ARBITRATION DECISION NO.:
426

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

EMPLOYER:
Bureau of Employment Services

DATE OF ARBITRATION:
February 11, 1992

DATE OF DECISION:
March 30, 1992

GRIEVANT:
Leonard Groboske
Rae Jacobozzi
Jessie McClain

OCB GRIEVANCE NO.:
11-02-(91-08-02)-0103-01-09
11-02-(91-08-16)-0104-01-09
11-02-(91-08-29)-0107-01-09

ARBITRATOR:
Anna Smith

FOR THE UNION:
John Porter
    Advocate
Tony Degirolamo
    Second Chair

FOR THE EMPLOYER:
Robert Thornton
    Advocate
Michael Duco
    Second Chair

KEY WORDS:
Re-Employment
Seniority
Intermittent

ARTICLES:
Article 16-Seniority
    §16.02-Continuous Service
Article 17-Promotions and Transfers
    §17.03-Vacancy

Article 18-Layoffs
§18.01-Layoffs
§18.08-Recall
§18.09-Re-Employment

FACTS:

The three grievants were hired by the Ohio Bureau of Employment Services (OBES) in the 1970's and laid-off in 1982. Subsequently, each accepted intermittent positions with OBES within one year of lay-off. The grievants were ultimately appointed to permanent, full-time positions with OBES, but not until more than one year after their layoff. The State counted the three grievant's seniority as being broken by the fact that they were not called back into a full time position until more than one year after their layoff.

One of the grievants previously had filed a 1986 grievance on the same issue which was granted at Step 3; however the decision by management was later changed and as a result his seniority was revised to reflect a break in service.

When the grievants were originally hired and laid off, they were not covered under a collective bargaining agreement. The first agreement, effective July 1, 1986, contained a seniority provision, Article 16. A side letter of understanding on seniority was negotiated in 1987 by Marianne Steger and Sybil Griffin. In the 1989 contract, to cover employees hired prior to 1989, a Memorandum of Understanding was negotiated which provided that an employee laid-off and recalled or re-employed within one year from the date of layoff, prior to 1986, has not experienced a break in service.

UNION'S POSITION:

The agency's rehiring of a laid-off employee to an intermittent position within one year of the layoff constitutes re-employment within the meaning of the Page 136 Memorandum of Understanding. Further, this mutually agreed upon meaning is established both by Ms. Steger's testimony and the prior granting of grievant Groboske's grievance, which constitutes a binding, settlement between the parties. The term "re-employment" is not restricted to the definition contained in Article 18.09 of the contract. Moreover, this case is distinguishable from the case cited by the State in support of their position, FOP v. ODNR. In that case an arbitrator determined that the same word used in two separate sections of the same contract article should be defined in the same way. In this grievance the term "re-employment" is contained in two different articles, not different sections of the same article. Therefore, when the same word is used in two different articles of a contract it may have different meanings. Also, the fact that the State failed to present rebuttal testimony as to the intended meaning of the term "re-employment" further supports the position that "re-employment" can have different meanings in different sections of the contract.

The Union requests that the Arbitrator 1) grant the grievances, 2) restore the grievants, original seniority dates to reflect continuous, unbroken service, 3) correct seniority dates that would have prevented the grievants' layoffs, 4) reinstate the grievants to their original positions, 5) make the grievants whole including losses suffered, and 6) permit bargaining unit employees who should have been displaced to retain their current positions.

EMPLOYER'S POSITION:

The Memorandum of Understanding on page 136 of the contract deals with laid-off employees who were reinstated pursuant to the Administrative Rules of recall and employment rights which governed employment prior to collective. Since the grievants were not reinstated to positions which they were entitled, they were neither recalled nor re-employed; therefore, they lose their seniority because they suffered a break in service.

The State defined "re-employment" as the extension of recall rights to reinstatement to a position in the same classification as that from which the employee was laid-off but in a different agency. Since an intermittent position is by definition not a permanent position it cannot be a vacancy as defined by Article 17.03 which limits the term to permanent full-time or part-time employees; therefore employees cannot be recalled to or re-employed in intermittent positions. Further, the Union failed to prove that there was a

mutual agreement to the definition of "re-employment" despite the proffered testimony of Ms. Steger. Under the decision in FOP v. ODNR, words should be given the same meaning throughout the contract, absent specific language to the contrary. Moreover, the Arbitrator's decision in OCSEA v. OBES wherein the Arbitrator held that an employer's granting of a grievance does not constitute a binding settlement, mandates that the employer not be held to its earlier decision. Consequently, the State seeks that the grievances be denied in their entirety.

