

ARBITRATION DECISION NO.:

693

UNION:

OCSEA Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Youth Services

DATE OF ARBITRATION:

???????? (bench decision?)

DATE OF DECISION:

February 2, 1999

GRIEVANT:

Scott Smith
David McLaughling

OCB GRIEVANCE NO.:

35 06 (98 01 23) 0001 01 04.
35 06 (98 06 30) 0016 01 03
35 22 (98 06 08) 0030 01 06

ARBITRATOR:

David M. Pincus

FOR THE UNION:

Jim Pagani, Lead Staff Rep.
Herman S. Whitter, Esq., Dir. of Dispute Resolution

FOR THE EMPLOYER:

David S. Reber, Labor Relations Admin.
Colleen Ryan, LRO
Michael P. Duco, Mgr. of Dispute Resolution
Bradley E. Rahr, Sr., LRO

KEY WORDS:

Back Pay
Burden of Proof
Civil Service Exam
Internal Promotions
Language Dispute
Minimum Qualifications
Roll Call Pay
Seniority

ARTICLES:

Article 17

FACTS:

The Employer failed to promote bargaining unit members from the Ohio Department of Youth Services after said bargaining unit members met minimum qualifications for the JCO positions.

EMPLOYER'S POSITION:

The Employer believed that it could choose applicants from civil service certification lists when dealing with these internal promotions.

UNION'S POSITION:

According to Article 17, the Employer is required to rely on seniority for promotion purposes.

ARBITRATOR'S OPINION:

The Employer violated Article 17 of the collective bargaining agreement when it failed to promote the previously specified bargaining unit members, even though they met the minimum qualifications specified. The Employer, as the proposing party of the language in dispute, has the burden of establishing the propriety of its interpretation. Here it failed to meet its burden.

It should be noted that this award is limited to those peculiar circumstances dealing with internal promotions. In all other circumstances, the Employer is not limited in its use of civil service certification lists. This award, moreover, neither modifies nor eliminates the remaining terms and conditions negotiated by the parties, or the job specifications agreed to by the parties.

Any, and all, prior acceptance or non acceptance decisions made by bargaining unit members regarding upgrades to the new JCO classification from any other eligible positions shall not be impacted by this award. Bargaining unit members shall be bound to those prior decisions.

All other grievances, dealing with the same disputed issue, with proper standing and presently being processed, shall be summarily dealt with as a consequence of this Arbitrator's award. The Arbitrator shall retain jurisdiction to hear disputes of proper standing. Grievances not yet filed, but presented within the timeframes pursuant to Article 25.02, Step One, shall be deemed as having proper standing.

AWARD:

The two grievants have been promoted during the interim to JCO positions. As such, their promotion rights have been fulfilled. The Employer is, however, ordered to pay these individuals for any financial losses incurred but for the Employer's misapplication of Article 17 and the Memorandum of Understanding. These losses include back pay and role call pay for the period in question.

TEXT OF THE OPINION:

* * *

AND
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
VOLUNTARY ARBITRATION PROCEEDING

IN THE MATTER OF THE ARBITRATION BETWEEN

STATE OF OHIO OHIO DEPARTMENT OF YOUTH SERVICES

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME

GRIEVANTS: SCOTT SMITH AND DAVID MCLAUGHLING

GRIEVANCE NO: 35 06 12398 01 01 04

35 06 63098 16 01 03

35 22 60898 30 01 06

ARBITRATOR'S AWARD
ARBITRATOR: DR. DAVID M. PINCUS
DATE: FEBRUARY 2, 1999

APPEARANCES

For the Employer:

David S. Reber
Colleen Ryan
Michael P. Duco
Bradley E. Rahr, Sr.

Position:

Labor Relations Administrator
Labor Relations Officer, Central Office
Manager of Dispute Resolution
Labor Relations Officer

For the Union:

Jim Pagani
Herman S. Whitter, Esq.

Position:

Lead Staff Representative
Director of Dispute Resolution

* * *

AWARD

The employer did in fact violate Article 17 of the collective bargaining agreement when it failed to promote the previously specified bargaining unit members even though they met the minimum qualifications specified in paragraph 5 of the Memorandum of Understanding (Joint Exhibit 2). The employer, as the proposing party of the language in dispute, has the burden of establishing the propriety of its interpretation. Here, it failed to meet its burden. I am in agreement with the union's version of what took place during bargaining. Nothing in the record indicates that the union ever intended to erode, modify, or change Article 17 in terms of its reliance on seniority for promotion purposes.

It should be noted this Award is limited to those peculiar circumstances dealing with internal promotions. In

all other circumstances, the employer is not limited in its use of civil service certification lists. This Award, moreover, does not modify nor eliminate the remaining terms and conditions negotiated by the parties as contained in the Memorandum of Understanding (Joint Exhibit 2), and the job specifications agreed to by the parties. Any, and all, prior acceptance or non acceptance decisions made by bargaining unit members regarding upgrades to the new JCO classification from any other eligible positions shall not be impacted by this Award. Bargaining unit members shall be bound to those prior decisions.

The remedy to be outlined below has some specific and general ramifications. The two grievants have been promoted during the interim to JCO positions. As such, their promotion rights have been fulfilled. The state is, however, ordered to pay these individuals for any financial losses incurred but for the employer's misapplication of Article 17 and the Memorandum of Understanding (Joint Exhibit 2). These losses include back pay and role call pay for the period in question.

All other grievances, dealing with the same disputed issue, with proper standing and presently being processed, shall be summarily dealt with as a consequence of this Arbitrator's Award. The Arbitrator shall retain jurisdiction to hear disputes of proper standing. Grievances not yet filed, but presented within the timeframes pursuant to Article 25.02, Step One, shall be deemed as having proper standing.

The parties shall have sixty (60) days to identify grievances presently in the system.

February 2, 1999
Moreland Hills, Ohio

Dr. David M. Pincus
Arbitrator

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