

VOLUNTARY ARBITRATION
PROCEEDING

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE STATE OF OHIO, DEPARTMENT OF
REHABILITATION AND CORRECTIONS

-AND-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION,
AFSCME, LOCAL 11

GRIEVANT: ROBERT YOUNG

GRIEVANCE NO: 27-04-2008/1125-0166-01-03

Arb
Decision
1049

ARBITRATOR'S OPINION AND AWARD

ARBITRATOR: DAVID M. PINCUS

DATE: DECEMBER 18, 2009

APPEARANCES

FOR THE EMPLOYER

NAME

POSITION

Rodney Francis

Administrator, CMC

Allison Vaughn

Labor Relations Officer 3

Jackie Milsom

OCB/Labor Relations Specialist

Venita S. White

LRO 3 - DRC CO

FOR THE UNION

NAME

POSITION

John Porter

Associate General Counsel

Sandra F. Bell

General Counsel

David Johnson

Operations Director

Leon Hines

Chief Steward 2572

Roxie Turner

Steward 2572 - Sitting in for Chapter President

Robert Young

C.O. Grievant

George L. Yerkes

Staff Representative

Kevin Birchfield

Staff Representative

Timothy Roberts

OCSEA Member

PERTINENT CONTRACT PROVISIONS

DEPARTMENT OF REHABILITATION AND CORRECTION

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B. Pick-A-Post

xxx

6. Management retains the right to deny for good management reasons after consultation with the affected employee and the Union.

ARTICLE 25 – GRIEVANCE PROCEDURE

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25.03 Arbitration Procedures

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The decision and award of the arbitrator shall be final and binding on the parties. The arbitrator shall render his/her decision in writing as soon as possible, but no later than forty-five (45) days after the conclusion of the hearing, unless the parties agree otherwise.

Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement.

If either party desires a verbatim record of the proceeding, it may cause such a record to be made provided it pays for the record. If the other party desires a copy, the cost shall be shared.

(Joint Exhibit 1, pg. 94)

ISSUE

Whether the Grievant, Robert Young, was removed from 8 West Doan, a post located at the Ohio State University Medical Center, in violation of the Contract? If so, what shall the remedy be?

THE ARBITRATOR'S OPINION

From the evidence and testimony adduced at the hearing and an impartial review of the record including pertinent contract provisions, it is this Arbitrator's opinion that Appendix Q, B(6) was violated by the Employer. It did not have a "good management reason" to remove the Grievant from his bid position.

As other panel arbitrators have previously held,¹ "good management reasons" means not arbitrary, capricious or discriminatory. This Arbitrator agrees with the manner in which this term has been operationalized by these other arbitrators. This definition does not encompass a "just cause" standard for this particular type of "removal" decision; which offers the employer a certain amount of discretion.

¹ Department of Rehabilitation and Correction and Ohio Civil Service Employees Association, AFSCME, Local 11, Case No. 27-15-(12-29-93)-309-01.03, Crosbie (Idavec); Department of Rehabilitation and Correction and Ohio Civil Service Employees Association, AFSCME, Local 11, Case No. 27-25-(93-11-94)-0627-01-03, Appeal (Nelson); Department of Rehabilitation and Correction and Ohio Civil Service Employees Association, AFSCME, Local 11, Case No. 27-04-19990804-381-01-03, Dowler and Winfield (Smith).

Here, the Employer abused its discretion. It hid behind a third party contract entered into by the Employer and OSU. A contract which precluded any Union involvement even though its terms and conditions potentially impact bargaining unit members pick-a-post rights.

Testimony provided by Rodney Francis, Administrator, clearly underscores this determination. He expressly and unequivocally noted his decision was primarily a function of language contained in a Medical Services Agreement (Joint Exhibit 6) between the Employer and Ohio State University. Section I states in pertinent part:

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require that all physicians and personnel provided under this Agreement be bound to observe the laws, regulations and policies of the State of Ohio and the Department governing institution operations. In recognition of the sensitive nature of penal institutions, the Hospitals agrees that in the event the Departments has reason to believe that any of the individual physicians or personnel provided under this Agreement have failed to observe such laws, rule or regulations, the Department may give written notice to the Hospitals of such fact and the reasons therefore; and if the problem cannot be resolved after a reasonable amount of time, the Hospitals agrees to remove the individual about whom dissatisfaction has been expressed by the Department, and to cover with other physician or appropriate personnel until an approved replacement can be found. The Department agrees to allow the Hospitals a reasonable amount of time to find an approved replacement. The Department agrees to a reciprocal arrangement regarding correctional staff assigned to duty at the Hospitals or performing services under this Agreement who fail to observe laws, rules or policies of the Hospitals.

(Joint Exhibit 6, pgs. 54-58)

He was concerned that the reciprocal arrangement noted in the contract language could be jeopardized if he failed to remove the Grievant from his bided post. As such, he substituted contractually justified discretionary authority outlined in Appendix Q with a third party contractual veil.

Nothing in the Collective Bargaining Agreement nor Appendix Q allows denial of a bid for this particular reason. The parties, moreover, never intended a third party contract to serve as a good management reason.

An interpretation of this sort would place all of the discretion in the hands of Ohio State and eliminate a critical management right while limiting the Union's ability from protecting members' interests.

Such an outcome was never intended by the parties. A ruling in the Employer's favor, moreover, is outside the scope of this Arbitrator's authority, and thus, would violate Section 25:03 by adding to or modifying the terms of the Collective Bargaining Agreement.

AWARD

The Grievance is upheld. The Grievant shall be returned to his assigned post of Ohio State University "Ward Officer", within one (1) month of this dated Opinion and Award.

12/18/09

Chagrin Falls, Ohio
December 18, 2009



Dr. David M. Pincus
Arbitrator