

ARBITRATION DECISION NO.:

485

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health,
Office of Psychiatric Services,
Allen Correctional Institution

DATE OF ARBITRATION:

December 1, 1992

DATE OF DECISION:

January 12, 1993

GRIEVANT:

Geri Mangas

OCB GRIEVANCE NO.:

23-01-(91-12-16)-0138-01-14

ARBITRATOR:

Mollie H. Bowers

FOR THE UNION:

Bob J. Rowland,
Staff Representative

FOR THE EMPLOYER:

Teri Decher,
Labor Relations Officer, ODMH

KEY WORDS:

Layoff
Job Abolishment

ARTICLES:

Article 1 - Recognition
 §1.04-Bargaining Unit Work
Article 18 - Layoffs
 §18.01-Layoffs
 §18.02-Guidelines

FACTS:

In December of 1991 the State laid off 2 bargaining unit members from the Ohio Department of Mental Health due to reductions in its personal services budget. The grievants were employed at the Psychiatric Services to Corrections Unit at the Allen Correctional Institution as a General Activities Therapist 1 and an Administrative Assistant 1; however, the General Activities Therapist 1 withdrew his grievance.

UNION'S POSITION:

The State improperly abolished the grievant's Administrative Assistant 1 position in violation of Articles 1.04 and 18.01 of the Contract. As a result of the layoff, the bargaining unit was eroded as work was reassigned from bargaining unit employees to supervisory employees. Further, the Union raised a challenge that the State's rationale was incorrect. The Union claimed that the grievant's position was abolished for reasons of efficiency, rather than economy, and this also violated the Contract.

Moreover, the Union emphasized that the State elected to layoff a bargaining unit employee rather than exercise any of the numerous viable options available to it. The Union claimed that as late as one month prior to the abolishment, the State assured the grievant that her position was secure. Had the State not misled the grievant about the vulnerability of her position, she would have had ample opportunity to secure other continued state employment.

EMPLOYER'S POSITION:

The abolishment of the grievant's position was executed in accordance with Article 18.01 of the Contract. The abolishment was necessitated by budgetary reductions and shortfalls which were beyond the State's control. In support, the State referred to the budgets for the fiscal years 1990, 1991 and 1992 which showed the budget cuts and the resulting savings.

The State claimed that the abolishment did not erode the bargaining unit; accordingly, there was no violation of Article 1.04. The State maintained that it made every effort to address the budgetary deficiencies without abolishing bargaining unit positions. The State stressed that it did not fill 23 of the 26 vacant positions, that it offered early retirement programs and that it reduced contractual services. Lastly, the State noted grievant's own inaction contributed to her abolishment; the grievant had displacement rights which she chose not to exercise.

ARBITRATOR'S OPINION:

Despite the grievant's long term of state service and good work record, the Arbitrator concluded that the State violated neither Article 1.04 nor 18.01 by abolishing her position. The State has satisfied its burden of proving that the abolishment was made in accordance with ORC 124.321-.327 and Article 18.02 of the Contract.

Moreover, the Union failed to establish that the State's decision to layoff was based upon efficiency as opposed to economy. First, the State sufficiently proved that the abolishment of the grievant's position was a last resort to address a situation that the State did not create. Second, the Union failed to prove that bias or some other impermissible rationale prompted the State to abolish the grievant's position. Third, the Union unsuccessfully challenged the State's budgetary assessment upon which the Employer based its decision to abolish the grievant's position, while the State clearly established that the position was abolished solely for the purpose of saving money.

In addition, the Union failed to substantiate its claim that the grievant's duties were reassigned to non-bargaining unit personnel. In contrast, the State submitted its Layoff Rationale which specifically described how the workload of the Administrative Assistant 1 position would be accomplished without reassigning the grievant's duties improperly. Consequently, the Arbitrator concluded that the grievant's position was properly abolished for reasons of economy.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

IN THE MATTER OF THE
ARBITRATION BETWEEN:

Ohio Civil Service

Employees Association

-and-

**Ohio Department of Mental Health,
Office of Psychiatric Services**

Case No.

23-01-911216-0138-01-14

ARBITRATOR:

Mollie H. Bowers

APPEARANCES:

For the Association:

Bob J. Rowland,
Staff Representative
Geri Mangas, Grievant

For the Employer:

Teri Decher,
Labor Relations Officer,
ODMH
Dirk Daubermire,
Office of Collective Bargaining
Kathy Mohr,
Psychological Services to
Corrections, ODMH
Jessica Byrd,
Ohio Department of Mental Health

The Hearing was held on December 1, 1992, at 9:00 a.m. in Conference Room A of the Ohio Civil Service Employees Association Headquarters, Columbus, Ohio. Both parties were represented and had a full and fair opportunity to present testimony and evidence in support of their case and to cross-examine that presented by the opposing party. No post-Hearing briefs were submitted.

