

ARBITRATION DECISION NO.:

565

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health
Western Reserve Psychiatric Hospital

DATE OF ARBITRATION:

November 16, 1994

DATE OF DECISION:

January 31, 1995

GRIEVANT:

Diane DiBianca

OCB GRIEVANCE NO.:

23-18-(92-11-25)-0896-01-04

23-18-(93-01-11)-0913-01-09

23-18-(93-01-13)-0914-01-09

ARBITRATOR:

Mollie Bowers

FOR THE UNION:

Robert Robinson

FOR THE EMPLOYER:

Michael Duco

KEY WORDS:

Job Abolishment

Erosion of Bargaining Unit

ARTICLES:

Article 1-Recognition

§1.04-Inclusion/Exclusion of
New Classifications

Article 18-Layoffs

§18.01-Layoffs

FACTS:

The grievant was a Vocational Instructor II at the Western Reserve Psychiatric Hospital. The grievant's job description required her to assist in the training of patients in the Print Shop. In addition, she was required also to perform clerical, administrative, and technical duties. In December of 1992 the grievant's job was abolished. The employer's rationale for this action being taken was "primarily for reasons of economy and/or reorganization for efficiency."

UNION'S POSITION:

The Union contended that the Employer had failed to show by the required preponderance of the evidence that the job abolishment was justified by economic and efficiency needs and, therefore, the Employer violated Article 18 of the Agreement. Furthermore, the Union contended that the Employer acted in bad faith, eroded the bargaining unit and violated Article 1.04 of the Agreement by having exempt personnel perform the grievant's duties.

EMPLOYER'S POSITION:

The Employer contended that it has met its burden of showing that the job abolishment was in compliance with Article 18 of the Agreement and the Ohio Revised Code. Furthermore, it is the Employer's position that the Union has failed to meet its burden of proving that managers perform bargaining unit work or that such work has eroded the bargaining unit.

ARBITRATOR'S OPINION:

The Arbitrator concluded that the abolishment of the Vocational Instructor II position did not violate Article 18. The Employer proved by a preponderance of the evidence that the job abolishment was a result of a reorganization for the efficient operation of the Employer for the reasons of economy, or lack of work. In a rationale statement filed by the Employer, six valid reasons were listed supporting the grievant's job abolishment: (1) there was a downsizing of the Employer's operations due to a reduction in the number of patients; (2) there was only one patient in the "Printshop Training Program"; (3) training would have limited transferability with regard to competitive community employment due to technological changes in the printing trade; (4) the "S.E.T. print shop program" would close November 1, 1992; (5) vocational offerings will be community based with a small core done internally by the Employer for 40 patients, which is half of what the population was; and (6) "job coaching and skill building by Vocational Instructor I's was more economical." In disputing these factors the Union has failed to support their contentions with sufficient evidence. Likewise, there is insufficient evidence to support the Union's contentions that the Employer acted in bad faith and that the Employer had eroded the bargaining unit.

AWARD:

The position of Vocational Instructor II, PNC # 16711.0 was not abolished in violation of Article 18 or any article of the Collective Bargaining Agreement. The grievance is denied.

TEXT OF THE OPINION:

**IN THE MATTER OF ARBITRATION
BETWEEN:**

**STATE OF OHIO OFFICE OF
COLLECTIVE BARGAINING AND
DEPARTMENT OF MENTAL HEALTH,
WESTERN RESERVE PSYCHIATRIC
HOSPITAL**

-and-

OCSEA/AFSCME, LOCAL 11

Grievance Case No.

