordinator position. The rationale pointed out that while the classification specification required appropriate licensure that the Position Description itself did not. To justify job abolishment, the Employer must do more than just prove that the salary and benefits of the position were saved. The Arbitrator finds that the Employer did justify its rationale of improved efficiency. The Arbitrator can see little need for a position where the alleged lead worker does not have the appropriate license to "lead" his subordinate. Moreover, if the various plants can be run by the Treatment Plant Operator without direct supervision of a Treatment Plant Operations Coordinator, the need for a Treatment Plant Operations Coordinator becomes attenuated. In essence, the work is being done with less people and simultaneously that part of the work requiring licensure has been appropriately covered by a licensed operator. Such a change is facially more efficient.

The most serious charge raised by the Union in this Arbitrator's mind is the question of "good faith." The Union has maintained that the Employer failed in its duty to adequately warn the Grievant of the importance of licensure and failed to properly offer him appropriate training. The question to be answered is did the Grievant know or should the Grievant have known of the criteria (license) at issue?

The Grievant maintains that the Employer did not specifically warn him of the impending importance of licensure. The manager (Bennett) admitted that he never directly warned the Grievant. But he (the Grievant) went further and claimed that he never had been offered training and was not "aware" of the OEPA regulations. This claim is disingenuous. During the same period, Miles Reichling did receive the same notices that the Employer claimed to have given to both the Grievant and Mr. Reichling. Moreover, Mr. Reichling did take the training offered and did get the licenses. The Grievant admits knowing that Reichling's promotion in 1988 (3 years prior to the abolishment) was based on licensure. The Arbitrator finds that IF the

Grievant did not know about the training and its importance, he should have known! The Grievant had numerous opportunities to understand that as a Treatment Plant Operations Coordinator he needed an appropriate license. First, at the time of re-classification (1986) as a Treatment Plant Operations Coordinator, he had a clear opportunity to learn his job specification. Second, at the time of the job audit, he clearly had a golden opportunity to understand the job specifications. Third, he was offered training at the same time as Miles Reichling and had another golden opportunity to check out licensure. The Grievant would have the Arbitrator hold him to no standard of inquiry. A job holder has some duty of inquiry and investigation about his own position and its requirements. (The Arbitrator need not explicate that standard further in this case because the Grievant implicitly claimed he had no duty to check out anything at any time!)

Conversely, the Arbitrator would have preferred better personnel management on the Employer's part. In addition to the training memos -- when no response was received from Grievant -- the Employer should have had a direct discussion with the Grievant about licensure. However, failure to have this discussion does not rise to the level of bad faith on the Employer's part.

Lastly, the Union argues that Article 37.08 should have been applied to the Grievant.

Article 37.08 of the current contract is exactly the same as 37.08 of the 1986-1989 and 1989-91 Contracts. The 1986 contract became effective July 1, 1986. Under that Contract Article 37.08 would apply where a licensure requirement changed after July 1, 1986. However, according to the testimony of both sides, the Grievant became classified as a Treatment Plant Operations Coordinator either in anticipation of, or simultaneously with, the advent of the Contract, i.e., July 1, 1986. The Classification Specification for that position Treatment Plant Operations Coordinator carried from its inception a licensure requirement.

Article 37.08 only applies if a change in licensure occurs. Strictly speaking, no change has occurred since July 1, 1986 and, therefore, 37.08 does not apply to the Grievant’s situation.

Award

Grievance denied in its entirety.

Arbitrator

January 5, 1993
Date