Issue

The parties offered the following stipulated issue:

“Was the Collective Bargaining Agreement violated when management laid off an Administrative Assistant 1 from the Office of Psychological Services to Corrections? If so, what should the remedy be?”

Pertinent Contract Clauses

Article 1.04 - Bargaining Unit Work

Supervisors shall only perform bargaining unit work to the extent that they have previously performed such work. During the life of this Agreement, the amount of bargaining unit work done by supervisors shall not increase, and the Employer shall make every reasonable effort to decrease the amount of bargaining unit

work done by supervisors.

In addition, supervisory employees shall only do bargaining unit work under the following circumstances: in cases of emergency; when necessary to provide break and/or lunch relief; to instruct or train employees; to demonstrate the proper method of accomplishing the tasks assigned; to avoid mandatory overtime; to allow the release of employees for union or other approved activities; to provide coverage for no shows or when the classification specification provides that the supervisor does, as a part of his/her job, some of the same duties as bargaining unit employees.

Except in emergency circumstances, overtime opportunities for work normally performed by bargaining unit employees shall first be offered to those unit employees who normally perform the work before it may be offered to non-bargaining unit employees.

Further, it is the intent of the Employer in the creation and study of classifications to differentiate between supervisors and persons doing bargaining unit work. Whenever possible, such new and revised classifications will exclude supervisors from doing bargaining unit work.

The Employer recognizes the integrity of the bargaining units and will not take action for the purpose of eroding the bargaining units.

Article 18.01 - Layoffs

Layoffs of employees covered by this Agreement shall be made pursuant to ORC 124.321 -.327 and Administrative Rule 123:1-41-01 through 22, except for the modifications enumerated in this Article.

Background

The Ohio Civil Service Employees Association, AFSCME Local 11 (hereinafter, "the OCSEA" or "the Union") brought this matter to arbitration asserting that Articles 1.04 and 18.01 of the Agreement were violated when the Employer abolished bargaining unit positions in December, 1991, resulting in the layoff of two employees. The layoff occurred when the Ohio Department of Mental Health, Office of Psychiatric Services to Corrections (hereinafter, "the Employer") suffered a reduction in its personal services budget and determined that job abolishments were necessary.

In its original form, the grievance regarding said layoffs pertained to two employees: Charles Clapper, General Activities Therapist 1; and Geri Mangas, Administrative Assistant 1 (hereinafter, "the Grievant"). Both were employed at the Psychiatric Services to Corrections Unit at the Allen Correctional Institution in Lima, Ohio. At the outset of the Hearing, the Union stipulated that Mr. Clapper had withdrawn from this grievance.

The parties agree that the grievance was timely filed and processed through the negotiated procedure. They also stipulated that the issue is properly before this Arbitrator. (JX-1&2)

Union Position

The OCSEA maintains that the Employer improperly abolished the bargaining unit position held by the Grievant in violation of Articles 1.04 and 18.01 of the Agreement. It alleges that the Employer's action eroded the bargaining unit and resulted in circumstances contrary to the contractual prohibition against assigning supervisory employees to perform bargaining unit work. The Union challenges the Employer's layoff rationale as unjust, claiming that the abolishment of the Grievant's job occurred for Reasons of efficiency, rather than economy, in contravention of the parties' Agreement.

Additionally, the Union asserts that the Employer had other options available to it, but did not exercise them, to avoid laying off the Grievant. Those options, the Union claims, included reducing her work hours to those of a part-time position, reclassifying her position, reducing work hours of staff nurses and social workers, reducing the number of meetings (and related time and travel), and reducing contractual services and costs. Instead of exercising any of these options, the OCSEA points out, the Employer opted to layoff a good employee with considerable years of service.

As further support for its position, the Union contends that the Grievant, a state employee from November, 1976 to December, 1991, was misled by the Employer, as late as one month before the layoff, when she was assured that her position was secure. According to the Union, had the Grievant been properly informed about her vulnerability to layoff in a timely manner, she could and would have taken steps to secure continued employment with the state. Since this opportunity was not made available due to mismanagement, and in view of the aforesaid violations of the Agreement, the Union requests as remedy that the Grievant be reinstated to her previous position with full back pay and be made whole in every other respect. (JX-2)

Employer Position

The Employer argues that abolishment of the Grievant's job occurred in accordance with Article 18.01 of the Agreement. By this, the Employer means that the reasons for such abolishment were economy required by budgetary reductions and shortfalls beyond its control. As support for its position, the Employer cites the budgets for the fiscal years 1990, 1991, and 1992, which showed the budget cuts and the savings achieved by abolishing the two positions. (JX-3)