ARBITRATOR'S OPINION:

The common sense meaning of "re-employed" means to place back in service, whether to a different position or not. Absent compelling evidence indicating that the parties intended a different meaning, the common sense meaning of the word must be accepted; the State failed to provide such evidence. Evidence provided by stipulation and by the Union establishes that the term "re-employed" was not intended to be limited to rehire to a position in the same classification, but rather to rehire in any capacity. The correctness of this construction is further evidenced by the fact that the only relevant difference the effect of pre-1986 and post-1986 contract lay-offs is the period in which being re-employed or recalled would preserve continuous service. Thus, the meaning of "re-employed" means hired again by any state agency.

AWARD:

The grievances are granted in their entireties except that those bargaining unit employees who should have been bumped, but were not, due to incorrect calculations of the grievants, seniority, may not retain their original positions.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11,
A.F.S.C.M.E., AFL/CIO

and

STATE OF OHIO
BUREAU OF EMPLOYMENT SERVICES

OPINION and AWARD
Anna D. Smith, Arbitrator

Case 11-02-910802-0103-01-09
Rae Jacobozzi, Grievant

Case 11-02-910816-0104-01-09
Leonard Groboske, Grievant

Case 11-02-910829-0107-01-09
Jessie McClain, Grievant

Seniority

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Appearances

For the Union:

John Porter; Assistant Director of Arbitration,
OCSEA Local 11, AFSCME, AFL-CIO; Advocate
Tony Degirolamo; OCSEA Local 11, AFSCME, AFL-CIO; Second Chair
Marianne Steger; Assistant to Executive Director,
OCSEA Local 11, AFSCME, AFL-CIO; Witness
Rae Jacobozzi; Grievant
Jessie McClain; Grievant
Lillian Riggs; Observer

For the State of Ohio:

Robert Thornton; Office of Collective Bargaining; Advocate
Michael Duco; Office of Collective Bargaining; Second Chair
Brent Fatzinger; Labor Relations Officer,
Ohio Bureau of Employment Services; Observer
Janice Viau; Labor Relations Manager; Ohio Bureau of
Employment Services; Observer

Hearing

Pursuant to the procedures of the parties a hearing was held at 8:00 a.m. on February 11, 1992, at the offices of the Ohio Civil Service Employees Association, Local 11 AFSCME, AFL-CIO, Columbus, Ohio before Anna D. Smith, Arbitrator. The parties were given a full opportunity to present written evidence and documentation, and to examine and cross-examine witnesses, who were sworn. The case was argued by brief and closed upon their receipt by the Arbitrator on February 27, 1992, but reopened by agreement of the parties to receive a union reply brief. The record was again closed on March 6, 1992. This opinion and award is based solely upon the record as described herein.

Issue

By agreement of the parties, the issue to be decided by the Arbitrator is:

Did the Ohio Bureau of Employment Services (OBES)
violate the terms of the Agreement when calculating
the seniority dates of the grievants?
If so, what shall the remedy be?

In the event this question is answered in the negative, the Union asks the Arbitrator to answer the following, to which the State objects:

Did OBES and the State of Ohio violate
the Contract by granting Leonard Groboske's
1986 grievance at Step 3 and then changing his seniority date?
If so, what should the remedy be?

Joint Exhibits and Stipulated Facts

Joint Exhibits

1. 1989-91 Collective Bargaining Agreement
2. Statement of stipulated issue and facts
3. Groboske grievance trail
4. Jacobozzi grievance trail
5. McClain grievance trail
6. Side letter between parties, May 26, 1987, and meeting notes
7. Arbitration decision of Grievance No. G87-0733
8. Section 123:1-41-17 O.A.C.

