

Revised #756

CD 5/7/01

REVIEWED BY

OPINION AND AWARD

MAY 16 2001

IN THE MATTER OF THE ARBITRATION BETWEEN

Belmont Correctional Institution—Ohio Department of Rehabilitation and Corrections,

-AND-

OCSEA/AFSCME Local 11

Appearing For Belmont Correctional Institution

Brian Eastman, Deputy Director, Information & Technology

Tina Krueger, Advocate

James M. Lendavic, Labor Relations Specialists, OCB

Dave Lynch, Human Resources Director

Steve Little, OCB- Second Chair

Richard B. Shutek, Labor Relations Officer, Belmont

Arthur Tate, Jr., Warden, Belmont

Appearing for OCSEA

Ralph E. Church, Grievant

James S. Cofer, Corrections Officer

Tracey Cutright, Grievant

Mark Linder, Associate General Counsel

Bo Olexo, Chapter President

Michael Ondeek, Sergeant, Belmont

Jamie Kuhner, OCSEA Staff Representative

Dave Toler, Grievant Herman S. Whitter, Director Dispute Resolution (Telephonic Interview)

Joseph D. Williamson, Grievant

Mark Williams, Grievant

CASE-SPECIFIC DATA

Grievance Nos.

Grievance No. 27-31-20001003-0266-01-03-T

Grievance No. 27-31-20001003-0266-01-03

Hearings Held

November 29, 2000 and December 22, 2000

Case Decided

April 30, 2001

Subject

Removal-Residency Requirement

Arbitrator: Robert Brookins, Professor of Law, J.D., Ph.D.

## Table of Contents

I.	The Facts .....	3
II.	Relevant Contractual Provisions and Work Rules.....	9
III.	The Issue.....	9
IV.	Summaries of the Parties' Arguments .....	9
	A. Summary of the Employer's Arguments.....	9
	B. Summary of the Union's Arguments.....	10
V.	Discussion and Analysis .....	11
	A. Major Procedural Issues .....	11
	B. Major Substantive Issues .....	12
	C. The Decision.....	15
VI.	The Award .....	16

I. **The Facts**

The parties to this dispute are the Belmont Correctional Institution, an Agency of the Ohio Department of Rehabilitations and Corrections, ("BCI" or "the Employer") and OCSEA/AFSCME Local 11 ("the Union").<sup>\1</sup>

BCI has consistently informed its new employees of an Ohio residency requirement ("residency requirement"). In 1995, a correctional institution in Moundsville, West Virginia was either closing or preparing to close, and BCI was recruiting that institution's employees. BCI notified the Moundsville employees of Ohio's residency requirement. Specifically, when hiring Messrs. Ralph Church,<sup>\2</sup> Tracey Cutright,<sup>\3</sup> Dave Toler,<sup>\4</sup> Joseph Williamson,<sup>\5</sup> and Mark Williams<sup>\6</sup> as correctional officers ("the Grievants"), BCI apprised them of Ohio's residency requirement.

Because the pith of this dispute involves the facts and circumstances surrounding the Grievants' living arrangements, a relatively detailed itemization of those arrangements is indicated:

**Mr. Ralph Church**

1. While employed at BCI, Mr. Church lived in an apartment in Shadyside, Ohio with correction officers James Cofer and Joseph Williamson.
2. Mr. Church and his wife own real estate in West Virginia where his wife and children reside.
3. While employed with BCI, Mr. Church remained in Shadyside, Ohio during his workweek and spent the weekends in West Virginia with his wife and children.
4. Also, while still a BCI employee, Mr. Church voted in the last general and primary election in Belmont County, Ohio.
5. Mr. Church holds an Ohio driver's license and drives an automobile that is registered

<sup>\1</sup> Because much of the arbitral record lacked numbered exhibits, this opinion does not cite to exhibits in the record as extensively as the Arbitrator would have liked.

<sup>\2</sup> Hired, May 1995.

<sup>\3</sup> Transferred to BCI in 1994. Union's Post-hearing brief at 1.

<sup>\4</sup> *Id.*

<sup>\5</sup> Hired, November 1993. Union's Post-Hearing Brief at 2.