According to the Employer, its action did not erode the bargaining unit, in violation of Article 1.04 of the Agreement. It cites as support for this position the de-recruitment actions it took to address the budget cuts before implementing layoffs. The Employer relies upon testimony provided by Jessica Byrd to affirm that it made every effort to address the budgetary shortfall without abolishing any bargaining unit positions. It points to her testimony that the budget cuts in fiscal years 1991 and 1992 forced the Employer to reduce its staff by 13 positions. (EX-1) The Employer also stresses her testimony that it did not fill twenty-three, of twenty-six vacant positions, offered early retirement to employees, and reduced contractual services in an effort to balance the budget. Based upon Ms. Byrd's testimony, the Employer further asserts that the Agency in question reduced its costs by decreasing the number of Program Director meetings and by eliminating Peer Group meetings in fiscal year 1992.

Other evidence offered by the Employer included its Abolishment Rationale and Plan for the Office of Psychiatric Services to Corrections prepared by D. Brad Rice, Personnel Administrator, Department of Mental Health. (JX-3) The Plan outlined the bases for the Office's reduction of its staffing levels as follows:

- 1) source of funding reduced by 6.4% or \$870,542.00 in personal services budget;
- 2) proposed allocation for Fiscal year 1992 required a staff reduction of 13 positions from the Office of Psychiatric Services to Corrections;
- 3) initial steps taken to prevent abolishment of positions (provided by Byrd's) testimony, discussed above); and
- 4) factors used to determine which unit positions would be abolished (type of facilities, type of services, each unit's staffing pattern; each unit's anticipated/planned client caseload compared to actual caseload, and the administrative configuration of each unit).

The Employer also argues that the Grievant's inaction contributed to her being placed in a layoff status. It points out that the Grievant had displacement rights which she failed to exercise. (JX-5) Thus, the Employer maintains that it cannot be held culpable for the circumstances in which she now finds herself and that the grievance should be denied.

Opinion

In fashioning a ruling in the instant case, the Arbitrator could not help but consider, and commend, the Grievant's long service and good work record with the Employer. For these reasons, the Arbitrator recognizes both the professional and personal hardship which the Grievant's layoff has caused her. Based upon a thorough analysis of the evidence and testimony of record, however, the conclusion is inescapable that the Employer did not violate Articles 1.04 and/or 18.01 of the Agreement when it abolished her position.

With respect to the justification for such action, the Employer has the burden of proving, by a preponderance of the evidence, that the job abolishment was accomplished in accordance with Ohio Revised Code (ORC) 124-321-.327 as provided in Article 18.02 of the Agreement. (Bispeck v. Trumbull County Bd. of Comms, 3705 (3rd) 26, 523 N.E.2d 502, 1988, and Esseburne v. Agriculture Dept., 49 App (3d) 37, 550 N.E.2d 512 (Franklin, 1988) Note was taken that the OCSEA agreed that the Employer complied with the procedural requirements of Article 18.

Although the Union argued that the Employer's rationale for the job abolishment was based on efficiency, rather than the required rationale of economy, it was not able to prove its case. The basis for this conclusion is threefold. First, the Union was unable to show that the action was taken as a means of streamlining work for efficiency reasons or for the purpose of eroding the bargaining unit. Indeed, cross-examination of the Employer's witness, Byrd, by the Union demonstrated that abolishment of the Grievant's position in the bargaining unit was a last resort to address a situation that was not of the Employer's making. Second, the Union failed to demonstrate that bias or some other impermissible rationale led the Employer to abolish the Grievant's position. And third, the Union was unsuccessful in challenging, and did not submit any evidence to rebut, the budgetary assessment of the Employer upon which its decision to abolish the Grievant's job was based. In contrast, the Employer presented clear evidence that the Grievant's job was abolished solely for the purpose of saving money necessitated by significant budget cuts. (MX-1, JX-3)

Additionally, the OCSEA specifically argued that abolishment of the Grievant's position resulted in bargaining unit work being performed by non-bargaining unit personnel, in contravention of Article 1.04 of the Agreement. It failed, however, to present any testimony or other evidence to substantiate this claim. In contrast, the Employer submitted its "Layoff Rationale" which described how the work requirements of the abolished Administrative Assistant 1 position would be met. (JX-4) The Arbitrator therefore gave weight to the fact that the OCSEA was unable to rebut the Employer's rationale to show that bargaining unit work was being performed by supervisory/other employees, and thus, failed to meet its burden of proving that the Agreement had been violated in the instant case.

The foregoing analysis thus supports the Arbitrator's conclusion that the Grievant's job was abolished for reasons of economy.

Award

The grievance is denied.

Mollie H. Bowers
Arbitrator

January 12, 1993
Date