

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 27-03-20080509-0032-01-03

The Ohio Civil Service Employees
Association, AFSCME Local 11

GRIEVANT: Dwight Bethel

AND

1035

Ohio Department of Corrections
Chillicothe Correctional Facility

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: June 17, 2009

APPEARANCES FOR THE PARTIES

Management: Christopher Lambert, Labor Relations Officer
Management Advocate
Victor Dandridge, Office of Collective Bargaining

UNION: David Justice, Ohio Civil Services Employees
Association, AFSCME Local 11,
Union Advocate

PROCEDURAL HISTORY

Chillicothe Correctional Institute is hereinafter referred to as "Management". The Ohio Civil Service Employees Association, AFSCME, Local 11 is hereinafter referred to as "Union". Dwight Bethel is the "Grievant".

Grievance No. 27-03-20080509-0032-01-03 was submitted by the Union to Management in writing on May 8, 2008 pursuant to Article 25 of the parties' collective bargaining agreement. Following unsuccessful attempts at resolving the grievance, it was referred to arbitration in accordance with Article 25, Section 25.10 of the 2006-2009 Collective Bargaining Agreement.

Pursuant to the collective bargaining agreement between the Union and Management, the parties have designated this Arbitrator to hear and decide certain disputes arising between them. The parties presented and argued their positions on June 12, 2009 at the Chillicothe Correction Facility. During the course of the hearing, both parties were afforded full opportunity for the presentation of evidence, examination and cross-examination of witnesses, and oral argument. Witnesses were sequestered during the hearing. The hearing was concluded on June 12, 2009.

The parties stipulated that the grievance and arbitration were properly before the Arbitrator.

The parties did stipulate to the issue as follows: Did the Employer violate Article 34.07 of the 2006-2009 Contract when it denied paid administrative leave to the Grievant, Dwight Bethel, (to attend) an Industrial Commission of Ohio hearing on April 30, 2008. If so, what shall the remedy be?

PERTINENT PROVISIONS OF THE 2006-2009 AGREEMENT

34.07 - Leave to Attend Industrial Commission Hearing

An employee shall be granted time off with pay from regularly scheduled work hours, including travel time, sufficient to attend one hearing conducted by the Ohio Industrial Commission in the determination of the employee's workers' compensation claim. In addition, an employee will be granted time off with pay from regularly scheduled work hours, including travel time, sufficient to attend any hearing where the Employer contests the employee's workers' compensation claim.

BACKGROUND

Grievant is employed as a correction officer at the Chillicothe Correctional Institution. On October 13, 1997 Grievant suffered a work-related injury caused by a bar of soap, which was thrown at him by an inmate. The original claim was allowed. On January 23, 2008, the treating physician of Grievant submitted a C-9 form for additional chiropractic care and a onetime purchase of a home exercise ball. (The C-9 application is the physician's report/treatment plan for industrial injury.) CompManagement Health Systems, the managed care organization that reviews, approves and monitors all medical treatment received by employees on worker's compensation, for the Department, denied the application. The treating physician then requested a peer review of the decision. The reviewing chiropractic also denied the request. Grievant's attorney then filed for an appeal of the denial of C9 dated February 28, 2008. The MCO and Grievant did not resolve the medical dispute, and the MCO referred the dispute to the Ohio Bureau of Worker's Compensation, hereinafter referred to as BWC, for a determination. The BWC decision disallowed the treatment/services. Grievant, by and through counsel, appealed said decision to the Industrial Commission on April 4, 2008. An appeal hearing was scheduled before the Industrial Commission on April 30, 2008. CompManagement, Inc., the third party administrator that manages workers' compensation claims of the Department, represented management at the hearing. CompManagement,

Inc and CompManagement Health Systems are sister companies. Grievant requested leave with pay to attend said hearing. Management granted the leave but approved vacation time in lieu of the requested administrative leave.

The Union filed its grievance on May 08, 2008 alleging a violation of Article 34.07. The grievance was not resolved within the procedure established by the collective bargaining agreement, and was properly advanced to arbitration.