<sup>\6</sup> Hired, in August 1996.

1 in Ohio.

- 2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16
6. His 1998, 1999 Federal and Ohio Income Tax Returns contained his Ohio address.
  7. Mr. Church received mail at his Shadyside, Ohio apartment, including utility bills, w-2 tax statements, medical bills, health insurance, OCSEA's newsletters, monthly checking account statements, automobile repair bills, automobile and boat insurance, and his paychecks.
  8. Mr. Church normally ate, slept, and kept his personal belongings at his Ohio apartment.
  9. The telephone bill (including a cellular telephone) and the cable television bill for the Shadyside apartment were issued in Mr. Church's name.
  10. Mr. Church owns a boat in Ohio and holds Ohio boat and dock licenses containing his name and his address in Shadyside, Ohio.
  11. Mr. Church both claims and intends to be an Ohio resident, and his Ohio address is his primary residence for an indefinite period.
  12. Mr. Church intends to return to West Virginia upon retiring from BCI.

17  
18

#### Mr. Tracey Cutright

- 19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40
1. Mr. Cutright shared an apartment in Shadyside, Ohio with correction officers Mike Ondek and David Toler.
  2. Mr. Cutright does not own real estate in West Virginia, but his wife owns and resides on West Virginia property that she obtained from a divorce in a prior marriage.
  3. While employed with BCI, Mr. Cutright lived in Shadyside, Ohio during his workweek but spent the weekends with his wife and children, in West Virginia.
  4. Mr. Cutright voted in the last general and primary election in Belmont County, Ohio and held an Ohio driver's license.
  5. Mr. Cutright's 1998 and 1999 Ohio state Income Tax Return carries his Ohio address.
  6. Mr. Cutright received mail at his Shadyside, Ohio address, including utility bills, w-2 tax statement, OCSEA's newsletters, monthly checking account statements, and his paychecks.
  7. Mr. Cutright normally ate, slept, and kept some of his personal belongings at his Ohio apartment.
  8. Mr. Cutright shared rent, telephone, and utility expenses equally with his two roommates.
  9. Mr. Cutright paid Mr. Ondek cash for his share of the monthly expenses.
  10. Mr. Cutright has family in Ohio.
  11. Mr. Cutright had no written rent receipts.
  12. Mr. Cutright claims he intends to be an Ohio resident and that his Ohio address is his primary residence and home for an indefinite period.
  13. Mr. Cutright intends to return to West Virginia upon retiring from BCI.

41  
42

#### Mr. David Toler

- 43  
44  
45  
46  
47  
48  
49  
50  
1  
2
1. Before his removal from BCI, Mr. Dave Toler resided in an apartment in Shadyside, Ohio with correction officers Mike Ondek and Tracey Cutright.
  2. Mr. Toler and his wife owned real estate in West Virginia where she resides with their children.
  3. While employed at BCI, Mr. Toler lived in Shadyside, Ohio during the workweek and traveled to West Virginia to visit his wife and children on weekends.
  4. Before BCI fired him, Mr. Toler voted in the last general and primary election in Belmont County, Ohio and possesses an Ohio driver's license.
  5. In 1998 and 1999, Mr. Toler filed Federal and Ohio Income Tax returns with his Ohio address as return.
  6. Mail addressed to Mr. Toler at Shadyside, Ohio included utility bills, w-2 tax

statements, OCSEA's newsletters, monthly checking account statements, and his paychecks.

7. Mr. Toler normally ate, slept, and kept his personal belongings at his Ohio apartment.
8. Also, Mr. Toler shared his rent, telephone, and utility expenses equally with his two roommates.
9. The Shadyside water bill was in the name of and issued to Mr. Toler.
10. Mr. Toler obtained an Ohio fishing license.
11. Mr. Toler claimed that he never had a need for written receipts and therefore could not honor DAS's request therefor. However, Mr. Toler had Mr. Ondek to sign a receipt, acknowledging that Mr. Toler paid Mr. Ondek in cash for Mr. Toler's fair share of at least two months rent.
12. Mr. Toler claims he believes he is an Ohio resident and intends so to be.
13. He claims that he intended for Shadyside to be his primary residence.
14. Mr. Toler intends to return to West Virginia at the end of his employment with BCI.

