ARBITRATION DECISION NO.:
346

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Health
Northeast District

DATE OF ARBITRATION:
March 8, 1991

DATE OF DECISION:
May 20, 1991

GRIEVANT:
Bill Hayward

OCB GRIEVANCE NO.:
G-87-2401

ARBITRATOR:
Jonathan Dworkin

FOR THE UNION:
Brian J. Eastman
Tim Miller

FOR THE EMPLOYER:
Michael J. D'Arcy
Michael Duco

KEY WORDS:
Issue
Meeting Space
Feasible

ARTICLES:
Article 3-Union Rights
§3.04-Meeting Space

FACTS:

This grievance deals with Section 3.04 of the Agreement, "The Union may request use of State property to hold meetings. Where feasible, the employer will provide such space. Such requests will not be unreasonably denied." The Akron district of the Department of Health denied an application by the County Executive Board for meeting space after hours from 5:30 p.m. to 7:30 p.m. The employer's denial cited the problems of crowding and the need for security. The employer also added in the Step 3 response that the County Executive Board was not entitled to meeting space; under the Agreement only agency employees should be granted meeting space. Some of the members of the committee were not employees of the

agency where the meeting was to be held.

UNION'S POSITION:

The Union centered its argument on the fact that under Article 3.04 granting the meeting space was feasible. The Union argued that the conference room was suitable for the meeting. The employer had held supervisory meetings in that room. The employer's argument of security was unfounded; the employer had invited other people for parties from other outside departments and agencies. The Union could not understand why the security risk was any greater for Bargaining Unit officials from inside that agency than for partygoers. The Agreement clearly states, "The Union" is to be granted meeting space. There are no restrictions in this language and the arbitrator should not read into the Agreement an exclusion that does not exist.

EMPLOYER'S POSITION:

The State introduced intent testimony that the Agreement language on meeting space was accepted with mutually understood and accepted conditions. These conditions included the fact that the word "feasible" took into account factors of security expense and inconvenience. Mr. Brundige, the State's principal spokesperson in both the 1986 and the 1989 negotiations, testified that requiring the State to provide a supervisor, security officer, or other exempt employee for the Union meeting would not be "feasible." The State advanced several theories why granting the meeting space was not feasible. The building was crowded, the members of the Executive Board were not employees of the Agency and therefore posed a security risk, and there was a lab annexed to the proposed meeting room that posed a special and unacceptable danger.

ARBITRATOR'S OPINION:

The state has agreed to subsidize the Union in allowing meeting space. The employer voiced the wish not to intrude on Union business but in this case the employer's actions bordered on interference with the organization of the Union. The Department of Health was willing to allow local Union committees but not County Boards to meet in its facilities. The employer cannot intrude on the Union's right to meet as long as the organization does not violate the Agreement. The arbitrator found that the Agreement did not carve out an exclusion to granting meeting space to certain subdivisions of the Union. The section states, "The Union." The arbitrator found it is improbable that Mr. Brundige, a skilled negotiator, would allow this language purporting to grant a benefit to the Union as a whole when it was only meant to apply to certain groups within the Union.

The next question is whether granting the meeting space was feasible. The arbitrator found that the space could have been provided without undue cost or inconvenience to the employer. There was no need to provide security for the meeting. The Board members are adults. It would only take a simple instruction explaining to the Board where they were allowed to meet and what areas i.e. the lab were off limits.

AWARD:

The grievance is sustained. The employer is directed to cease and desist from applying an interpretation of Article 3, Section 3.04 which excludes County Executive Boards or any other subdivision of the Union from meeting space in State facilities. Such space is to be granted to any Union subdivision which applies, regardless of its composition, so long as granting the application is feasible. No Union request for meeting space is to be unreasonably denied.

