

ARBITRATION DECISION NO.:

552

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Bureau of Employment Services

Toledo Office

DATE OF ARBITRATION:

DATE OF DECISION:

August 2, 1994

GRIEVANT:

LeRoy A. Williams

OCB GRIEVANCE NO.:

11-09-(93-08-19)-0264-01-09

ARBITRATOR:

Harry Graham

FOR THE UNION:

John P. Gersper

FOR THE EMPLOYER:

Jerry Lehman

KEY WORDS:

Discrimination

Disparate Treatment

Administrative Leave

ARTICLES:

Article 2 - Non-Discrimination

§ 2.01 - Non-Discrimination

FACTS:

The Grievant was an African-American who was employed as an Unemployment Compensation Auditor 1 by the Ohio Bureau of Employment Services. He was involved in the United Way as the Vice-Chair. As the Vice-Chair of the United Way, the Grievant was required to attend board meetings from time to time. To do this, the Grievant sought release time from his duties. This release time was denied to him and he was forced to use his own vacation time. There were two other employees of OBES who were granted release time to attend United Way activities. Those two employees were white.

UNION'S POSITION:

Under Article 2.01 of the agreement, discrimination is prohibited on the basis of race. There is an element of disparate treatment here, as other white employees of OBES in the Toledo office were granted

release time to participate in the United Way, who were white. The Grievant, who is African-American, was denied the same type of leave. It is impossible to conclude other than that there occurred the sort of race discrimination that is prohibited by the Agreement.

EMPLOYER'S POSITION:

The Grievant works in the Unemployment Compensation Division of the Bureau, whereas the two other employees work in the Employment Services Division. The two divisions have substantially different tasks. Employees of the Employment Services Division are specifically authorized to attend meetings of various community organizations. That is not the case with employees of the Unemployment Compensation Division. The job descriptions of the two white employees require them to interact with community organizations to advance the work of the Bureau. Neither of the employees used administrative or excused leave to attend the meetings because attending such meetings is, a routine part of their duties. The State had no obligation to grant the Grievant excused time to attend the board meetings.

ARBITRATOR'S OPINION:

That the Grievant is an African-American and was not allowed to utilize excused time to attend United Way meetings does not establish evidence of racial discrimination. Also, that two employees who were allowed to attend such meetings were white, does not prove racial discrimination. Nothing showing racial hostility by management is on the record in this proceeding. In order to support a claim of racial discrimination prohibited by the Agreement, there must be some evidence in some direction, beyond the coincidence pointed out by the Union.

If employees are situated differently with respect to the employment relationship the employer may treat them differently. The two groups of employees work in different divisions which perform different functions, therefore, a charge of disparate treatment was not proved by the union.

The argument that it is "good" for the Grievant to be on the board of the United Way and therefore his grievance should be granted is not supported by the language of the contract. The Agreement does not provide for the sort of time off sought by the Grievant in this instance.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

**In the Matter of Arbitration
Between**

OCSEA/AFSCME Local 11

and

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

Case Number:

11-09-(93-08-19)-0264-01-09

Before:

Harry Graham

Appearances:

For OCSEA/AFSCME Local 11:

John P. Gersper

Staff Representative
OCSEA/AFSCME Local 11
1680 Watermark Dr.
Columbus, OH. 43215

For Bureau of Employment Services:

Jerry Lehman
Labor Relations Officer
Ohio Bureau of Employment Services
145 South Front St.
Columbus. OH. 43215

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

Issue: The parties do not agree upon the precise formulation of the issue in dispute between them. There is agreement on the fundamental nature of the controversy which involves the denial of excused time to the Grievant in order to attend Board meetings of the Ohio United Way. The Arbitrator finds the issue to be:

Did the Ohio Bureau of Employment Services discriminate against the Grievant when it denied him authorization to attend Ohio United Way meetings on State time in violation of Article 2.01 of the Agreement? If so, what shall the remedy be?

Background: There is agreement upon the events that prompt this Proceeding. The Grievant, LeRoy A. Williams, is an Unemployment Compensation Auditor 1 in the employ of the Ohio Bureau of Employment Services. He works within the Compliance Division in the Toledo, OH. office. Mr. Williams is of African-American heritage and is active in civic affairs. In the course of his life the Grievant became involved in the United Way. This activity was initially in the Toledo, OH. area. In due course Mr. Williams was asked to serve as the Chair of the United Way State Government Employees campaign. This is a very responsible and prestigious post. Subsequently he became the Vice-Chair of the Ohio United Way. Selection to that post represents recognition of his devoted service to the Ohio United Way and the goals that it espouses.

As part of his responsibilities to United Way it is necessary that Mr. Williams attend Board meetings from time to time. To do so he has sought released time from his duties as an Unemployment Compensation Auditor. Released time to attend United Way Board meetings was denied to him. In order to protest that denial he filed a grievance. That grievance was not resolved in the procedure of the parties and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points to Article 2, Section 2.01 of the Agreement and asserts that the Employer has violated it in this instance. The language of Section 2.01 prohibits discrimination for, among things, race. Mr. Williams is an African-American. He was denied excused time off work to attend meetings of the United Way Board. Such denial is prohibited under the terms of the Agreement according to the Union.