#### **Mr. Joseph Williamson**

1. Mr. Joseph Williamson lived in Shadyside, Ohio, where he rented an apartment with correction officers James Cofer and Ralph Church. There was no written lease.
2. Neither Mr. Williamson nor his wife owns real estate in West Virginia, but his mother-in-law does.
3. Mr. Williamson's wife and children reside on his mother-in-law's West Virginia property.
4. During his workweek at BCI, Mr. Williamson remained in Ohio and visited his wife and children on weekends.
5. Before he was fired, Mr. Williamson voted in the last general and primary election in Belmont County, Ohio and holds an Ohio driver's license.
6. Mr. Williamson filed his 1998 and 1999 Federal and Ohio income tax return with his Shadyside, Ohio address as the return address.
7. Mr. Williamson received mail at his Shadyside address, including utility bills, w-2 tax statement, medical bills, OCSEA's newsletters, monthly checking account statements, and his paychecks.
8. He normally ate, slept, and kept his personal belongings at his Ohio apartment.
9. He and his roommates equally shared the rent, telephone, and utility expenses at their Shadyside address.
10. Mr. Williamson testified that he and Mr. Church paid Mr. Cofer in cash for their share of the monthly expenses at Shadyside, Ohio. However, the electric and the refuse removal bills for their apartment were issued in Mr. Williamson's name.
11. Mr. Williamson cellular telephone was billed to him at his Shadyside address.
12. He holds a firearms license from the state of Ohio where he also purchased firearms.
13. Mr. Williamson claims he is and fully intends to be an Ohio resident and that his Shadyside, Ohio address is not only his primary residence for an indefinite period.
14. Mr. Williamson intends to return to West Virginia at the end of his employment with BCI.

#### **Mr. Mark Williams**

1. Mark Williams claimed that his residence is in Martin Ferry, Ohio, where he rents an apartment with another correction officer
2. Mr. Williams and his wife own real estate in West Virginia.
3. Mr. Williams testified that he lives at his home in Martin Ferry, Ohio, but his wife and children live on their West Virginia property.
4. While employed with BCI, Mr. Williams remained in Martin Ferry, Ohio during his workweek and visited his wife and children, in West Virginia, on weekends.

5. Before BCI fired him, Mr. Williams voted in the last general and primary election in Belmont County, Ohio.
6. Mr. Williams holds an Ohio driver's license and has Ohio license plates registered in his name.
7. Mr. Williams filed his 1999 Federal and Ohio Income Tax return with his Martin Ferry, Ohio address.
8. Mr. Williams has a written lease for his Martin Ferry, Ohio address where he received mail, including utility bills, w-2 tax statement, OCSEA's newsletters, monthly checking account statements, and his paychecks.
9. Mr. Williams normally ate, slept, and kept his personal belongings at his Ohio apartment.
10. Mr. Williams shared his rent, telephone, and utility expenses with his roommate, Mr. Tim Ball. He claims he paid Mr. Ball in cash.
11. Because he paid his roommate in cash, Mr. Williams had no written receipts to present to BCI in support of such payments for his living expenses.
12. Mr. Williams intends to return to West Virginia at the end of his employment with BCI.

When BCI hired the Grievants, it also hired other employees from West Virginia who, in BCI's view, fulfilled Ohio's residency requirement as reflected in Section 124.27 ("Section 124.27")<sup>∇</sup> by, among other things, selling their West Virginia homes and moving to Ohio. Predictably, these employees grew increasingly concerned that the Grievants had not similarly complied with the residency requirement. Finally, in 1998, the employees threatened legal action, unless BCI began to enforce the residency requirement. Previously, BCI had done little to enforce the residency requirement.

Nevertheless, the prospect of a law suit apparently played a part in ending BCI's relaxed posture regarding the residency requirement. On or about August 6, 1998, Mr. Errol Douglas, Chief of the Bureau of Prisons, communicated with "all wardens," regarding the residency status of employees living outside of Ohio.<sup>∞</sup> Again, on or about February 17, 1999, Mr. Douglas communicated with the "Institution Personnel Officers," requesting updates "of all individuals currently living outside of . . . [Ohio]."<sup>∞</sup> On or about February 23, 1999,

<sup>∇</sup> Ohio Revised Code Ann. § 124.27 (2000).