23-18-921125-0896-01-04;

23-18-930111-0913-01-09;

23-18-930113-0914-01-09

Grievant:

Diane DiBianca

ARBITRATOR:

Mollie H. Bowers

Representing the State:

Michael Duco

Representing the Union:

Robert Robinson

The Ohio Civil Service Employees Association/American Federation of State, County and Municipal Employees, Local 11 (the Union) brought this matter to arbitration challenging as improper the decision of the Department of Mental Health, Western Reserve Psychiatric Hospital (the State/the Employer) to abolish the position of Vocational Instructor II, and to layoff Diane DiBianca (the Grievant), the incumbent in that position. Three related grievances make up this dispute. In addition to the one by the Grievant alleging the layoff was improper, there are two grievances filed by Union Steward Mary Ann Tomasik regarding the consequences of the position abolishment and the Grievant's layoff. The parties stipulated that "there are no allegations of procedural defect with the abolishment action" and that this matter is "properly before the Arbitrator".

The Hearing in this case was held November 16, 1994. Both parties were represented. They had a full and fair opportunity to present evidence and testimony in support of their case and to cross-examine that presented by the other party. At the conclusion of the hearing, the parties agreed to the submission of post hearing briefs in support of their respective positions. The Union's brief was dated January 2, 1995, and the Employer's brief was dated January 17; both were received in a timely manner. The entire record has been carefully considered by the Arbitrator in reaching her decision.

ISSUE

The parties stipulated that the issue to be decided is:

Was the position of Vocational Instructor II, PNC # 16711.0 abolished in violation of Article 18 or any article of the Collective Bargaining Agreement? If so, what should the remedy be?

RELEVANT CONTRACT PROVISIONS**Article 1.04 - Inclusion/Exclusion of New Classifications**

The Employer will promptly notify the union of its decision to establish all new classifications. If a new classification is a successor title to a classification covered by this Agreement with no substantial change in duties, the new classification shall automatically become a part of this Agreement.

If the new classification contains a significant part of the work now done by any classifications in these bargaining units or shares a community of interest with classifications in one of the bargaining units, the Union may notify the Employer that it believes the classification should be in the bargaining unit within thirty (30) days of its receipt of the Employer's notice. The parties will then meet within twenty-one (21) days of such notice to review the classification specifications, and if unable to agree as to its inclusion or exclusion, shall submit the question to the SERB for resolution.

Article 18.1 - 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.

Ohio Revised Code

ORC 124.321 (D)[provides in pertinent part]:

Employees may be laid off as a result of abolishment of positions. Abolishment means the permanent deletion of a position... 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 lack of work. The determination of the lack of need to abolish positions shall indicate the lack of continued need for the positions within the appointing authority. Appointing authorities shall themselves determine whether any position shall 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 the abolishment results in a reduction in the work force the appointing authority shall follow the procedures for laying off employees.

FACTS

The parties stipulated that the Grievant's original date of hire was May 4, 1981, and that she had held the position of Vocational Instructor II from October 1984 through December 6, 1992, at which time she was laid off. The applicable Position Description for the Vocational Instructor II provided, among other things, that 70% of the job duties involved, "in order of importance", required the Grievant to:

"assist job site supervisors with from three days to two weeks training of new or transferred patients within the hospital. Supervise, instruct and assist WRPB patients in a training program in the Print Shop. Teach new skills to institutionalized or home bound patients when new on-grounds or off-grounds jobs have been found. Continue job canceling on the job site after placement or as needed if a training problem arises."

The other job duties stated in the Position Description involved mainly clerical, administrative, and technical tasks pertaining to the S.E.T. program and related duties.

In its August 1992 statement on the abolishment of the Vocational Instructor II position and of other positions, the Employer indicated that these actions were being taken "primarily for reasons of economy and/or reorganization for efficiency". As to the specific abolishment of the Vocational Instructor II position, the Employer represented that:

"Western Reserve Psychiatric Hospital is and has been undergoing downsizing. Over the last three years, the hospital has reduced its patient population from 500 to 310 patients. Duties associated with new or transferred patients have dramatically diminished with the downsizing of Western Reserve. ...With the technology of the new high speed duplicating machine, traditional printshop functions no longer exist. Only one patient is currently involved in the "Printshop Training Program". This "training" would have limited transferability with regard to competitive community employment. The vocational S.E.T. print shop program will close on November 1, 1992. Western Reserve Vocational offerings will be community based with a small core program internally. Job coaching and skill building by Vocational I's is more economical. Within the past four years Western Reserve has downscaled its in house vocational offerings from servicing 80 patents to servicing 40 patients. The remaining in house vocational programs (except for the printshop program) are not skilled professions. Exiting vocational duties are consistent with and will be assigned to Vocational Instructors I's."