Stipulated Facts

1. These grievances are properly before the arbitrator.

2. Grievant Groboske was employed by OBES as a full-time permanent Employment Services Interviewer on 4-5-76.

3. Grievant Groboske was certified in the above classification on 10-21-76.

4. Grievant Groboske was laid off from that classification on 1-14-82.

5. Grievant Groboske was employed by OBES as an intermittent Claims Assistant on 8-16-82.

6. Grievant Groboske was employed by OBES as a full-time permanent Claims Assistant on 3-20-83.

7. Grievant Jacobozzi was employed by OBES as an intermittent Claims Assistant on 2-21-78.

8. Grievant Jacobozzi was employed by OBES as a full-time temporary Clerk on 8-26-78.

9. Grievant Jacobozzi was employed by OBES as a full-time permanent Clerk on 11-4-78.

10. Grievant Jacobozzi was certified in the above classification on 12-11-78.

11. Grievant Jacobozzi was promoted to Employment Services Interviewer on 3-22-81.

12. Grievant Jacobozzi was laid off from that classification on 1-14-82.

13. Grievant Jacobozzi was employed by OBES as an intermittent Claims Assistant on 9-7-82.

14. Grievant Jacobozzi was employed by OBES as a full-time permanent Employment Services Interviewer on 5-29-83.

15. Grievant McClain was employed by OBES as a full-time permanent Employment Services Technician on 9-1-70.

16. Grievant McClain was certified in the above classification on 3-5-71.

17. Grievant McClain was promoted to Employment Services Specialist on 12-3-73.

18. Grievant McClain was reclassified to Employment Services Interviewer on 1-4-76.

19. Grievant McClain was promoted to Employment Services Counselor on 8-27-78.

20. Grievant McClain was laid off from that classification on 5-22-82.

21. Grievant McClain was employed by OBES as an intermittent Claims Assistant on 8-25-82.

22. Grievant McClain was employed by OBES as a full-time permanent Employment Services Interviewer on 6-12-83.

23. Although temporary, interim, intermittent and seasonal appointment types in Ohio Civil Service are defined for the purposes of the Agreement in Article Seven of the Agreement, employees occupying such positions are not in the OCSEA bargaining unit.

24. The Agreement was not in effect in 1982, when the layoff of the grievants occurred.

25. Upon refusal of a laid off employee to accept an intermittent position the Employer has not considered this refusal a cancellation of recall or re-employment rights as outlined in the Agreement.

26. As intermittents the grievants accrued sick leave, personal leave and PERS retirement benefits.

27. Grievant Groboske timely filed a grievance over the exact issue which is the subject of this grievance in 1987. This previously filed grievance was granted at Step 3 of the grievance procedure and grievant Groboske was credited with no break in service at that time. His seniority date was later changed to reflect a break in seniority in 1982. Grievant Groboske was bumped to a lower position in 1991, after this grievance was filed.

28. The Page 136 Memorandum of Understanding of the Contract is written to apply only to employees hired prior to 7-1-89. It gives those employees additional rights.

29. Section 16.02(1-5) (page 28) applies to all employees.

30. When seniority rights conflict between page 136 and page 28 (§16.02(1-5)), then page 136 controls for employees hired prior to 7-1-89.

31. It is the Union's position that a laid off employee's re-employment as an intermittent does not break an employee's seniority date as referred to in §16.02 A-E.

Background

Significant facts of the grievants' employment histories with the State were stipulated by the parties and are set forth in detail above. Briefly, the three grievants were hired by the Ohio Bureau of Employment Services (OBES) in the 1970s. In 1982 they were laid off. Within a year, each took intermittent positions with the OBES. After working these intermittent positions for several months, each was appointed to a full-time permanent position with the Bureau. In all three cases, the period of time between layoff and full-time permanent employment exceeded one year. Believing a break in service to have occurred, the State credited each grievant with the seniority date of the day on which s/he was employed in the intermittent

position. The grievants subsequently protested the State's calculation of their seniority, claiming that since they took the intermittent positions within one year of being laid off, no service break occurred, and that they should therefore have their original seniority dates restored. After the grievances were filed and as a result of carrying the later seniority dates, the three were displaced when 1991 layoffs occurred. Being unresolved at lower steps of the grievance procedure, the grievances came to arbitration for final and binding decision.

It should also be noted that Grievant Groboske had previously had a 1986 grievance on the same facts and issue resolved in his favor at Step 3, but this decision was later revoked with his seniority date once again being changed to reflect a break in service. Should the 1991 grievances be denied, the Union asks that the Arbitrator uphold the Step 3 resolution of the 1986 Groboske grievance.

Bargaining History

When the grievants were originally hired and in 1982 when laid off, their conditions of employment were not governed by a collective bargaining agreement. The first contract between the parties was negotiated to be effective July 1, 1986. This contract contained a seniority provision (Article 16). To clarify its meaning, a sideletter of understanding was negotiated in 1987 by Marianne Steger (for the Union) and Sybil Griffin (for the State), and signed by Russell Murray (for the Union) and Edward Seidler (for the State). One of its provisions is directly applicable:

6. An employee who is laid off and is reemployed, i.e. not recalled by any state agency, but hired by any state agency, within 18 months (prior to the contract's implementation within one year) has not experienced a break in service. This employee would continue to earn seniority while on layoff.