<sup>∞</sup> Employer Exhibit No. 2.

<sup>∞</sup> Employer Exhibit No. 1.

1 Labor Relations Officer, David Lynch and Personnel Officer, Rick Shutek notified all BCI's  
2 employees of their duties to comply with Sections 124.27 and 123 1-11-02 within the next six  
3 months.<sup>\10</sup> On or about February 25, 1999, the Warden of BCI, Arthur Tate, Jr., also notified  
4 BCI's classified employees of the absolute duty to satisfy Section 124.27.<sup>\11</sup> Finally, on or  
5 about July 16, 1999, Messrs. Shutek and Lynch, through Warden Tate, issued BCI's classified  
6 employees a "second and final notice" to comply with the residency requirement and that the  
7 six-month window for correcting residency problems would end on August 25, 1999.<sup>\12</sup> On  
8 or about September 3, 1999, OCSEA's General Counsel, Linda K. Fiely, openly questioned  
9 BCI's interpretation of 124.27 to require classified employees to establish "primary,  
10 permanent residence in Ohio."<sup>\13</sup> In response to General Counsel Fiely's concern about the  
11 "primary, permanent" standard, Mr. Brian Eastman, Chief of the Bureau of EEO, stated:

12 The Department does not intend to attach any more significance to the term  
13 than what is *required under the law*. As you are aware, the Ohio Revised Code  
14 does not define "resident" for purposes of 124.27 of the Revised Code.

15 Therefore, the *common usage* of the word applies. Blacks Law Dictionary  
16 defines resident as "*one who has his residence in a place.*" Black's defines  
17 residence as "*a factual place of abode. Living in a particular locality.*" Barron's  
18 Law Dictionary defines residence as a term often "... used as *being synonymous*  
19 *with domicile*, since a person's residence is usually also his or her domicile and  
20 since the two terms have been held equivalent in judicial construction of some  
21 statutes." The *Department of Administrative Services* advised the Department of  
22 Correction and Rehabilitation *that for State Residency requirements the term*

\10 Employer Exhibit No. 4.

\11 Employer Exhibit No. 5A. The actual Ohio Residence Form is Employer Exhibit No. 5B.

\12 Employer Exhibit No. 6.

\13 Employer Exhibit No. 7.

1 *residence is synonymous with domicile*, and permanent, primary domicile in the  
2 state of Ohio is required for classified service. The residence in Ohio must be  
3 the single domicile for permanent residence, regardless of temporary absence or  
4 ownership of vacation property.<sup>\14</sup>

5 On or about February 14, 2000, BCI began to take positive disciplinary steps to  
6 enforce Section 124.27. Accordingly, Warden Tate notified Grievant Toler that he was the  
7 subject of an impending formal investigatory interview that was scheduled for February 29,  
8 2000, at 9:00 p.m., the purpose of which was to verify Grievant Toler's residency under  
9 Section 124.27 and Section 123:1-11 of the Ohio Administrative Code.<sup>\15</sup> During the  
10 investigatory interview, BCI determined that Grievant Toler was in violation of Section  
11 124.27 and, thus scheduled a pre-disciplinary hearing for July 26, 2000. The pre-disciplinary  
12 hearing was held on or about August 9, 2000, and on or about September 7, 2000, the Pre-  
13 Disciplinary Hearing Officer held that because the Grievant had violated Section 124.27,  
14 there was just cause for discipline.

15 On September, 23, 2000, Warden Tate informed Grievant Toler that he was officially  
16 removed, effective September 20, 2000. The specific charges against Grievant Toler were his  
17 alleged "violation of Rule No. 1 of the Standards of Employee Conduct, which addresses any  
18 violation of the Ohio Revised Code, (ORC), in that you have failed to comply with Ohio  
19 Residency requirements as specified in ORC 124.27."<sup>\16</sup> According to the record, your  
20 residence is stiff not within the State of Ohio. Accordingly, you are hereby removed from  
21 your position as Correction Officer." BCI took the same action on the foregoing dates  
22 against Grievants Mark Williams, Tracy Cutright, Joseph Williamson, and Ralph Church.