In a letter dated October 26, from the Employer, the Grievant was advised of the abolishment of her position and lay off for the same reasons as stated above.

Vocational Rehabilitation Manager II Don Holley testified that there had been reductions in staff in December of 1992, because the State had been shifting funds from institutions, such as the Employer, to local community control resulting in staff moving out into the community or being laid off. He stated it was ultimately decided that the Employer only needed one Vocational Instructor I. According to Mr. Holley, instead of performing those duties set forth in the Position Description, the Grievant for the previous two years had spent half a day running the print shop, and the remainder of the day coaching and supporting other clients assigned various training jobs. He stated that there was no longer a need for her position because the Employer had discontinued the print shop as a patient work site.

Mr. Holley discussed the effect of technological changes in the printing industry moving from off set printing and duplicating machines to such equipment as Kodak high speed duplication, which meant that specific print shop skills being taught were not transferable to the community. He acknowledged that offset machines had not been used for four to six years prior to the layoff.

Mr. Holley stated that most training slots at the facility were unskilled positions, and the difference between the Vocational Instructor I and II was the difference between unskilled and skilled training. He said that the Grievant did work coaching and helping a patient acclimate to the facility's worksites. That function, according to Mr. Holley, has been eliminated, except for remaining aspects of the custodial program. He stated that it was the vocational Instructor I that heads up the custodial program and teaches skills as a crew leader. Mr. Holley testified that the reference in the rationale statement to serving 80 patients in in-house vocational training referred to the late 1980's.

Mr. Holley agreed that the Grievant had discussed her concerns about her position with him and that he responded that the Position Description reflected what she was doing because of the semiskilled nature of trade teaching. He stated that it was not the Grievant's responsibility to teach clients how to set up and produce the hospital newspaper, Vantage Point. He further stated that she served more as an advisor, but that the newspaper was a formal vocational program run by the patients. According to Mr. Holley, the Grievant and others, including Director of Psychological Services Howard Morrette, trained clients on computers. Mr. Holley noted that the Vantage Point became a quarterly publication instead of a monthly one about six months ago.

Dr. Morette testified that clients working on the newspaper teach themselves how to do so by use of computer tutorials and that the staff, including Print Shop Operator Carolyn Mockus, provided advice and help with initial instruction to patients on how to run the tutorial program. He stated that he had the Grievant helping him on the newspaper to make sure she had enough work to do. He said that was not a priority at all and commented that it was not her primary job. According to Dr. Morette, when the newspaper was put out monthly, an adviser spent half an hour a day on it, which is about the same now with the paper being published quarterly due to patient expansion to "on call" clericals. He acknowledged that he would have changed the Vocational Instructor II Position Description item regarding time spent on duties, if it had come up during an annual review.

Testimony was provided by Account Clerk III Sharon Williams that she worked in the same building as Office Machine Operator II Pam Meadows, whose position she worked in Ms. Meadows' absence. According to Ms. Williams, after the Grievant's layoff, Ms. Meadows worked in the print shop "at least four hours a day" doing work the Grievant used to do there involving bulk coping and handbook assembling.

SOS Mobile Maintenance Work Program Evaluator Roseanne Dorko testified that she had the office next door to the Grievant. According to Ms. Dorko, the Grievant supervised and trained the clients in typing, writing articles, and putting the Vantage Point together. According to Ms. Dorko, Dr. Morette first performed those duties after the Grievant was laid off and he spent less time than Grievant at the newspaper. She stated that patients are higher skilled than before due to the Mental Health Act specifications, although that Act also placed some less disabled patients back into the community.