(Joint Ex. 6)

Elements of this sideletter were thereafter incorporated into the 1986-89 Contract, most notably the following:

Article 16 - Seniority

§16.02 - Continuous Service

5. An employee who is laid off and is re-employed, i.e. not recalled by any State Agency, but is hired by any State Agency, within eighteen (18) months has not experienced a break in service. This employee would continue to earn seniority and service credits while on layoff.

MEMORANDUM OF UNDERSTANDING ON SENIORITY FOR EMPLOYEES HIRED PRIOR TO JULY 1, 1989

The parties agree to the following interpretations and application of the seniority language for employees hired prior to July 1, 1989. This interpretation does not apply to employees hired after that date.

7. An employee who was laid off and recalled, or re-employed prior to July 1, 1986, within one (1) year of lay off has not experienced a break in service and shall continue to earn seniority and service credits while on layoff.

(Joint Ex. 1)

Arguments of the Parties

Argument of the Union

The Union's position is that an agency's rehiring of a laid off employee to an intermittent position within one year of the layoff constitutes re-employment as contemplated by the Agreement's page 136

Memorandum of Understanding and the May 26, 1987 sideletter.

In support of this position the Union offers the testimony of Marianne Steger, who negotiated the sideletter and the 1989-91 Agreement's seniority provision and page 136 Memorandum of Understanding. Ms. Steger stated that her understanding was that "re-employment" meant "not recalled by any State agency (within one year) but hired by any State agency within one year." She also stated that she believed this to be the State negotiator's understanding as well. The Union points out that the State called no witnesses to rebut Ms. Steger's testimony and urges the Arbitrator to conclude that they were not called because they cannot rebut Ms. Steger.

A second support offered by the Union is the resolution of Grievant Groboske's 1986 grievance at Step 3. It argues that granting of the grievance should estop the State from changing Grievant Groboske's seniority date. Further, granting of the grievance by Management is tantamount to settlement inasmuch as the Union's lack of appeal to the next step signifies agreement with the terms granted. Such settlements should not be disturbed in the interest of good labor-management relations, argues the Union. Moreover, mutual agreement is evidence of intended meaning that carries special weight, the Union claims, citing Elkouri and Elkouri, and Bornstein and Gosline.

Regarding Management's position that re-employment is defined in Article 18.09 by incorporation of the Ohio Administrative Code, the Union argues that nothing prevents different meanings for the same word in different sections of the Agreement. The union believes the case at bar differs from the F.O.P. case cited by the State in that the word at issue is not contained in different sections of the same article, but in two different articles which were negotiated by different individuals. Different meanings of "re-employment" is plausible since Articles 18 and 16 were negotiated by different individuals. Moreover, the Union negotiator of the 1987 sideletter and the 1989-91 seniority language was not even present when the 1986 Agreement was negotiated, and thus did not form her perception of Article 16's use of "re-employment" based on the 1986 negotiations. Additionally, the Union reminds the Arbitrator that there was no Management testimony that the word was intended to mean the same thing in the various contexts.

The Union asks that the Arbitrator uphold its position, grant the grievances, and restore the Grievants' original seniority dates to reflect continuous, unbroken service. It further requests that if their correct seniority dates would have prevented them from being displaced, they be reinstated to their former positions and made whole for losses suffered as a result of being improperly bumped, including pay and benefits, and losses from being improperly moved out of their assigned areas. Additionally, it requests that bargaining unit employees who should have been displaced be allowed to remain in their original positions. Finally, it asks that the Arbitrator retain jurisdiction pending determination of the effects of the award.

Argument of the State

Management's position is that the Parties mutually understood "re-employment" to mean an extension of an employee's recall rights to agencies beyond the agency from which s/he was laid off. It states that definitions in the Agreement and sideletter arose from their definitions in the Ohio Revised Code and Ohio Administrative Code, which formed the basis of many articles in the first negotiated agreement between the Parties. It points to §18.01 on layoffs that refers to ORC Chapter 124 and OAC Chapter 123, to §18.08 on recall that sets the recall right period, and §18.09 on re-employment that refers to OAC 123:1-41-17. The latter itself limits re-employment to the same classification from which layoff or displacement occurred (A), limits the jurisdictional recall right to one year (B), and initiates recall for re-employment by an existing vacancy (C)(1). Therefore, reasons the State, in both the Agreement and the Code, "recall" is the right of a laid off employee to reinstatement to a position in the same classification as that from which the employee is laid off within the same agency; and "re-employment" is the extension of recall rights to reinstatement to a position in the same classification as that from which the employee is laid off but in different agencies.