23 On or about October 3, 2000, the Union timely grieved the decision to terminate the

<sup>\14</sup> Employer Exhibit No. 8. (emphasis added).

<sup>\15</sup> Employer Exhibit No. 14.

<sup>\16</sup> Ohio Rev. Code Ann. § 127.24 (2000).



1 Grievants. The parties agreed to forego the third step in their grievance procedure and  
2 expedite the Grievance directly to arbitration.

3  
4 **II. Relevant Contractual Language and External**  
5 **Regulations**  
6

7 **Article 5-Management Rights**

8 Except to the extent expressly abridged only by the specific articles and sections of this  
9 Agreement, the Employer reserves, retains and possesses, solely and exclusively, all the  
10 inherent rights and authority to manage and operate its facilities and programs. Such rights  
11 shall be exercised in a manner which is not inconsistent with this Agreement. The sole and  
12 exclusive rights and authority of the Employer include specifically, but are not limited to, the  
13 rights listed in the Ohio Revised Code, Section 4117.08 (C), Numbers 1-9.  
14

15 **Section. 124.27**

16 Any person appointed to a position in the classified service under sections 124.01 to 124.64 of  
17 the Revised Code, except temporary and exceptional appointments, shall be or become  
18 forthwith a resident of the state.  
19

20 **Section 123:1-11-02.-Ohio Administrative Code provides that:**

21 Every applicant for examination must be a resident of the state of Ohio or signify in  
22 writing his or her intention to become and remain upon appointment, a resident of  
23 Ohio, unless such requirements are specifically waived in the examination  
24 announcement or otherwise waived in statute or rule.  
25

26 **III. The Issue**

27  
28 Whether the Grievants were removed for just cause? If not what shall the remedy be?  
29

30 **IV. Summaries of the Parties'**

31 **Arguments**

32 **A. Summary of the Employer's Arguments**  
33

34 **1. Management Reserved Rights**

35 a. Management reserves the right to define residency requirements.

36 Without that right, management could scarcely retain operational control.

37 b. Rights such as determining residency requirements are so central to the  
38 Employer's managerial and operational role as to be impervious to challenges  
39 based on arbitrariness, unreasonableness, or capriciousness.

40 c. Residency requirements are legitimate exercises of state power to promulgate  
41 regulations for its services.

42 d. Because the Department of Administrative Services (DAS) is charged with  
43 central maintenance of state employment issues, DAS must have authority to  
44 promulgate and define essential employment requirements and to *clarify*  
45 *legislative mandates* for state employment. Such basic decisions are immune to  
46 challenges that DAS somehow exceeded its legal authority. Therefore, absent  
47 the Employer's express concession of this right in a the Contract, challenges to  
48 that right must fail.

49 **2. Notice**

50 a. The Employer gave the Grievants six-months notice within which to comply

with Section 124.27 as interpreted by Section 123:1-11-02.

3. Residency—Legitimacy and Applicability
  - a. The residency requirement, as set forth in Section 123:1-11-02, is not contrary to law, given the absence of a definition in Section 124.27 and the usual *flexibility* of residency requirements in serving their *underlying purposes*.
4. Persuasiveness of the Grievants' Arguments
  - a. The Grievants have offered a thinly-veiled sham solely to circumvent Ohio's residency requirement.
  - b. The Grievants' conduct speaks louder than their empty allegations of intent to become Ohio citizens.
  - c. Alleged "intent" to be an Ohio resident for employment purposes is insufficient without actual physical removal of one's vested primary residence in West Virginia.
  - d. The Grievants are not voluntarily choosing Ohio as their domicile. Each Grievant intends to keep his West Virginia home and has no intent to become a *permanent* resident of Ohio.
  - e. An apartment is transitory by definition.
  - f. The Grievants stated no intent to abandon their West Virginia domicile. Instead, they stated that they intend to return to West Virginia, where their families will remain and where the Grievants will someday retire.