TEXT OF THE OPINION:

OCB-OCSEA VOLUNTARY GRIEVANCE PROCEEDING
SUMMARY ARBITRATION OPINION AND AWARD

In The Matter of Arbitration
Between:

THE STATE OF OHIO
Department of Health
Northeast District (Summit County)

-and-

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, OCSEA/AFSCME
Local Union 11, State Unit 3

Case No.: G 87-2401
Bill Hayward

Decision Issued:
May 20, 1991

APPEARANCES

FOR THE STATE
Michael J. D'Arcy, Chief Advocate
Michael Duco, OCB Representative
N. Eugene Brundige, witness

FOR THE UNION
Brian J. Eastman, Associate General Counsel
Tim Miller, OCSEA Staff Representative
James LaRocca, President, Chapter 1001
William E. Hayward, President, Chapter 7700
Anthony J. DeGirolano, Arbitration Clerk

ISSUE:

Article 3, §3.04:
Charge that Department of Health denied meeting space to County Executive Committee in violation of Union rights.

Jonathan Dworkin, Arbitrator
9461 Vermilion Road
Amherst, Ohio 44001

BACKGROUND AND ISSUES

The State of Ohio and the Ohio Civil Service Employees Association (OCSEA/AFSCME, Local 11) adopted their first Collective Bargaining Agreement in 1986. Among the many issues discussed in pre-contract negotiations, the subject of Union rights was preeminent. Ultimately, the parties agreed to eleven items under that heading, and one of their agreements concerned meeting space. The Union requested access to State facilities, and the State acquiesced conditionally. A compromise was struck, the substance of which became Article 3, §3.04 of the Agreement. It provided:

ARTICLE 3 - UNION RIGHTS

. . .

§3.04 - Meeting Space

The Union may request use of State property to hold meetings. Where feasible, the Employer will provide such space. Such meetings will not interrupt state work and will not involve employees who are working. Such requests will not be unreasonably denied.

The language was continued in the current, 1989-1991 Agreement.

The grievance was initiated on September 24, 1987, after the Northeast (Akron) District of the Department of Health denied the Union space for an after-hours (5:30 to 7:30 p.m.) meeting of the County Executive Board. The application was submitted by a Health Department employee who is a Steward and President of the Summit County OCSEA Chapter. He is also the nominal Grievant.

The grievance was answered and denied at Steps 2 and 3.[1] Both Answers were comprehensive; they recited the Department's reasons at length:

1. At the time, the Department's Summit County offices were housed in an old building on Brownstone Avenue in Akron, Ohio. The facility was confined and had become increasingly so as the Agency's duties and space requirements expanded. At one time, it housed a separate conference room and, in fact, that was the meeting space Grievant requested. But the conference room no longer existed. Of necessity, it had been filled with desks and converted to additional office space.[2] One reason the Northeast District Administrator turned down the Union request was that, in her view, adequate space did not exist for the Union meeting.

2. There was a special need for security in the office. The former conference room was adjacent to the Health Department laboratory, and the two rooms were separated only by a fire door which could not be locked. It was a "hot lab," with plenty of real dangers. Blood and rabies testing were continually conducted there and, although signs indicating biological hazards were posted, non-staff members were not permitted inside without escorts. While the meeting space sought by the Union was not in the lab, the District Administrator was concerned that, without security or staff employees to bar entry, someone could enter the lab by mistake or intentionally and encounter unacceptable risks. She felt that in order to accommodate the Union, she would have to assign personnel on overtime to watch the area. Although §3.04 does not state that space will be provided to the Union so long as there is no additional cost to the State, that limitation was mutually understood as part of the meaning of the contractual word, "feasible."

3. The Union had other, more convenient space available, including its own office building, complete with conference rooms, in a West Akron suburb.

The Employer's Answers also noted that the Northeast District office would soon move to larger quarters in the Ocasek State Office Building in downtown Akron. In its Step 2 response, the Employer made a tacit admission that, but for the space and security restrictions, it would not have been consistent with the Agreement to deny the Union meeting space. It stated:

"It would indeed be unreasonable if the State denied the union use of its property, but it has not denied such use as witnessed by the fact that several state facilities are available to them for such purposes, including the main State office (Ocasik) Building in downtown Akron. The Department does not feel it was unreasonable in this case since it was concerned about its office security, liability, and keeping its facility open beyond its normal operating times for non-state activities.

Looking at the entire picture, the union had several other reasonable alternatives. Its own office/conference space or other state facilities open 24 hours could and probably would have given them

access.

Given the above, this grievance is denied."

