

**ARBITRATION DECISION NO.:**

628

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Rehabilitation and Correction  
Pickaway Correctional Institution

**DATE OF ARBITRATION:**

February 26, 1997

**DATE OF DECISION:**

March 26, 1997

**GRIEVANT:**

Inez Rice-Valentine

**OCB GRIEVANCE NO.:**

27-22-(96-01-10)-0302-01-03

**ARBITRATOR:**

Nels E. Nelson

**FOR THE UNION:**

Anne Light Hoke, Advocate

**FOR THE EMPLOYER:**

Pat Mogan, Advocate  
Michael Duco, Second Chair

**KEY WORDS:**

Arbitrability

**ARTICLES:**

Article 25 - Arbitration Procedure

**FACTS:**

The grievant, a secretary in the education unit at the Pickaway Correctional Institute, aggravated a preexisting back strain while attending a self-defense class required for her job. The grievant's treating physician suggested that she change her starting time from 8:00 am to 8:30 am because the medication prescribed would leave her dizzy and drowsy in the morning. The department refused the grievant's request to alter her starting time. As a result, the grievant's treating and primary care physicians agreed that she would be unable to work. The grievant went on workers' compensation. A grievance (27-22-(94-09-20)-0251-01-09) was filed charging that grievant's request for a change to her starting time was based upon the recommendation of her doctor and was a "reasonable accommodation" consistent with the Americans with Disability Act.

Following the grievant's return to work she filed another grievance (27-22-(96-01-10)-0302-01-03). She charged that the department improperly placed her on an involuntary disability separation, denied her

compensation for her accrued sick and personal leaves and failed to reinstate her to her former position.

A step three hearing was held for grievance no. 0302. The current dispute arose at this hearing. The Union claims that the department agreed to combine grievances 0251 and 0302. The department's labor relations officer was the hearing officer and claims that an agreement to combine the grievances was not made. However, the department agreed to amend grievance 0302 at this hearing. Grievance 0302 was presented at step four, but a settlement was not reached

#### **UNION'S POSITION:**

The Union argued that the department agreed to combine grievance numbers 0251 and 0302. The grievant testified at the step three hearing and reported that the department's labor officer accepted the union's request to combine the grievances. The union also argued that the chief union steward's testimony was the best evidence regarding what happened at the step three hearing because he had nothing to gain or lose. The union also emphasized that the department's labor relations officer signed the amendment to grievance no. 0302 which had the effect of combining the two grievances. Finally, both grievances were considered at step four.

#### **EMPLOYER'S POSITION:**

The department contended that the grievances were separate and distinct. The department maintained that there was no written document indicating the two grievances had been combined. Furthermore, the appeal form for step four and the request for arbitration list only grievance number 0302. The department also argued that the amendment to grievance number 0302 did not refer to a change in the grievant's work schedule or mention grievance number 0251. Finally, the department argued that grievance number 0251 was not discussed at the step four meeting for grievance number 0302.

#### **ARBITRATOR'S OPINION:**

The arbitrator concluded that the department agreed to combine grievance numbers 0251 and 0302 based upon the chief union steward's testimony. The arbitrator found his testimony more credible than the labor relations officer's testimony. The Arbitrator's conclusion was also supported by common sense. Grievance number 0251 protests the department's refusal to grant the grievant's request for a schedule change. Grievance number 0302 relates to the denial of accrued sick and personal leave and her return to work. The arbitrator found that these issues would not have arisen had the department granted the schedule change which the grievant requested. Furthermore, since the grievances involved many of the same facts, it would have been logical to combine them. Finally, the Arbitrator found the lack of response to the step three hearing for grievance number 0302 was a significant factor because it would have removed any doubt about whether an agreement had been reached to combine the grievances.

#### **AWARD:**

The arbitrator held that the grievances had been combined and therefore all of the issues were arbitrated.

Note: As a result of the arbitrators ruling, the parties reached a settlement whereby the grievant was reinstated and the employer agreed to pay the grievant \$5,500 in back wages, minus appropriate deductions. The employer will credit the grievant with 110 vacation hours, credit grievant with sick leave hours and personal leave hours that would have accrued from 9-13-94 thru 12-17-95 inclusive. The grievant shall receive the above compensation within two pay periods from 2-26-97. The grievant further agrees to withdraw her claim to the secretary position she allegedly was entitled to after her return from leave

#### **TEXT OF THE OPINION:**

### **ARBITRATION DECISION**

March 26, 1997

In the Matter of

**State of Ohio, Department of Rehabilitation  
and Correction, Pickaway Correctional  
Institution**

and

**Ohio Civil Service Employees Association,  
AFSCME Local 11**

**Case No.:**

27-22-960110-0302-01-03

**Inez Rice-Valentine, Grievant**

**APPEARANCES**

**For the State:**

Pat Mogan, Advocate, Office of Collective Bargaining  
Michael Duco, Second Chair, Director of Dispute Resolution, Office of Collective Bargaining  
Iddris Abdurragib, Labor Relations Officer  
Colleen Ryan, Team Leader, Office of Collective Bargaining