#### B. Summary of the Union's Arguments

1. Scope and Other Characteristics of Section 124.27
  - a. Section 124.27 does not use either "primary" or "permanent" to modify "resident."
  - b. Section 124.27 makes no reference to "Domicile" as a modifier of resident.
  - c. DAS unilaterally interpreted Section 124.27 to implicitly contain the modifiers "primary," "permanent," and "domicile." Section 124.27 contains only the term "resident," which is not defined in Chapter 124.
  - d. Section 123:1-11-02 was repealed in November 11, 2000 and, therefore, lacks any force or effect.
  - e. Section 124.27 has no legislative history and the Employer's speculations thereto are irrelevant.
  - f. Although the Employer views domicile and residence as synonymous, the Employer failed to produce any legal analysis to support that those terms are normally so viewed.
  - g. Ambiguous terms such as "resident" should be broadly construed to protect those subjected to it.
2. Burden of Proof
  - a. The Employer improperly shifted the burden to the Grievants to show that they are residents of Ohio.
3. Disparate Treatment
  - a. The Grievants are victims of disparate treatment because other correctional institutions in the Department of Rehabilitation and Corrections do not impose the residency requirement.
4. Suspended Enforcement of Section 124.27
  - a. Before the instant case, DAS made no effort to enforce the residency requirement consistently and fairly.
  - b. The Employer failed to act reasonably and responsibly in altering approximately 20 years of past practice.
5. BCI's Duty to Bargain

- 1 a. BCI failed to bargain with the Union before initiating the residency  
2 requirement.  
3 b. On several previous occasions DAS issued “hollow” notifications of its intent  
4 to enforce the residency requirement.  
5 6. Work Rules and the Collective-Bargaining Agreement  
6 a. Work rules must be reasonable and inoffensive to Ohio’s laws such as the Ohio  
7 Revised Code and the Ohio Administrative Code.  
8 b. The residency requirement in the instant case does not appear in the parties’  
9 Collective-Bargaining Agreement.  
10 c. For DAS to nullify public employees’ statutory rights, such an intent must be  
11 specifically and unequivocally set forth in the Collective-Bargaining  
12 Agreement.<sup>17</sup> Absent such an explicit intent, the Employer must respect  
13 statutory standards.

14 **V. Discussion and Analysis**

15 The foregoing summaries reflect the Parties’ numerous arguments—with varying  
16 degrees persuasive force—offered in support of their positions in this dispute. Nevertheless,  
17 the this dispute is amenable to resolution on much narrower grounds and, at bottom, resolves  
18 itself into two basic issues: (1) The Employer’s authority to interpret a general statute (public  
19 law) that contains a pivotal term (“resident”), which is hopelessly ambiguous on its face and  
20 which has an equally ambiguous history; and (2) whether the Employer’s interpretation of  
21 “resident” is consistent with any clear trend of judicial interpretation.

22 **A. Major Procedural Issues**

23 The most outcome-determinative procedural issues raised by the Union are whether  
24 the Employer afforded its employees sufficient notice before implementing the Section 124.27  
25 and whether the Employer had a duty to bargain with the Union before implementing its  
26 interpretation of Section 124.27, regardless of the propriety of that interpretation.

27 The Union correctly argues that an employer with a long-standing practice or custom  
28 of lax enforcement of a rule must afford employees and the Union proper notice and an  
29 opportunity to comply with either the resurrected or the newly minted work rule, before

<sup>17</sup> Ohio Ass. of Pub. Sch. Employees v. Batavia Sch. Dist. Bd. of Edu., 89 Ohio St. 3d 191 (2000).

1 modifying that custom or practice. Evidence in the record establishes that the Employer  
2 afforded the Grievants substantial notice and an opportunity to comply.<sup>\18</sup>

3 On the other hand, the record does not show that the parties bargained about this  
4 issue, and it is unclear whether the Union demanded that the Employer bargain or that the  
5 Employer simply refused to offer to bargain. Therefore, the Arbitrator lacks sufficient  
6 evidence to address this issue.