If the State's rationale had consisted of no more than its Step 2 assertions, this grievance probably would be moot. It was not presented to arbitration until 1991 -- three years after the dispute arose, and long after the Northeast District moved from the Brownstone Avenue location. Presumably, the problems which made the meeting non-feasible in the mind of the District Administrator were eliminated by the move. In its Step 3 Answer however, the Employer added profound dimension to the controversy by claiming that only local agency subdivisions of the Bargaining Unit were covered by §3.04. The Executive Board is a cross-agency assembly of Bargaining Unit representatives from several departments. It meets regularly and makes decisions on issues affecting many local OCSEA Chapters. In the State's view, the ten-member County Executive Board would not have been entitled to Health Department space for its meeting even if granting such space was feasible. The Step 3 Answer stated:

Decision:

The intent of Article 3.04 concerns meetings that would be held at an agency's facilities after hours to be only for that particular agency' s employees. It was not of the intent of the State to have this language to be construed in the way that it is put forth by the Union. Accordingly, the grievance is denied in its entirety. The Department of Health has not violated the contract in any way.

The Step 3 Answer introduced a major issue, converting the dispute from one of local interest to a broad ranged controversy of significance to the State and the Union as a whole. The dominant issue, as the Arbitrator views it, is: Is the benefit provided by Article 3, §3.04 available to the Union, or only to Union subdivisions consisting mainly of employees of an agency?[3] A subordinate issue is whether or not the Department of Health violated §3.04 by rejecting the Union's application for meeting space in September, 1987.

The grievance was appealed to arbitration. It was heard in Columbus, Ohio on March 8, 1991. At the outset, the State stipulated that the dispute was arbitrable; that time lines and other procedural prerequisites had been met or waived. The parties further stipulated that the Arbitrator was authorized to issue a conclusive award on the merits of the grievance, subject to the following limitations set forth in Article 25, §25.03 of the Agreement:

"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."

THE EMPLOYER'S POSITION;
INTENT TESTIMONY

The Employer's main witness was N. Eugene Brundige, former Chief of the Office of Collective Bargaining and the State's principal spokesperson in both 1986 and 1989 negotiations. He testified that provision of meeting space along with other representational questions were topics of intense discussions at the 1986 bargaining table. The pre-negotiation practices were mixed. Some offices and agencies routinely granted their employees meeting facilities, others did not. The Union proposed creating a contractual right to such space, without limitation, and expanding the right to every subdivision of the Bargaining Unit. The State was "dead set" against expansion, but willing to allow the practice to continue in those locations where it already existed.

A compromise was reached on July 8, 1987. The Union modified its proposal to the language which became §3.04, and the State agreed to it, but with mutually understood and accepted conditions. The

conditions are reflected in bargaining notes:

"III. ITEMS DISCUSSED AND ANY ACTIONS AGREED TO:

. . .
2. A NUMBER OF STEWARD ISSUES WERE DISCUSSED.
. . .
b. The parties discussed the use of state property after hours for union meetings. Mr. Brundige stated the following criteria should be applied by management when reviewing such requests.

i. Will such a meeting require a supervisor to stay overtime?

ii. Will the State incur additional expense?

Mr. Brundige also stated that if other outside groups are allowed the use of state property for meetings then the union must be allowed use under the same circumstances."

In summarizing what was said and understood regarding the contractual word, "feasible," Brundige testified that security, expense, and inconvenience were recognized as barriers to a meeting-space request. He noted that any meeting requiring a supervisor, security officer, or exempt employee to remain on duty after hours would not be feasible.

According to the witness, the discussions centered on agency and area-specific meetings. All the explanations of the Union spokesperson dealt with such examples, and there was absolutely no mention of County Executive Boards.[4]

The remainder of the State's case centered on the contention that it was not feasible to grant the union meeting space at the Brownstone Avenue location. The building was "bursting at the seams," there was no space; the meeting would bring in Executive Board members who were not employees of the Agency, and that posed a possible security risk; the lab annexed to the proposed meeting room introduced a special, unacceptable danger.