**For the Union:**

Anne Light Hoke, Advocate  
Terry Hollon, Vice President/Chief Steward  
Inez Rice-Valentine, Grievant  
Robert L. Goheen, Staff Representative

**Arbitrator:**

Nels E. Nelson

**BACKGROUND**

The events giving rise to the grievance began on August 22, 1994. On that date the grievant, Inez Rice-Valentine, a secretary in the education unit at the Pickaway Correctional Institution of the Department of Rehabilitation and Correction, was attending a self-defense class which was required for her job. In the course of participating in the program she aggravated a pre-existing back strain.

The grievant was treated by a Dr. Cristales. He suggested that she change her starting time from 8:00 A.M. to 8:30 A.M. because medication that he had prescribed would leave her dizzy and drowsy at 8:00 A.M. When the department refused to alter the grievant's starting time, Dr. Cristales and the grievant's primary care physician agreed that the grievant would be unable to work. As a result, she went on workers' compensation on September 13, 1994.

On September 20, 1994 the grievant filed grievance no. 27-22-940920-0025-01 09. She charged that her request for a change in her starting time based on the recommendation of her doctor was a "reasonable accommodation." The grievant requested that she be granted a reasonable accommodation consistent with the Americans with Disabilities Act. When no step two response was received, the grievance was appealed to step three. The time limits for step three were extended on November 18, 1994 and May 9, 1995 for further investigation and information and on July 14, 1995 the grievance was extended until the grievant returned to work.

The grievant returned to work on December 18, 1995. She was placed in a secretary's position in the management unit. Because the department had placed the grievant had been placed on an involuntary disability separation on October 13, 1995, she did not receive credit for the sick leave and personal leave that she had accrued while she was on workers' compensation.

On January 8, 1996 the grievant filed grievance no. 27-22-960110-0302-01-03. In this grievance she charged that the department improperly placed her on an involuntary disability separation, denied her compensation for her accrued sick leave and personal leave, and failed to reinstate her to her former position. The grievant requested that the disability separation be expunged from her record that she be credited with accrued vacation, sick, and personal time; and that she be made whole.

The department's step two response was provided on January 18, 1996 by George Engle, a labor relations officer. It indicates that the grievant was informed of the rules regarding her disability separation by telephone and a letter dated October 13, 1995 and that these constituted a pre-separation hearing. The grievance response stated that the grievant was not due accrued sick leave or personal leave because she was being reinstated from a disability separation. It added that the law required only that she be placed in the same or similar position upon reinstatement.

The step three hearing for grievance no. 302 took place on February 29, 1996. The grievant appeared at the step three hearing with Terry Hollon, the chief steward. The union claims that at the hearing the department agreed to combine grievance nos. 251 and 302. The department was represented by Engle and Iddris Abdurragib, a labor relations officer, who served as the hearing officer. The state asserts that no agreement was made to combine the grievances.

At the third step meeting the department agreed to an amendment to grievance no. 302. It states:

"Furthermore, as a result of these violations, the employee was further harmed when she was lessed [sic] payment of wages not credited to her leave balances."

The union claims that this amendment indicates that the department agreed to combine the two grievances. The state rejects this contention.

The dispute was presented at step four on March 15, 1996. The union was represented by Brenda Goheen. The state's representatives included Colleen Ryan, a labor relations supervisor from the Office of Collective Bargaining. The union contends that grievance nos. 251 and 302 were discussed. The state claims that only grievance no. 302 was considered. In any event, no settlement was reached and the union requested arbitration.

The arbitration hearing took place on February 26, 1997. At that time the state argued that only grievance no. 302 was before the Arbitrator. It further maintained that since it had stipulated that the grievant was not placed on disability separation and should be credited with accrued sick leave and personal leave for September 13, 1994 through December 17, 1995, the only issue before the Arbitrator was whether the grievant should have been reinstated to her former position as a secretary in the education unit.

The union insisted that the department had agreed to combine grievance nos. 251 and 302. It indicated that this required the Arbitrator to determine whether the department had violated the collective bargaining agreement in September 1994 when it refused to allow the grievant to change her schedule from 8:00 A.M. - 4:30 P.M. to 8:30 A.M. - 5:00 P.M.

The parties requested the Arbitrator to rule whether the grievances had been combined before proceeding with their presentations regarding the alleged failure of the department to accommodate the grievant's back problem. After hearing the arguments regarding the issue, the Arbitrator ruled that the department had agreed to combine the grievances and indicated that he was prepared to proceed.