### 7 B. Major Substantive Issues

8 The Employer has the burden of persuasion regarding its charges against the Grievants  
9 and launches its substantive case by asserting that it has a residual, absolute, and inalienable  
10 right to “promulgate and define essential employment requirements and to clarify legislative  
11 mandates for state employment.”<sup>\19</sup> Furthermore, in the Employer’s view, the exercise of its  
12 rights in this area is so fundamental to operational control and to realization of its mission as  
13 to overwhelm any challenge to that right, including challenges of unreasonableness,  
14 arbitrariness, or capriciousness.<sup>\20</sup>

15 The quick response to this position is that there are *no absolute* rights. That is not to  
16 discount either the existence or importance of the Employer’s residual rights under the  
17 Parties’ Collective-Bargaining Agreement. Indeed, few would seriously deny that a public  
18 employer has the authority and the duty to enforce applicable public statutes. Nevertheless,  
19 the language of Section 124.27 addresses a legitimate concern of the Employer in this case:  
20 assuring that all of its employees are residents of Ohio. That much is clear on the face of  
21 Section 124.27. Nor does the Union seriously contend to the contrary. Clearly, then, the  
22 Employer’s basic right to enforce Section 124.27 is not at issue in this dispute, however.

23 Instead, the essence of this dispute is the scope of BCI’s discretion or authority to

---

<sup>\18</sup> See pp. 3, 6-7 *supra* for discussion of facts on this point.

<sup>\19</sup> Various Employer Exhibits.

<sup>\20</sup> *Id.*

1 police residency requirements by engrafting its interpretative gloss on a general public statute  
2 that addresses that subject. Restated, the issue is the propriety of the Employer's  
3 interpretation of Section 124.27.

4 The Employer's contention that it has unbridled discretion to interpret public law  
5 tumbles down under its own wright. Even the judiciary lacks such discretion. When  
6 interpreting a statute, courts must make a good-faith attempt to implement the intent of the  
7 legislative body in question. Surely no less is expected of BCI. In addition, BCI is also  
8 obliged to reference and follow judicial precedent when interpreting such a statute as Section  
9 124.27. Consequently, overstepping its authoritative or discretionary bounds,<sup>\21</sup> BCI's  
10 interpretation of "resident," in Section 124.27, must square with the common and traditional  
11 meaning of that term as set forth by the relevant judicial opinions.

12 In the instant case, BCI interprets "resident" to mean "primary, permanent "resident,"  
13 Yet the statutory language mentions only "resident." Both BCI and the Union cite and  
14 discuss case law showing the ambiguity, functionality, and resilience of "residence" or  
15 "resident." Regarding functionality, for example, the Employer's Post-Hearing Brief  
16 correctly points out that residence may be defined broadly for purposes of collecting income  
17 tax and narrowly for purposes of licensing Certified Public Accountants.<sup>\22</sup> In the instant  
18 dispute, however, the legislature opted to use the basic term "resident" for purposes of  
19 residency, and one must assume that was the limit of the legislative intent.

20 For reasons discussed below, the Arbitrator holds that the Employer's interpretation  
21 of Section 124.27 is wide of the mark. First, Section 124.27 inauspiciously declares that

---

<sup>\21</sup> See, e.g., *Hartong v. Makary*, 665 N.E.2d 704, 707 (1995) (stating:  
[T]he term "resident" is not defined in the policy. In the absence of a policy definition, the  
term must be given its *plain and ordinary meaning*. A "resident" is a person who lives in a place  
"for a period of some duration or regularity, *although not necessarily there permanently*, but  
excludes a temporary or transient visitor. (Internal quotation marks omitted)(emphasis added.

<sup>\22</sup> Employer's Post-Hearing Brief at 4.

1 employees in the classified service,” shall be or become forthwith a *resident* of the state.”<sup>\23</sup>

2 The Employer engrafted onto “resident” the added restrictions of “primary and permanent,”  
3 which immediately and effectively elevate “resident” to the level of “domicile.” Yet, even a  
4 cursory examination of the case law of Ohio and her sister states reveals that “resident” and  
5 domicile are not commonly understood to be synonymous.