Both recall and re-employment, asserts the State, are triggered by vacancy, which is defined by §17.03 of the Agreement as an opening in a permanent full-time or permanent part-time position within a specified bargaining unit covered by this Agreement which the Agency determines to fill."

Since an intermittent position is by definition not a permanent position, it cannot be a vacancy as defined by §17.03, and employees cannot be recalled or re-employed to it. Thus, the grievants were not recalled or re-employed, as the Union claims, but merely offered intermittent employment while on layoff status.

Regarding the Union's case, the State claims first that the argument is inconsistent. If the grievants had been re-employed as claimed, there would have been no need to convert them to permanent employees as the stipulated facts show was done. In fact, the State says, the grievants were newly hired as intermittents and later as permanent employees.

The State also contends that the Union has failed to prove that there was mutual agreement to a definition of "re-employment" in the 1987 sideletter different from that in Article 18. Ms. Steger's opinion does not prove mutual understanding.

Furthermore, the State goes on, under the rule that contracts should be interpreted in their entirety, words should be given the same meaning throughout. The Arbitrator is urged to consider the decision of Arbitrator Graham in FOP v. ODNR (Shoyer et al.) wherein the arbitrator argued that "absent specific language to the contrary it should be expected that identical language would be interpreted identically."

Regarding the issue of Mr. Groboske's previous grievance, the State's position is that if the instant grievances are denied, the method of calculating seniority for all will have been settled. To then hold the Employer to its earlier erroneous calculation of Grievant Groboske's seniority would create a special seniority for him. This is not only a disservice to other bargaining unit employees, but also impermissible under the Contract which prohibits the Arbitrator from adding to the terms of the Agreement. The State refers the Arbitrator to the OCSEA v. OBES (Domenic et al.) decision wherein Arbitrator Rivera held an employer's granting of a grievance is a unilateral action, not a mutually-agreed to and therefore binding settlement.

In conclusion, the State asserts that it has no burden to prove its position on the definition of "re-employment." Rather, it is for the Union to establish a mutual agreement to grant continuous service to those employees who accept intermittent employment while laid off. The Employer believes such an agreement does not exist and that the grievants' seniority dates are correctly calculated. It therefore asks that the grievance be denied in its entirety. It further requests that the second issue of Mr. Groboske's prior grievance be dismissed as not grievable, since neither the Employer nor the Arbitrator has the authority to grant specially calculated seniority to any employee.

Opinion of the Arbitrator

The grievances before the Arbitrator for resolution require a decision as to whether employees who accept certain kinds of State employment during lay-off are entitled to accrue seniority and service credit while laid off. More specifically, the question is whether employment in an intermittent position with the Agency may serve to maintain an employee's continuous service. The answer to this question depends on whether accepting employment as an intermittent constitutes "re-employment" as used in Article 16 and the page 136 Memorandum of Understanding, for these provisions specify that re-employed laid-off individuals do not suffer a break in service provided the re-employment occurs within a certain time frame. The issue thus turns on the meaning of the word "re-employed."

Since the page 136 Memorandum controls for these grievants by virtue of their employment dates, the analysis must begin with the relevant paragraph of that Memorandum:

"7. An employee who was laid off and recalled, or re-employed prior to July 1, 1986, within one (1) year of lay off has not experienced a break in service and shall continue to earn seniority and service credits while on layoff.

(Joint Ex. 1)

In its common usage, "re-employed" means simply "put to work again" or "hired back" such that a separated individual rehired by the original employer, whether to the same or to a different position, is re-employed. On the face of it, then, the grievants should be entitled to their original hire dates because although they were

not recalled, they were put to work again by the same employer (the State) within a year of being laid off. Without good indication that the Parties intended a different meaning, the common sense of the word must be accepted.

The State does, in fact, claim that a special meaning was intended, but offers no evidence arguing instead that the special meaning is self-evident. The thrust of its argument is that paragraph 7 deals with laid off employees who were reinstated pursuant to the Administrative Rules of recall and re-employment rights that governed employment prior to collective bargaining. Since the grievants were not reinstated to positions to which they were entitled (permanent full-time, same classification), they were neither recalled nor re-employed and therefore lose their original hire date. This argument fails because of the history of the Memorandum of Understanding, its relationship to Article 16, and a clarifying clause.