The parties, however, expressed a desire to attempt to negotiate a settlement. After several hours a settlement was reached and agreed to by the state and the union. As part of the settlement the grievant agreed to waive any further administrative appeals or legal action.

This decision is prepared in response to the parties' request for a written decision in support of his ruling at the hearing that they had agreed to combine grievance nos. 251 and 302.

## **ISSUE**

The issue as framed by the Arbitrator is as follows:

Did the department agree to combine grievance nos. 251 and 302?

## **UNION POSITION**

The union argues that the department agreed to combine grievance nos. 251 and 302. It points out that the grievant testified that at the step three meeting for grievance no. 302 Hollon told Abdurragib that the two grievances ought to be combined. The union notes that the grievant reported that Abdurragib accepted Hollon's request and an amendment to grievance no. 302 was written which was intended to roll together grievance nos. 251 and 302.

The union contends that Hollon's testimony was the best evidence regarding what happened at the step three meeting because he had nothing to gain or lose. It observes that he stated that all aspects of the grievant being forced to go on workers' compensation were discussed and that Abdurragib consented to roll together the two grievances. The union emphasizes that Abdurragib signed the amendment to grievance no. 302 which combined the two grievances.

The union claims that both grievances were considered at step four. It maintains that the grievant covered all of the facts relating to both grievances and that Goheen presented the union's position for both cases. The union reports that the state requested a caucus but never responded to the grievances.

The union rejects Ryan's testimony that grievance no. 251 was not discussed at step four. It points out that she admitted being out of the room during part of the mediation session. The union further notes that she acknowledged that she did not review her notes regarding the meeting prior to testifying.

## **STATE POSITION**

The state argued that grievance nos. 251 and 302 are separate and distinct Grievances. It points out that grievance no. 251 concerns the grievant's request to change her hours of work. The state notes that grievance no. 302 relates to her disability separation, entitlement to accrued leave, and reinstatement as a secretary in the management unit.

The state maintains that no written document indicates that the two grievances were combined. It observes that the appeal form for step four lists grievance no. 302 but not grievance no. 251. The state reports that the request for arbitration also refers only to grievance no 302. It stresses that the amendment to grievance no. 302 does not refer to a change in the grievant's work schedule or mention grievance no. 251.

The state indicates that Abdurragib testified that the grievances were not combined at the step three hearing for grievance no. 302. It charges that the union tried to confuse Abdurragib by the way it phrased its questions to him. The state reports that he was on sick leave for some time and admits that he may have been confused about some of the details.

The state maintains that grievance no. 251 was not discussed at the step four meeting for grievance no. 302. It points out that its grievance tracking form lists only grievance no. 302. The state notes that Ryan testified that the discussion involved the disability separation and the leave balances. It stresses that she further stated that no agreement was made to combine the two grievances.

## **ANALYSIS**

The Arbitrator must conclude that the department agreed to combine grievance nos. 251 and 302. This conclusion is based in part on the testimony of Hollon. He testified in a clear and convincing fashion that he proposed combining the two grievances and that Abdurragib agreed to his suggestion. The testimony of Abdurragib that there was no agreement to combine the grievances was less convincing. At first he seemed not to recognize the grievances at issue. Even his subsequent statements were less credible than those of

Hollon.

The Arbitrator's conclusion that the two grievances were combined is also supported by common sense. Grievance no. 251 protests the department's refusal to grant the grievant's request for a schedule change. Grievance no. 302 relates to the denial of accrued sick leave and personal leave and her return to work. These issues would not have arisen had the department granted the schedule change the grievant had requested. Since the grievances involve many of the same facts, it is logical to combine the two grievances. This fact makes the union's position all the more credible.

The Arbitrator also believes that the lack of a response to the step three meeting for grievance no. 302 is a significant factor. If the grievance procedure is to function properly, it is important that the parties meet their contractual obligations. In the instant case a third step response by Abdurragib, the hearing officer, likely would have removed any doubt about whether an agreement had been reached to combine the two grievances.

This award and the agreement reached by the parties at the arbitration hearing fully resolve the issues contained in grievance nos. 251 and 302. At the hearing the grievant had the opportunity to discuss fully the entire incident. The state admitted that there was no disability separation and agreed to credit the grievant's sick leave and personal leave balances, to grant her 110 hours of vacation, and to pay her \$5500 in back wages. The grievant agreed to forego her claim to the secretary's position in the education unit and to waive any right to any further administrative appeals or legal action.

### **AWARD**

The department and the union agreed to combine grievance nos. 251 and 302.

Nels E. Nelson  
Arbitrator

March 26, 1997  
Russell Township  
Geauga county, Ohio