

REVIEWED BY

NOV 13 2002

GRIEVANCE COORDINATOR

#812

 *
 In the Matter of Arbitration *
 *
 Between *
 *
 OCSEA/AFSCME Local 11 *
 *
 and *
 *
 The State of Ohio, Department *
 of Rehabilitation and Correction *
 *

Case Number:
Scott Woodland 635
 27-08-(4-17-02)-635-
 01-03

Before: Harry Graham

APPEARANCES: For OCSEA/AFSCME Local 11:

Donny Sergeant
 Staff Representative
 OCSEA/AFSCME Local 11
 390 Worthington Rd.
 Westerville, OH. 43082-8331

For The State of Ohio:

Michael Duco
 Office of Collective Bargaining
 100 East Broad St., 18th Floor
 Columbus, OH. 43215

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument in Westerville, OH. on October 23, 2002

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Do Corrections Officers have recall rights back to their parent institution per Article 18?

BACKGROUND: There is agreement upon the event that prompts this dispute. The Employer closed a correctional facility in Orient, OH. Employees at Orient exercised their bumping rights under the Agreement. It came to be that some employees were bumped from another facility, the Franklin Pre-Release Center. (FPRC). Those bumped from Franklin Pre-Release received a letter detailing their bumping rights. (Jt. Ex. 7). That letter indicated in relevant part:

In the event you were displaced out of your classification, institution/office or appointment type you shall have recall rights in your same, similar or related classification series with FPRC and within the recall jurisdiction (See Appendix J of the Collective Bargaining Agreement) for a period of twenty-four (24) months provided you meet the minimum qualifications as stated in the classification specification. (Emphasis in original).

As set forth further below, the Union interpreted Joint Exhibit 7 to constitute recall rights to the institution, FPRC. The State disagreed. A grievance protesting the interpretation of the State was filed. It was processed through the grievance procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE UNION: The Union points out that Section 18.01 of the Agreement provides that when lay-offs occur they must be done by Section 124.321-.327 of the Ohio Revised Code and Rule 123:1-41-01 through 22 of the Ohio Administrative

Code. The Agreement continues in Article 18 to provide for "Implementation of Layoff Procedure." (Section 18.03). Then, in Section 18.11 the Agreement discusses the recall procedure. As the Union urges the Agreement be read the recall procedure is the reverse of the layoff procedure. That is, when people are laid-off from a particular facility, they should be recalled to that facility. That did not occur in this situation. People laid-off from Franklin Pre-Release must often drive long distances to and from the sites where they now work. Not only does this represent a breach of the Agreement according to the Union, it represents a misapplication of training supplied to the Union by the State on this very point. Union Exhibit 1 is a guide to the manner in which layoff and recall should be conducted in State service. It was prepared by the Office of Collective Bargaining. On page 15 is found the manner in which employees are to be recalled. In relevant part, the training material prepared by the Office of Collective Bargaining indicates that:

Employees may be recalled to positions in the same or similar classification grouping from which laid off, at the same or lower pay range. (Emphasis in original).

The Union interprets that language to mean that employees should be recalled to the work site from which they were laid off. Further, it relates the history of training by the State

to be that the State itself told the Union that people were to be recalled to their home institution. That did not occur in this instance. Thus, the Union urges the grievance be sustained and that people displaced from the Franklin Pre-Release Center be recalled to that facility.

POSITION OF THE EMPLOYER: The State points out that the presentation of the Union was incomplete. Section 18.01 indicates layoffs are to be made pursuant to the Ohio Revised Code and relevant Administrative Rule "except for the modifications enumerated in this Article." There are exceptions in Section 18.11, "Recall." The language found there provides that when the State is going to recall employees to a classification from which a layoff occurred:

The laid-off employee with the most state seniority from the same, similar or related classification series for whom the position does not constitute a promotion as defined in Article 17, and who prior to his/her layoff, held a classification which carried with it the same or higher pay range as the vacancy, shall be recalled first (See Appendix I). All employees who are laid off or displaced out of their classification shall be placed on the recall list by the effective date of their layoff.

The language does not show that employees go back to their home institution when recalled from layoff. Rather, it refers to creation of a recall list for employees who have been "displaced out of their classification." Over the years the State has laid-off and recalled thousands of employees. It has always created a recall list by classification, not

facility.

At Appendix J the Agreement contains the various jurisdictions maintained by different departments of the State. On page 162 is found the jurisdictions of the Department of Rehabilitation and Correction. District 2, the Central District, contains the following institutions:

Orient, Pickaway, Southeastern Correction Institution, London, Madison, Corrections Reception Center, Franklin Pre-Release Center, Belmont, Noble Adult Parole Authority-Columbus District Offices.

Employees in Franklin Pre-Release have recall rights to the facilities in District 2. They do not have recall rights specifically to that institution.

That recall rights are by classification, not institution is further shown by the last paragraph of Section 18.11. It indicates that:

Any employee accepting or declining recall to the same, similar or related classification series and the same appointment category (type) from which the employee was laid-off or displaced shall be removed from the recall and reemployment list if recalled to his/her original classification and appointment category (type).

Again, no reference is made to recall to the institution from which an employee had been laid off. Rather, recall is by classification series. Employees have recall rights by classification, not facility under the Agreement. As that is the case, the State contends the grievance must be denied.

DISCUSSION: Article 18, Section 18.11 deals specifically with

this situation. Cited above, it provides in the second paragraph that "All employees who are laid-off or displaced out of their classification shall be placed on the recall list by effective date of their layoff." (Emphasis supplied). In addition, the third paragraph of Section 18.11 indicates that "Recall rights shall be within the Agency and within recall jurisdictions as outlined in Appendix J." (Emphasis supplied). The language supports the position of the Employer in this situation. Recall rights are within the recall jurisdiction. They are not specific to the institution.

The Office of Collective Bargaining did not inform the Union that recall rights were to the institution rather than to the recall jurisdiction. The training materials provided to the Union (Union Ex. 1) show that employees are to be recalled to their positions "in the same or similar classification grouping from which laid off...." No mention is made of recall to the institution.

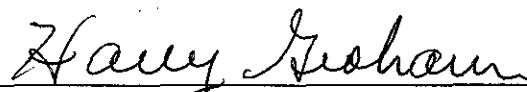
That the position of the State is correct in this dispute is further indicated by the existence of the geographical jurisdictions found in Appendix J of the Agreement. Pains were taken to divide the Department of Rehabilitation and Correction into geographic zones. The Franklin Pre-Release Center is grouped in the Central Zone with other institutions in the central part of the Ohio. Division of the State into

the various zones reflects the bargain made in Section 18.11 of the Agreement. Recall rights go to the recall jurisdiction outlined in Appendix J. They do not go to the institution.

Joint Exhibit 7 is the layoff notice from the Warden of the Franklin Pre-Release Center. It provides "In the event you were displaced out of your classification, institution/office or appointment type you shall have recall rights in your same, similar or related classification series within FPRC and within the recall jurisdiction...." (Emphasis in original). That letter is wrong. Recall rights per Article 18, Section 18.11 extend to the classification from which the employee was laid off in the appropriate recall jurisdiction as set forth in Appendix J of the Agreement. An erroneous letter from the head of an institution cannot alter the terms of the Collective Bargaining Agreement.

AWARD: The grievance is denied.

Signed and dated this 7th day of November, 2002 at Solon, OH.



Harry Graham
Arbitrator