Union Steward Mary Ann Tomasik testified she observed exempt employees and patients doing bargaining unit work. She stated that the Grievant and Print Shop Operator Ms. Mockus, worked "in tandem" at the print shop selecting which machines the patients could use. According to Ms. Tomasik, even though patient numbers went down, the print shop volume reported to her by the Grievant, increased by the time she was laid off. Ms. Tomasik testified that the Grievant performed a full time job running the print shop with

paper inventory, collating, and related activities; and those jobs are available in the community. Ms. Tomasik said the Grievant was like an editor for the newspaper by her providing advice on articles, editing, and by helping to print and to produce the newspaper.

According to Ms. Tomasik, from November 1991 to December 1992, there was only a net reduction of 30 patients at the facility. In her opinion, there are a "significant" number of high skill patients that need print shop training. She stated that after the layoff, Ms. Meadows, two named exempt secretaries, an identified patient, and Mr. Holly did a "lot of work" on the high volume copier, even though there are other copiers available. She acknowledged that there was one patient in the print shop program before the Grievant was laid off.

Local union President Betty Williams testified that the parties have a "pick 'n' post" agreement as to a specific designation for the Vocational Instructor II work area. She stated that management never discussed with her using the mail room attendant to do Vocational Instructor II duties, or anything about moving or shifting those duties.

The Grievant testified that Ms. Mockus ran the print shop. She said she became involved by bringing patients there to train and by remaining to "look after" them. The Grievant claimed that she spent an average of 20 hours a week on the newspaper engaged in numerous tasks including: training patients on the IBM computer; use of "Newsmaster"; how to type and to make up the newspaper; giving patients assignments; selecting articles with patients; and helping patients print the newspaper at the print shop. According to the Grievant, Mr. Holley told her to do work at the print shop half a day and work half a day on the Vantage Point. She stated that she still had an unnumbered amount of patients in the print shop at the time of her layoff.

The Grievant testified that she would log and run bulk copying jobs at the print shop. She acknowledged that management staff did not run bulk copying there, nor did Ms. Meadows. She identified that the print shop work log for the period September 29, 1992 to November 18, 1992, which she said does not show a "reduction" in work. It was the Grievant's testimony that she attended a meeting in November of 1992, at which Dr. Morette said he would be taking over the Vantage Point and he gave out December assignments, which had been her "job". According to the Grievant, she spoke to Mr. Holley four or five times about her Position Description, and he told her "don't worry about it" and "trust me", which she said she did.

PARTIES' CONTENTIONS

Union's Position

The Union contends that the Employer has failed to show by the required preponderance of evidence that the job abolishment was justified by economic and efficiency needs and, thus, that the Employer violated Article 18 of the Agreement. By way of relief, the Union seeks reinstatement of the Grievant to her former position with full back pay, interest thereon, and benefits. In addition, the Union requests an appropriate order whereby the Employer must revise her Position Description to accurately reflect her duties, and an order for the Employer to comply with its contractual obligations regarding work area changes.

The Union maintains that the Employer's rationale of maximizing fiscal and human resources is no more than salary savings, which is an insufficient basis to meet that contractual standard for layoff. The Union points out that no savings were mentioned regarding closure of the print shop program and asserts that such savings could not have been much anyway because there were no more than two patients in the program. According to the Union, there were no technological changes necessitating this action and Vocational Instructor I's are qualified to do the remaining duties. It is also the Union's position that the Employer's claim of decreasing need was refuted by Work Program Evaluator Dorko and "transferability" still exists because of the need for high speed duplicating skills. The Union emphasizes that the Employer's narrow interpretation of the Grievant's Position Description undervalues the importance of her Vantage Point training and supervision provided patients and staff.