The evidence produced by stipulation and the Union establishes that the origin of the Memorandum and the examples of uninterrupted continuous service given in Article 16.02 is the sideletter negotiated by the Parties in 1987. This document states that there is no break in service for an employee who is "laid off and is re-employed, i.e., not recalled by any state agency, but hired by any state agency, within 18 months (prior to the [1986] contract's implementation within one year) . . ." This sideletter gives a more expansive meaning to "re-employment" than the one urged by the State, by virtue of its clarification clause: "i.e., . . .hired by any state agency." This position is given further credence by the unrebutted testimony of the Union's witness and her notes of meetings with the State' s negotiator, which establish that they did not use "re-employment" to mean rehired only to a position in the same classification with a different agency, but any re-employment: "hired (but not recalled) into a **new job**" (emphasis added), "hired by other agency" (Joint Ex. 6). Moreover, Ms. Steger testified that the term "hired" was the State negotiator's term.

To put it another way, it seems to me that if the Parties had meant "re-employed pursuant to rights established by Administrative Rule 123:1-41-17 or Article 18.09" or "re-employed to a permanent full-time or permanent part-time position," they would have said so. No doubt the State now believes this was unnecessary because "re-employment" has clear meaning given by Article 18. But if this were the case, how account for the clarification, "hired by any state agency" that appears both in Article 16.02 and the sideletter that is the source of the contractual language? It must be assumed that the phrase was used for a reason, not merely as some sort of excess baggage, and that the reason is to underscore a non-exclusive meaning of "re-employed."

It is true that the clarifying phrase is missing from the paragraph of the Memorandum that applies to the grievants and that this omission might have given rise to misunderstanding by those who read the Memorandum in relation to Article 18 on layoffs, rather than to Article 16 and the source document on seniority, or by those who are unfamiliar with the bargaining history. Alternatively, the omission could signify that the Parties agreed that when the 1989 contract took effect, employees hired prior to July 1, 1989, would lose the seniority granted to them by the sideletter. Not even the State suggests this is so (holding to a restrictive meaning of "re-employed" in the source document as well as the Contract itself), and the Union's witness described only changes that affected employees hired after 1989. Moreover, it is apparent that the only relevant difference between the effect of pre- and post-1986-contract layoffs on seniority that is specified by the sideletter is the period in which being re-employed or recalled would preserve continuous service, not the definition of "re-employed." Therefore, when provisions of the 1987 sideletter were incorporated into the 1989 contract with the intent to preserve their meaning, the definition of "re-employed" for the purpose of calculating seniority remained the same for all. The "re-employed" of the Memorandum must be interpreted to mean the same as the "re-employed" of the 1987 sideletter and of Article 16.02.

This brings me back to the meaning of "re-employed" in the context of the sideletter and Article 16.02, both of which contain "i.e., not recalled by any state agency, but hired by any state agency." Clearly, "re-employed" can have the restrictive meaning urged by the State only if the ordinary sense of the word and this clause are disregarded. There simply is not compelling enough reason to do so. "Re-employed" therefore means "hired again by any state agency" in Article 16 and the page 136 Memorandum of Understanding.

Applying this meaning of "re-employed" to the grievants' situations, all three were hired back by a state agency within one year of layoff. They were therefore re-employed within the meaning of the page 136 Memorandum of Understanding. The grievances and requested remedy are granted, with the exception that

bargaining unit employees who should have been bumped, but were not due to incorrect calculations of the grievants' seniority, may not be permitted to remain in their original positions. To grant this portion of the requested remedy would require the Parties to violate their own Agreement.

Award

The grievance is granted. The Ohio Bureau of Employment Services violated the terms of the Agreement when calculating the seniority dates of the grievants. The seniority dates for the grievants are to be corrected to reflect no break in service while laid off. Seniority credit will also reflect time worked as an intermittent after expiration of recall rights, to be calculated in accordance with Memorandum of Understanding, page 136 of the Agreement. If the correct seniority date would have prevented a grievant from being bumped, the grievant will be reinstated to the former position and made whole for pay and benefits lost as a result of being improperly bumped. The Arbitrator retains jurisdiction for 30 days to resolve any differences arising in the implementation of this award.

Anna D. Smith, Ph.D.
Arbitrator

March 30, 1992
Shaker Heights, Ohio