THE UNION'S POSITION

The Union offered nothing to rebut Brundige's testimony. It noted a discrepancy, however, and called attention to it. According to Brundige's statement, the implicit understanding was that three factors would be decisive as to what was and was not "feasible" -- security, expense, and convenience. But the negotiations record the testimony relied upon reflected only two criteria -- expense and the need for a supervisor to remain on overtime. According to the notes, convenience was not mentioned. Beyond pointing to that inconsistency, the Union's evidence focused on the contention that it would have been feasible to grant the County Executive Board space for its meeting, and the Administrator's refusal to do so constituted an unreasonable denial in violation of Article 3, §3.04.

Grievant was the Union's only witness. He made a point of attempting to correct what he regarded as a misunderstanding derived from the State's arguments. The Executive Board is not, as the Employer suggests, an amalgam of employees of numerous agencies from a broad geographic area. The fact is, its ten members include six from the Department of Health and only four outsiders. All worked for Summit County State agencies.

The witness contended that, although it had been converted to office space, the former conference room was still suitable, appropriate, and feasible for the Executive Board meeting. Admittedly, social gatherings were not held there anymore, but supervisory meetings were; and the Board members would have required no more space than the supervisors. The argument that the adjacent lab caused a security risk was flimsy in the Union's judgment, since the lab was there when managers chose to host parties and invite people from

numerous outside departments and agencies. The Union Representative concluded by asking rhetorically why the security risk was any greater for Bargaining Unit county officials than for partygoers.

OPINION

The State' s Advocate made a very important statement in his closing statement. He said, "The State does not want to subsidize this Union or interfere with its internal activities." In the Arbitrator's opinion, it is too late for the Employer to avoid subsidization. It has already consented to moderate subsidies, and its consent is crystallized in the Collective Bargaining Agreement. In Article III, §3.02, it acceded to the demand that stewards "shall be allowed a reasonable amount of time away from their regular duties to administer the Agreement." That is a subsidy. Likewise, the State agreed to §3.03 which grants paid time for meetings to employees who are members of various joint Labor-Management committees. The provision of Union bulletin boards (§3.05), free use of the State mail system (§3.06), and allowing Union offices in State facilities where they existed before or space for filing cabinets where they did not exist (§3.11) are all forms of subsidies. For that matter, so is the right to meeting space under §3.04.

Of far greater importance to this dispute is the Representative' s remark that the State does not wish to interfere with internal Union matters. That is more than a preference or a desire not to intrude, it is a law. When a public employer interferes in internal Union matters, it commits an unfair labor practice. Ohio Revised Code §4117.11 provides in part:

4117.11 - Unfair labor practices

(A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; except that a public employer may permit employees to confer with it during working hours without loss of time or pay, permit the exclusive representative to use the facilities of the public employer for membership or other meetings, or permit the exclusive representative to use the internal mail system or other internal communications system;

The Arbitrator does not sit on the State Employment Relations Board, nor is he a judge. His jurisdiction is restricted to resolving grievances based on his interpretation of contract language, not law. He cannot help but observe, however, that the Department of Health’s willingness to allow local Union committees, but not County Boards, to meet in its facilities comes perilously close to the very interference its Advocate maintained the State wished to avoid. The Union has a right to organize along any lines it chooses, except to the extent that it may have relinquished those rights in bargaining. It is not up to the Employer to question county subdivisions, inquire into their membership, or deny them benefits due "the Union."

The danger of the Employer’s probing into internal Union matters is illustrated in the Step 2 response to the grievance. The Department’s Designee apparently strayed from strictly contractual matters and asked Grievant why he needed Health Department space when there was an OCSEA office just five miles away. The answer was unfortunate:

“When asked why they couldn’t use the union’s new office facilities with conference room in the western suburbs, [Grievant] stated that the district office was more convenient to the Summit County Board union members (five people) and that there was a rift (bad feelings) between the Board President and an OCSEA union staff official.”

The Designee learned too much. He obtained information about intra-Union strife which, to put it bluntly, was none of his or Management’s business. If the Union, as a single entity, was entitled to use State office space for meetings pursuant to §3.04, the entitlement belonged to the County Executive Board as well. The Board could be excluded from the advantage only if the Agreement carved out the exclusion, regardless of the fact that other space may have been available.