6 “The terms ‘domicile’ and ‘residence’ although sometimes used synonymously, are  
7 frequently held not to be convertible, due to their distinguishing characteristics.”<sup>\24</sup>

8 “Domicile ordinarily has a broader meaning than residence, which requires the actual  
9 physical presence at some abode coupled with an intent to remain at that place for some  
10 period of time.”<sup>\25</sup> Finally, “while one can have only a single domicile, he may have several  
11 residences.”<sup>\26</sup> When called upon to interpret a residency requirement, courts usually look  
12 first to either the facial language of the statute or regulation in question to which they usually  
13 apply traditional definitions and interpretations. If, however, the regulation, or statute  
14 suggests that the legislature sought to achieve a special purpose or goal by breaking with  
15 tradition, courts will interpret the residency requirement to achieve that purpose.<sup>\27</sup> The key  
16 is that courts usually exercise discipline when they interpret residency requirements,  
17 referencing either or both of the two forgoing criteria.

---

\23 Ohio Rev. Code Ann. § 127.24 (2000).

\24 *Spires v. Spires*, 214 N. E. 2d 691, 694 (1966).

\25 *In re Fisher*, 91 Ohio App. 3d 212, 215 (1993) (citing *Furr v. Lordy* (*In re Lordy*) (stating, “A person’s domicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain there. A person has only one domicile at a particular time even though he or she may have several residences”).

\26 *Id.* See also, *In re Fore*, 168 Ohio St. 363, 371 (1958) stating:  
It is urged by the petitioner that the word, ‘resident,’ should be interpreted as synonymous with ‘domicile,’ and that in Ohio the Probate Court can not appoint a guardian for a person not domiciled in Ohio unless he has a ‘legal settlement’ in Ohio. We do not ascribe this meaning to the word, ‘resident,’ as it is used in this section. Rather, we believe it is to be given its ordinary meaning, that of indicating simply a place of dwelling within the state.

\27 *In re Fore*, *supra*, note 26.

1 In the instant case, there is little evidence that, when interpreting Section 124.27, BCI  
2 followed either traditional guidelines or legislature intent. Indeed, Section 124.27 seems to  
3 lack a legislative history from which one can discern a legislative intent. Consequently, the  
4 Employer was left with tradition, which it apparently choose to ignore.

5 C.

The Decision

6 Having held that the Employer misinterpreted Section 124.27, the issue becomes  
7 whether the Grievants were terminated for just cause. They were not. If the Employer is to  
8 adopt and enforce a public statute as a work rule, then it must properly apply that rule as the  
9 legislature and the judiciary reasonably intended. In the instant case, the Arbitrator believes  
10 that the number and strength of the Grievant's contacts with Ohio are sufficient to satisfy  
11 "resident," under Section 124.27, when that term is interpreted in its ordinary and traditional  
12 sense. This is not to say that none of the Grievants' conduct raises an eyebrow. Clearly, it  
13 does. Yet, on balance, the Grievants' behavior and their expressed intent are consistent with  
14 a desire to become residents of Ohio, even though the domicile for most, if not all, of the  
15 Grievants remains in West Virginia.

16 If the Employer wishes to enforce a more stringent standard than is reflected on the  
17 face of Section 124.27, it has other avenues through which it may promulgate and enforce  
18 such a work rule. Misinterpreting or misapplying public statutes is not among those options.

19  
20  
21 VI.

The Award

22 For all the foregoing reasons, the Grievances in this dispute are sustained in their  
23 entirety. Consequently, the Employer is hereby instructed to reinstate the Grievants with  
24 full backpay from the date of their wrongful terminations to the date that the Employer  
25 implements the Undersigned's opinion and award in this matter. The Employer is entitled to  
26 reduce whatever backpay owed to the Grievants by any earnings they did receive or with due

1 diligence would have received during the period defined above. Finally, the Grievants'  
2 seniority is to remain undisturbed, as if the terminations never occurred.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

Robert Brookins  
Robert Brookins, Labor Arbitrator

Notary Certificate

State of Indiana )  
)SS:

County of

Before me the undersigned, Notary Public for \_\_\_\_\_ County, State of Indiana,  
personally appeared \_\_\_\_\_, who swears under oath and under penalty  
of perjury that the contents of this document are true and accurate and were prepared solely  
by Robert Brookins who hereby acknowledges the execution of this instrument this  
day of \_\_\_\_\_, 2001.

Signature of Notary Public:  
Printed Name of Notary Public:  
My commission expires:  
County of Residency:



