

ARBITRATION DECISION NO.:

641 A (decision clarification to case #641)

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Ohio Department of Mental Health
Northwest Behavioral Healthcare

DATE OF ARBITRATION:

October, 7, 1997

DATE OF DECISION:

OCTOBER 9, 1997

GRIEVANT:

Betty Williams

OCB GRIEVANCE NO.:

28-18-961230-1402-01-04

28-18-961217-1397-01-04

ARBITRATOR:

Anna DuVal Smith

FOR THE UNION:

Herman Whitter

FOR THE EMPLOYER:

Tim Wagner

KEY WORDS:

Union dues
Good faith mitigation of damages
Notification of Determination of Rights

FACTS:

Arbitrator clarified her decision on the above cited grievances and both parties notified the arbitrator of their mutual agreement on the issues of withholding union dues and reinstatement of insurance.

AWARD: NA

TEXT OF THE OPINION:

* * *

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration
Between
OHIO CIVIL SERVICE
EMPLOYEES ASSOCIATION
LOCAL 11, AFSCME, AFL-CIO
and
OHIO DEPARTMENT OF
MENTAL HEALTH

DECISION CLARIFICATION

Anna DuVal Smith, Arbitrator

Case No. 28 18 961230 1402 01 04

Case No. 28 18 961217 1397 01 04

Hearing

Betty Williams, Grievant
Remedy

Date of Hearing: October 7, 1997
Management Advocate Timothy Wagner
Union Advocate: Herman Whitter

Place: Northcoast Behavioral Healthcare
Northfield, Ohio

Issues and Answers

Issue 1: Was leave of eleven (11) hours of vacation for November 9 10, 1996 properly denied?
Answer: Yes.

Issue 2: An issue on insurance reinstatement and claims was discussed and resolved by mutual agreement.

Agreement: The parties mutually agree the Ohio Department of Mental Health will immediately follow up on insurance reinstatement and payment of claims.

Issue 3: An issue on withholding of Union dues was discussed and resolved by mutual agreement.

Agreement: The Union will rebate Union dues to the extent they have been overpaid.
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Issue 4: Is the Grievant entitled to overtime for holidays she would have worked but for her removal?

Answer: Pursuant to the past practice of the parties, this issue is untimely as inclusion of overtime was not raised during the grievance procedure up to and including the arbitration hearing.

Issue 5: Is the Grievant entitled to interest?

Answer: No

Issue 6: Did the Grievant make a good faith attempt to mitigate damages?

Answer: Yes. The good faith standard is low and the burden is on the Employer. No specific effort is required, nor is success. The Employer did not establish that the Grievant failed to make a reasonable effort to secure income. In this case, the Grievant unsuccessfully sought income by a number of methods, including those used to secure her employment with ODMH. She testified she consulted newspaper advertisements, friends, and postings at OBES when she went to apply for unemployment benefits, but her education, vision and lack of transportation hindered her success. She also testified she was under the impression she had completed her application for unemployment benefits. The Notice of Determination of Benefits Rights which she received by mail about the time her grievance arbitration was scheduled did not tell her otherwise, but instead states, "Claimant's application is allowed," speaks to appeal rights and procedure, and makes reference to a forthcoming "determination of eligibility." It was reasonable for her to await that determination and not to be alarmed when it was not immediately forthcoming. Nowhere in here is there indication of a bad faith attempt to take advantage of the situation at the expense of the Employer. The Grievant believed she had filed for unemployment benefits and she sought other work.

This clarification applies only to Case Nos. 28 18 961217 1397 01 04 and 28 18 961230 1402 01 04.

Anna DuVal Smith, Ph.D. Arbitrator

Cuyahoga County, Ohio October 9, 1997 **2**

Date: October 9, 1997

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OCSEA/AFSCME

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Ohio Office of Collective Bargaining

Number of Pages Following: 2

Special Instructions:

Revision per Robert Thornton and Herman Whitter.
Signed originals follow by U.S. Mail,

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