POSITIONS OF THE PARTIES

MANAGEMENT

Management contends that there was no contractual violation. An employee is granted administrative leave to attend one hearing before the Ohio Industrial Commission regarding the determination of the employee's worker's compensation claim and any hearing where the employer contests the employee's worker's compensation claim. Management asserts that the Grievant, and not Management, appealed the decisions of CompManagement Health Systems and BWC. Grievant was not contractually eligible for paid administrative leave for this hearing on April 30, 2008 because Grievant, and not Management, appealed first to the BWC and then to the Industrial Commission.

Management requests that Grievance No. 27-03-20080509-0032-01-03 be denied.

UNION

Union contends that the denial of the requested leave was in violation of the Collective Bargaining Agreement, Article 34, Section 34.07. CompManagement Health Systems, the MCO of the Department, denied the request. The Union argues that the MCO is the agent of Management; therefore, Management is contesting the claim. Further CompManagement Health Systems, the MCO, and CompManagement, Inc., the TPA, are sister

companies. As sister companies, the medical claim denials of the MCO favor CompManagement, Inc as the representative of Management due to an alleged bias by the MCO. Union requests that Grievance No. 27-03-20080509-0032-01-03 be sustained, and that Grievant be credited for loss of vacation time, and be paid administrative leave.

DISCUSSION

The language of Article 34.07 is clear and unambiguous. Neither advocate advances any argument of ambiguity in the article or any ambiguity arising from reading any other provisions of the collective bargaining agreement. No mutual mistake is alleged.

An employee is entitled to time off with pay from regularly scheduled work hours sufficient to attend one hearing conducted by the Ohio Industrial Commission in the determination of the employee's workers' compensation claim. Management asserts that the one time payment is for the initial claim filing. The Arbitrator disagrees. The language of the article states only that "...hearing conducted by the Ohio Industrial Commission in the determination of the employee's workers' compensation claim". The language of the article specifically limits a one-time payment for only one hearing before the Industrial Commission. The representative of the MCO gave several examples of situations that require determinations in a claim by the Ohio Industrial Commission. For instance, although this claim was originally allowed in 1997 the first paragraph in Union 1- exhibit, BWC Order dated March 26, 2008, states that "the MCO and the parties could not resolve the medical dispute and the MCO has referred the dispute to the Ohio Bureau of Workers' Compensation (BWC) for a determination, and the BWC determination was appealed to Industrial Commission as evidenced by the Record of Proceedings, Union Exhibit-3. Article 34.07 provides a one-time payment to attend one hearing conducted by the Ohio Industrial Commission in the determination of the employee's workers' compensation claim.

Grievant testified that he has never been paid for a hearing on the determination of his worker's compensation claim before the Ohio Industrial Commission.

Article 34.07 further provides an employee with administrative leave, including travel time, sufficient to attend any hearing where the Employer contests the employee's workers' compensation claim. The condition precedent is that the employer must contest. This includes any action taken by Management's representative, CompManagement, Inc. The record of the proceedings and the admissions of the Grievant indicate that it was the Grievant, and not management, that contested the denial of the MCO and the determination of the BWC.

The argument that CompManagement Health Systems is bias, and renders denials solely because she is a sister company to CompManagement, Inc., the third party administrator, is without merit absent a showing of impropriety by CompManagement Health Systems. The medical management responsibility of BWC was switched to managed care organizations that review, approve and monitor all medical management of a claim. Managed care organizations are extensions of the BWC, and not Management, and they do not affect the contractual rights of the parties under its collective bargaining agreement. Grievant is not entitled to administrative leave based upon denials of the treatment plan by the MCO, which are appealed by Grievant.

The statement of facts on the grievance form states "member should have been granted time off with pay including travel pay (administrative leave) but had to use his own time instead" and cites contract Article 34.07 and all that apply. Grievant testified that he was never paid administrative leave for any hearing before the Industrial Commission. The Contract provides for one-day pay for one hearing before the Industrial Commission; therefore, Grievance no. 27-03-20080509-0032-01-03, is granted.

AWARD

Having heard, read and carefully reviewed the evidence and argumentative materials in this case and in light of the above Discussion, Grievance no. 27-03-20080509-0032-01-03 is granted. Grievant shall be credited for loss of vacation time, and be paid one day administrative leave, less appropriate deductions.

Dated: June 17, 2009

/s/ Meeta Bass Lyons

Meeta Bass Lyons, Arbitrator
Steubenville, Ohio