The Union contends that the Employer's purported efficiency rationale of having Ms. Meadows take on the Grievant's copying was later changed to a rationale involving consolidating the Print Shop and mailroom into one work area; which has not yet happened. According to the Union, the varying reasons given for the layoff are evidence of its bad faith, as is the fact that the Grievant's Vantage Point duties were not accurately

reflected in her Position Description. The Union points out that those duties were assigned by Supervisor Holley as consistent with her Position Description and consisted of a half day's work. The Union notes that when the Grievant questioned Mr. Holley about the security of her job, he improperly told her that there was nothing to worry about. That was bad faith, according to the Union, since he should have undertaken a re-evaluation of her duties.

The Union further contends that the Employer eroded the bargaining unit and violated Article 1.04 of the Agreement by having exempt personnel perform the Grievant's duties. That includes exempt employee Ms. Baker doing bargaining unit employee Ms. Meadows' work, when Ms. Meadows was spending four hours a day doing copying work previously performed by the Grievant. The Union also notes that Dr. Morette now performs Vantage Point duties previously performed by the Grievant.

Additionally, the Union argues that the assignment of the Grievant's copying duties to Ms. Meadows constitutes an improper job consolidation. It stresses that combining the mail room and print shop duties violates the integrity of the work areas provision of Appendix N(D) of the Agreement and was never discussed with the Union.

Employer's Position

The Employer contends that it has met its burden of persuasion that the job abolishment was in compliance with Article 18 of the Agreement. According to the Employer, the job in question was a Vocational Instructor II, not print shop operator, and the Grievant's position was eliminated for the reasons set forth in its administrative request [set above]. The Employer maintains it made its decision to eliminate the Grievant's position and the training program because there is no longer a need to train patients in its print shop due to technological changes in the industry and a lack of outside jobs in printing.

The Employer emphasizes that it is the Grievant's Position Description, not those duties she performed, which is at issue. It maintains that printing duties the Grievant had performed and which were distributed to Ms. Meadows, were within the latter's Position Description. The Employer stresses that there was not enough Vocational Instructor II work in the Printshop Training Program and it allowed the Grievant to keep her salary while she did lower grade copier work and advised clients on running the Vantage Point. When reorganization became necessary, the Employer asserts, this "luxury" could not be continued.

It is the Employer's position that the Union has failed to meet its burden of proving that managers perform bargaining unit work or that such work has eroded the bargaining unit. According to the Employer, some supervisors may copy their own documents due to technological changes in copying equipment. The Employer maintains that such copying is not "purely bargaining unit work" and, thus, was not part of the duties contained in the Grievant's Position Description. It also stresses that there is no evidence the Employer acted in bad faith. The Employer maintains that the Union has failed to establish that the duties performed by the Grievant with the Vantage Point were defined as "bargaining unit work". It contends that the Employer "should not be penalized" by having the Grievant perform "make work" duties which prolonged the time she was employed at the institution until considerations of economy and efficiency made this no longer possible.

The Employer "Demurs" to the Union contention that there was no consultation between the parties before changing the Office Machine Operator II work area, but argues that is no basis to overturn the position abolishment. The Employer points out that the parties have stipulated there were no procedural defects in the job abolishment, so the Union cannot now argue this procedural matter which is, at most, a minor procedural defect.

ANALYSIS

The Arbitrator has determined that the Vocational Instructor II position was abolished in accordance with Article 18 and applicable law based upon the preponderance of the evidence in this record. The thrust of the Union's challenge is that the position should not have been abolished, and that it was abolished, contrary to Article 18.01. That contractual provision permits the abolishment of positions in the bargaining unit, if done in conformance to the procedures provided in Article 18 and pursuant to operative law. ORC 124.321 (D)

permits the Employer to abolish positions in certain circumstances providing applicable layoff procedures have been followed. The parties stipulated that there were no procedural errors in the position abolishment at issue.

