

VOLUNTARY LABOR ARBITRATION TRIBUNAL

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In the Matter of Arbitration \*  
Between \*

CLARIFICATION  
OF AWARD

OHIO CIVIL SERVICE \*  
EMPLOYEES ASSOCIATION \*  
LOCAL 11, AFSCME, AFL/CIO \*

Anna DuVal Smith, Arbitrator

and \*

Case No. 27 04 960618 0154 01 03

OHIO DEPARTMENT OF \*  
REHABILITATION & \*  
CORRECTIONS \*

James Hess, Grievant  
Removal

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The Issue

A telephone conference on this matter took place on January 29, 1998, between 2:00 and 2:40 p.m. John McNally and Michael Duco of the Ohio Office of Collective Bargaining, Herman Whitter and George Yerkes of the Ohio Civil Service Employees Association participated. Arbitrator Anna DuVal Smith presided. The parties jointly requested clarification of the Arbitrator's award of overtime. Their questions, as framed by the Arbitrator, were:

1. What was the basis for the award of overtime in this case?
2. To what extent are the parties to view the award of overtime in this case as setting precedent for future cases?
3. How is overtime for the Grievant to be calculated?

\*\*1\*\*

Clarification

As to the first question, I have not previously awarded over time in State of Ohio/OCSEA cases. I did so here because of the presence of several features indicating it was appropriate in this particular case. First, the record established that the Grievant was working overtime when some of the alleged incidents took place. But for the fact that he was working overtime, he would not have been in a position to commit a number of the acts with which he was charged. Second, the Grievant had a clean disciplinary history, including no disciplines for attendance. Third, the record established that the Grievant regularly and frequently worked overtime. A remedy that does not include nonspeculative overtime earnings lost, especially when, as here, a significant portion of an improperly discharged grievant's earnings came from overtime, is not a make whole remedy. Fourth, by the terms of the Collective Bargaining Agreement, the Grievant was subject to mandatory overtime by seniority. This reduced speculation in the calculation of the amount of the award because mandated overtime earnings lost could be based on that worked by the officer

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who assumed the Grievant's position, since he would be relatively close to the Grievant in seniority and on the same overtime roster the Grievant would have been, had he not been discharged.

On the second question, I lack authority to decide any but the case before me and therefore did not intend my ruling to extend to any future disputes between the parties. My award was based solely on the record before me, the facts of which made overtime both nonspeculative and appropriate as part of a make whole remedy.

On the third question, during the telephone conference, I made several suggestions on how to calculate overtime earnings due the Grievant and remanded the case for the parties' further

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consideration, retaining jurisdiction to resolve further dispute on this point. The parties subsequently reached an agreement on the method of calculation, making this issue moot.

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Anna DuVal Smith, Ph.D.  
Arbitrator

Cuyahoga County, Ohio April 5, 1998      \*\*3\*\*