There is an element of disparate treatment in this situation that lends credence to the Union allegation of race discrimination. Other employees of OBES in the Toledo office have been given released time to participate in United Way activities in Toledo. Specifically the Union points to Pat Castro and Jerry Baum. Both have been active in the Toledo United Way and both were given released time to do so. Baum and Castro are Caucasian. It is impossible to conclude other than there occurred the sort of race discrimination that is prohibited by the Agreement according to the Union. Hence, it urges the grievance be sustained and vacation hours used by the Grievant to attend United Way Board meetings be restored to his account. It also seeks a directive ordering the agency to permit Mr. Williams to attend future United Way Board meetings on

released time.

Position of the Employer: The State denies that any prohibited discrimination occurred in this situation. It also denies that there is the element of disparate treatment alleged to exist by the Union.

The Grievant works within the Unemployment Compensation Division of the Bureau. That Division is responsible for collection of unemployment tax payments from employers in Ohio. There is another large Division of the Bureau. It is the Employment Services Division. That Division is responsible for assisting people to find jobs and for assisting employers to find employees. The two Divisions have substantially different tasks. Employees of the Employment Services Division are specifically authorized to attend meetings of various community organizations in an effort to advance the task of that Division. That is not the case with employees of the Unemployment Compensation Division.

As an Auditor Mr. Williams conducts random audits of employer accounts. He is active in assessing delinquent employers. He also may file liens against delinquent employers. He specifically does not have the sort of community liaison responsibility that is part of the job of those employees who work in the Employment Services Division of the Bureau. The State acknowledges that the Union correctly indicates that two employees of the OBES Toledo office were permitted to attend meetings of the local United Way. Both were in the Employment Services Division. One was an Employment Services Supervisor and the other was an Employment Services Interviewer. Their job descriptions require them to interact with community organizations to advance the work of the Bureau. In fact, neither used Administrative Leave or Excused Leave to attend such meetings. They did so as a routine part of their duties. In this case, the Grievant was a volunteer official of United Way. He was not active in the organization as part of his job duties. The Bureau never encouraged or discouraged his United Way activity. Mr. Williams' participation in the affairs of the United Way is purely voluntary on his part. As that is the case the State has no obligation to grant him excused time to attend board meetings. He was granted vacation and personal leave. In the opinion of the State no violation of the Agreement occurred in this situation. Hence, it urges the grievance be denied in its entirety.

Discussion: The claim of race discrimination raised by the Union is a very, very, serious assertion against the good faith of the State. As such, it deserves careful scrutiny. That the Grievant is an African-American and did not secure excused time to attend United Way meetings does not establish evidence of race discrimination. Similarly, that two employees who attended such meetings in Toledo were Caucasian does not provide evidence of race discrimination. There is an element of happenstance or coincidence that cannot be overlooked. The Union urges the Arbitrator draw an inference that is not supported by any evidence. Nothing showing racial hostility by supervision is on the record in this proceeding. Nor is any evidence of personal animosity toward the Grievant on the record. In order to support a claim of racial discrimination prohibited by the Agreement there must be some evidence, in some direction, beyond the coincidence pointed to by the Union. That the Grievant is African-American is insufficient to prompt the conclusion that he was the object of the sort of race discrimination that is prohibited by the Agreement.

Similarly, the claim of disparate treatment raised by the Union does not establish a basis for granting of this grievance. If employees are situated differently with respect to the employment relationship the employer may treat them differently. Joint Exhibit 8 in this proceeding is the Position Description of Jerry Baum. It provides that, among his duties that of carrying out an "effective community relations program." That Mr. Baum attended meetings of the Toledo United Way was arguably part of his job duties. Similarly, the Classification Specification for Patricia Castro (Jt. Ex. 5) provides that the incumbent have knowledge of "public relations." Both Mr. Baum and Ms. Castro work in Employment Services Division of the Bureau. The Grievant is employed in the Unemployment Compensation Division. The two Divisions perform very different functions. Granting that in the performance of his daily tasks Mr. Williams interacts with employers and that there is an element of public relations in his duties, that is not specified in either the relevant classification series or Position Description. That function does not have the priority in his daily tasks that it does for Mr. Baum or Ms. Castro. As that is the case, the claim of disparate treatment raised by the Union is not sustainable.

There is another reason prompting denial of this grievance. The Union in essence argues that in addition

to claimed racial discrimination that the grievance should be granted because it is "good" that Mr. Williams is on the Board of United Way. There is an obvious and fatal fallacy to that argument. It prompts the question of where the line is to be drawn? It requires no stretch of the imagination to envision a scenario where employees are active in such worthy organizations as the Boy Scouts or Girl Scouts or the Red Cross and seek time off to perform their tasks. That is an insupportable position. The Agreement does not provide for the sort of time off sought by the Grievant in this instance. Lacking such a contractual benefit which might have been, but was not, negotiated into the Agreement by the parties no basis for the claim advanced by the Union exists.

In the absence of any evidence of prohibited race discrimination that would support a finding of a contractual violation or the existence of any contractual benefit that was denied to the Grievant the grievance must be denied.

Award: The grievance is denied.

Signed and dated this 2nd day of August, 1994 at South Russell, OH.

Harry Graham
Arbitrator