The Ohio Revised Code referred to in Article 18.01 includes ORC 124.321 (D), which permits position abolishment "as a result of a reorganization for the efficient operation of [the Employer] for the reasons of economy, or lack of work". The August 1992, rationale statement filed by the Employer supporting this job abolishment relied upon various facts including that: (1) there has been a downsizing of the Employer's operations due to a reduction in the number of patients; (2) there was only one patient in the "Printshop Training Program"; (3) training would have limited transferability with regard to competitive community employment due to technological changes in the printing trade; (4) the "S.E.T. print shop program" would close November 1, 1992; (5) vocational offerings will be community based with a small core done internally by the Employer for 40 patients down from 80 patients; and (6) "job coaching and skill building by Vocational Instructor I's is more economical".

Clearly those factual circumstances, if supported by the preponderance of the evidence, met the applicable statutory requirements of the Ohio Revised Code concerning the abolishment of a position pursuant to ORC 124.321 (D). A careful review of this record shows that those circumstances are supported by such evidence and that many of those circumstances are not disputed by the Union. Mr. Holley's testimony that there had been staff reductions due to a shifting of State funding from institutions like the Employer to the local communities was not rebutted. The same is true of his testimony that the print shop was no longer being used in patient training programs. It was in that context, that Mr. Holley said that the use of the Vocational Instructor I, instead of the Grievant's position, was all that was needed economically to provide the necessary custodial aspects of the remaining programs. He also noted the fact that the number of patients had been dropping since the 1980's, which was not refuted by substantive evidence. Additionally, Mr. Holley, discussed the technological changes in the printing industry which contributed to making the printing shop programs skills not transferable to jobs in the community.

Essentially, the Union's contentions are directed at two of the factors relied upon in the rationale statement. Union witnesses offered their opinions disputing the effect of technological changes in the printing industry and the transferability of training skills for community employment purposes, but placed no substantive evidence in this record on that matter. The mere fact that the print shop has not provided off set printing training for many years is not determinative of this issue in the Union's favor. Similarly, there is insufficient evidence to support the Union's contention disputing the economic aspect of having the Vocational Instructor I provide coaching and skill building services to clients in place of the Vocational Instructor II. Additionally, it is noted that such duties are within those contained in the Position Description of the Vocational Instructor II.

Moreover, it is abundantly clear that at the time of the position abolishment, the overwhelming majority of the job duties of the Vocational Instructor II involving print shop training programs, as set forth in the position description, effectively had become defunct as of the time of the position abolishment and the Grievant's layoff. That was due to the circumstances relied upon in the rationale statement discussed above. Furthermore, these circumstances were acknowledged by the Grievant in her testimony, and that of her Supervisor, that her work at the time of the abolishment and layoff consisted of Vantage Point activities and non-training printing shop activities, all of which are not duties set forth in the Position Description for the Vocational Instructor II.

The Union's contentions that the Employer acted in bad faith in this matter is not established by sufficient evidence. Rather, the record reflects that the Employer provided the Grievant with what was tantamount to "make work" while it maintained her employment prior to the position abolishment and layoff. Likewise, there is insufficient evidence to support the Union's contention that the Employer has eroded the bargaining unit under the circumstances of this case. The Union has the burden of persuasion on that contention. The fact that management and or exempt employees have used print shop copying equipment on occasions without further specifics as to the nature and content of that use is hardly an adequate basis on which to find for the Union. That the Employer has demurred about not consulting with the Union in changing the work place of Office Machine Operator Meadows does not effect the aforementioned findings and conclusions as to the

issue the parties stipulated for the Arbitrator to address.

AWARD

The position of Vocational Instructor II, PNC # 16711.0 was not abolished in violation of Article 18 or any article of the Collective Bargaining Agreement. The grievance is denied.

Date: January 31, 1995

MOLLIE H. BOWERS, Arbitrator