The mainstay of the Employer's position is Brundige's testimony that §3.04 was mutually understood as granting a right only for local agency employee meetings in State facilities. That qualification does not appear in the provision. The Section states, *"**The Union*** may request use of State property to hold meetings;" and, "Such requests shall not be unreasonably denied."

If an entity smaller than the Union -- the Ohio Civil Service Employees Association -- were intended to be the beneficiary of the language, the Agreement most definitely would have said so in unmistakable terms. The State's principal spokesperson was a highly skilled, meticulous negotiator. His performance demonstrated acute understanding of the process and the most careful attention to wording. It is improbable that he would have agreed to language purportedly vesting a benefit in the Union if he had meant to grant it only to discrete parts of the Union. In the Arbitrator's judgment, the language means what it says. If feasible, the Employer and all of its agencies are required to grant meeting space to the Union, whatever subdivision of that organization seeks the space, without regard or even notice to whether or not the individuals intending to meet are employees of the agency called upon to provide the space. It follows that the rationale in the Employer's Step 3 answer to the grievance -- that an agency's facilities are available only to the agency's employees -- violates Article 3, Section 3.04. The Employer will be ordered to cease and desist applying that extra-contractual regulation of its facilities.

There remains the issue of whether or not it was feasible for Northeast District of the Department of Health to grant the Summit County Executive Board's request for meeting space in September, 1987. The evidence on this question is mixed. As the parties well understand, the operative words of §3.04, "feasible" and "will not be unreasonably denied" do not lend themselves to concrete guidelines for the future. What is feasible or unreasonable depends on the unique circumstances of each case, and can be decided only on a case-by-case basis. As to September, 1987, the Employer produced persuasive evidence that granting the Union's request was not feasible. The Union produced equally compelling evidence that the reasons given for the Employer's denial of the benefit were pretexts, and it was feasible to provide the meeting space.

Examining the evidence as a whole, the Arbitrator is convinced that the space could have been provided without undue cost or inconvenience to the Agency. There was no real need to provide security to keep the "outsiders" away from the lab. The Board members were adults meeting for adult purposes, not to take explorative detours into restricted areas. It is apparent that a simple instruction limiting the area granted the Board would have been sufficient; security guards would have been unnecessary.

In light of the Step 3 Answer and the Employer's arguments in arbitration, the Arbitrator cannot avoid the impression that the only genuinely substantive reason for the Agency' s recalcitrance was its belief that §3.04 set implied limits on the meaning of the word, "Union" and space was required only for Union formations consisting entirely of Health Department employees. As stated, that concept is not in the provision.

The grievance will be sustained. The Employer will be directed to cease and desist from applying an interpretation of Article 3, Section 3.04 which excludes County Executive Boards or any other subdivisions of the Union from meeting space in State facilities. Such space is to be granted to any Union subdivision which applies, regardless of its composition, so long as granting such space is feasible. No Union request for meeting space will be unreasonably denied.

AWARD

The grievance is sustained. The Employer is directed to cease and desist from applying an interpretation of Article 3, Section 3.04 which excludes County Executive Boards or any other subdivisions of the Union from meeting space in State facilities. Such space is to be granted to any Union subdivision which applies, regardless of its composition, so long as granting the application is feasible. No Union request for meeting space is to be unreasonably denied.

Decision Issued at Lorain County, Ohio, May 20, 1991.

Jonathan Dworkin, Arbitrator

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[1] The Step 1, supervisory response was not substantive. The Supervisor briefly summarized the facts and concluded, "The remedy to this grievance is not available at my level of supervision."

[2] The Union argued that there was plenty of space; that parties had been held in the conference room. The Agency admitted the truth of the allegation insofar as it touched on prior uses of the area. It presented testimony, however, that there had been no parties since the conversion of the room to an office. The Union did not refute the testimony.

[3] The word, "mainly," is inserted to comport with an argument presented in the arbitration hearing. The Employer modified its stand slightly. Its Representative stated, "We didn't think §3.04 dealt with executive meetings. It licensed only chapter and meetings among Health Department personnel, ***with perhaps an OCSBA staff representative attending***."

[4] The truth is, County Executive Committees probably did not exist when the 1986 Agreement was being negotiated.