

Voluntary Labor Arbitration Proceeding

In the Matter of the Arbitration Between:

Department of Rehabilitation and Correction

-And-

Ohio Civil Service Employees Association, Local 11, AFSCME

Grievant: Douglas Korba

Grievance No.: 27-31-20100315-0028-01-03

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GENERAL COUNSEL

Arbitrator's Opinion and Award

Arbitrator: David M. Pincus

Date: October 26, 2011

Appearances

For the Employer

Clark Scott
Kent Litzenberger
Eric Lyle
Jackie Milson
Mike Sechrest
Venita S. White

Captain
School Administrator
Specialist
Labor Relations
Career Tech Horticulture Teacher 2
Advocate

For the Union

Wilbert Sattler
Douglas M. Korba
Michael Scheffer
Tim Watson

Chief Steward
Grievant
Staff Representative
Advocate

Introduction

This is a proceeding under Sections 25.03 and 25.05 entitled Arbitration Procedures and Arbitration/Mediation Panels between the State of Ohio, Department of Rehabilitation and Correction, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, Local 11, AFSCME, hereinafter referred to as the Union, for the period April 15, 2009 to February 29, 2012. (Joint Exhibit 1).

At the arbitration hearing, the parties were given the opportunity to present their respective positions on the grievance, to present witnesses, and to cross-examine witnesses. At the conclusion of

the arbitration hearing, the parties were asked by the Arbitrator if they planned to submit post hearing written closings. The parties submitted written closings in accordance with the guidelines established at the hearing.

Stipulated Issue

Did the Employer violate Article 1.05 when it allowed a Horticultural Teacher to escort Turf Management Program inmates to Monroe County to perform a landscaping detail for instruction and training? If so, what shall the penalty be?

Case History

The Turf Management program develops the knowledge, skills and abilities necessary for inmates to obtain initial employment in turf management once they transition into society. A portion of this program requires the completion of projects outside the secure perimeter of the prison. As such, inmates not only receive classroom instruction but hands on experience at different locations in the community.

Mike Sechrest is a Career Tech Horticulture Teacher 2 at Belmont Correctional Institution. He testified about the circumstances surrounding the present dispute. Sechrest was asked to take a group of inmates to Monroe County to perform some horticultural assignments. He asked for an additional staff member to escort the group due to the travel distance. Custody personnel informed him they did not have any available officers. If they did, officers were still unavailable because of overtime limitations. Sechrest then asked about another available teacher to accompany the detail. This request was eventually fulfilled.

It should be noted that on or about the same time the Employer began eliminating the Community Service PAP post. This post had been filled by Correction Officers, but eliminated to increase internal operation coverage.

On March 11, 2010, the Union filed a grievance claiming a violation of Article 1.05 which deals with erosion of the bargaining unit. It states in pertinent part:

XXX

On March 11, 2010 the Union was notified that a (sic) O.E.A member would be taking out community service crews to Monroe County to do work. This is currently our work and have turf officers assigned to do this. By doing this you are taking away bargaining unit work. Also management plans on sending another teacher for security reasons. Again security is our job both inside and outside the institution.

XXX

The parties were unable to resolve the disputed matter during subsequent stages of the grievance procedure. Neither party raised substantive nor procedural arbitrability concerns. As such, the grievance is properly before the Arbitrator.

The Merits of the Case

The Union's Position

The Union argues that the Employer's decision to allow the detail to leave without assigning a Correction Officer as escort violated Article 1.05.

The Union admitted Vocational Turf Management Instructors do have the right to supervise inmates while performing assignments in the community. However, inmate security related duties fall within the classification of Correction Officer. In the past, the Community Service Crew Correction officers escorted inmates for security purposes when inmates left the institution for community projects. Only the latest funding difficulties led to the elimination of community service posts. This outcome should not prevent Correction Officers from performing similar tasks. They have performed these tasks in the past.

The Employer's argument is further rebutted by several critical features. The Vocation Turf Maintenance Instructor's position description fails to include a security reference. Also, the record is void of any reference to transport training.

The Employer's Position

The Employer opines that it did not violate Article 1.05. The bargaining unit was not eroded when a Horticultural Teacher escorted Turf Management Program inmates without a Correction Officer. As a teacher, Sechrest was allowed to escort inmates without any additional custody staff.

Sechrest was trained to supervise and transport inmates. As such, he was no different from other similarly situated Correction Officers performing these duties. He was sent to the Corrections Training Academy and received training dealing with inmate supervision and unarmed self defense.

The Teacher 2 posting supports Sechrest's testimony regarding the performance of security duties while escorting inmates in the surrounding community. The classification specification for Teacher 1-4 contains supportive entries.

By engaging in these security duties, Sechrest's conduct falls within the Inmate Transportation Policy (Employer Exhibit 3). These inmates were transported for an authorized reason. The transportation detail, moreover, is viewed as a Type B Transport because inmates are not required to be restrained.

The Arbitrator's Opinion and Award

From the testimony and evidence introduced at the hearing and a complete and impartial review of the record, it is this Arbitrator's opinion that the Employer did not violate Article 1.05. The bargaining unit was not eroded as a consequence of the Employer's actions. The Correction Officers do not have exclusive jurisdiction over the escort and supervision of inmates engaged on a landscaping detail outside the institution. This finding is especially true when the detail is under the auspices of the Turf Maintenance Program, and a classified Horticulture Teacher 2 serves as an escort and instructor.

The circumstances surrounding the present dispute are a bit unique. Here, the Correction Officers do not have unique and distinct custodial responsibilities involving security. These duties are

also properly conducted by those classified as Horticultural Teacher 2s. The transport of these inmates falls within the Inmate Transportation policy as enumerated in 310-SEC-03 (Employer Exhibit 3). Type B transport is a detail which does not require inmates to be restrained; includes community service work details and is an authorized reason for transportation. Those various guidelines were adhered to when Sechrest escorted the inmates.

Sechrest also testified he engaged in proper search standards for the Type B Transport. For example, he engaged in a pat down search prior to transport and thoroughly inspected and searched the transportation vehicle prior to the loading of inmates.

It is now a well established generalization that erosion of the bargaining unit does not take place when two job classifications have overlapping duties and responsibilities. Here, the parties have not placed an absolute restriction on Correction Officers solely performing custodial or security duties.

Several documents and related testimony support his finding. The Teacher 2 (Career-Tech-Horticulture) posting (Joint Exhibit 3) references in the Job Duties Section:

XXX

...Maintains discipline and/or security and counsels students concerning their performance, behavior, and or personal problems

XXX

The classification series for Teachers 1-4 (Joint Exhibit 3) contains similar language in the Job Duties and Major Worker Characteristic sections.

Award

The grievance is denied.

Chagrin Falls, Ohio

Dr. David M. Pincus
Arbitrator