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In the Matter of Arbitration	:	Grievance Number: TOS-005-15
	:	
Between the	:	
	:	
TREASURER OF THE STATE OF OHIO,	:	Grievant: Deborah Gales
	:	
Employer	:	
and the	:	
	:	Date of Hearing: February 22, 2016
OHIO CIVIL SERVICE EMPLOYEES	:	
ASSOCIATION, AMERICAN	:	
FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES,	:	Howard D. Silver, Esquire
LOCAL 11, AFL-CIO,	:	Arbitrator
	:	
Union	:	

DECISION AND AWARD OF THE ARBITRATOR

APPEARANCES

RECEIVED / REVIEWED
MAY - 2 2016
OCSEA - OFFICE OF
GENERAL COUNSEL

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PROCEDURAL BACKGROUND

This matter came on for an arbitration hearing on February 22, 2016 at 10:00 a.m. in room 195 within the offices of the Union at 390 Worthington Road, Westerville, Ohio 43085. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The hearing concluded on February 22, 2016 at 7:50 p.m. and the evidentiary record was closed at that time.¹

This matter proceeds under the parties' current collective bargaining agreement, Joint Exhibit 1, an Agreement in effect between the parties from March 15, 2015 through March 14, 2018 that includes Article 16, Layoffs and Article 23, Grievance Procedure.

Each of the parties filed a post-hearing brief with the arbitrator by April 19, 2016 and the post-hearing briefs were exchanged between the parties by the arbitrator on April 20, 2016.

No challenge has been raised as to the arbitrability of Ms. Gales' grievance. Under the language of the parties' Agreement, Joint Exhibit 1, the arbitrator finds Ms. Gales' grievance to be arbitrable and properly before the arbitrator for review and disposition.

ISSUE

Did the Employer violate the parties' collective bargaining agreement when the Employer abolished the grievant's position and laid off the grievant effective September 28, 2015?

If so, what shall the remedy be?

¹ The February 22, 2016 arbitration hearing that considered the grievance of Deborah Gales, grievance number TOS-005-15, proceeded as a consolidated proceeding that had included a second grievant, Diana McNeal. The grievances that involved Ms. McNeal, TOS-006-15 that addressed Ms. McNeal's displacement (bumping) rights and that part of TOS-005-15 that addressed the abolishment of Ms. McNeal's Secretary position, were settled at the February 22, 2016 hearing. The arbitrator in the case herein therefore focuses on the evidence, arguments, and issues raised by Ms. Gales' grievance, grievance number TOS-005-15.

STATEMENT OF THE CASE

The parties to this arbitration proceeding, the Treasurer of the State of Ohio, the Employer, and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, the Union, are parties to a collective bargaining agreement in effect from March 15, 2015 through March 14, 2018, Joint Exhibit 1.

Within the parties' collective bargaining agreement, Joint Exhibit 1, is Article 16, Layoffs that in section 16.01 provides the following:

Layoffs of employees covered by this Agreement shall be for lack of funds, lack of work or the abolishment of positions. The abolishment of positions shall be as a result of reorganization for the efficient operation of the Treasurer's Office; for reasons of economy; or for lack of work expected to last for more than one (1) year. The Employer shall determine whether a layoff or an abolishment of positions shall occur, the timing of layoffs or job abolishments, the number of employees to be laid off or positions to be abolished, and in which classifications layoffs or abolishments shall occur.

Article 16, section 16.02 in the parties' collective bargaining agreement begins with the following:

When the Employer determines that a layoff or job abolishment shall occur, the Employer shall notify the Executive Director of the Union twenty-five (25) days in advance and the affected employee(s) no less than fourteen (14) calendar days in advance of the effective date of the layoff or job abolishment.

Also appearing within Article 16, section 16.02 is the following:

The notice to the Union shall contain the Employer's rationale for the layoff and identify the positions which the Employer believes may possibly be affected. In layoffs for lack of funds, the rationale shall contain information regarding current or projected deficiency of funding required to maintain current or sustained projected levels of staffing. In layoffs for lack of work, the rationale shall contain adequate information which may consist of a comparison between current work

levels and work levels when a lack of work did not exist. Such comparison may include statistical data and additional supporting materials.

The notice to the employee shall include:

1. The reason for the layoff or displacement;
2. The effective date of the layoff or displacement;
3. The employee's accumulated seniority;
4. A statement advising the employee of the right to displace (bump) another employee and that the employee must exercise displacement (bumping) rights within five (5) calendar days of the date the employee is notified of the displacement or layoff;
5. A statement advising the employee of the right to recall;
6. A statement that the employee is responsible for maintaining a current address with the Employer;
7. A statement that the employee may have the option to convert accrued unused leave, pursuant to Section 16.09.

Article 16, section 16.06 provides that layoff appeal rights for employees or the Union shall be through the grievance procedure and states that a grievance concerning a layoff may be advanced directly to Step 2 of the grievance procedure. The language of Article 16, section 16.06 includes: "The Employer shall have the burden of justifying the statement of rationale by a preponderance of the evidence. Absent a showing of abuse of discretion by the Employer, the arbitrator shall accept the rationale."

Within the table of organization of the Ohio Treasurer's Office is the Center for Public Investment Management, that part of the Ohio Treasurer's Office that coordinates continuing financial management education among public officials and public employees responsible for managing the investment of public funds. The Center for Public Investment Management is known by its acronym CPIM.

The grievant in this proceeding, Deborah Gales, was hired by the Ohio Treasurer's Office in October, 1998. Ms. Gales worked within the Ohio Treasurer's Office for the ensuing eighteen years. Ms. Gales worked in debt management and then in revenue management, and eventually moved to the Center for Public Investment Management where Ms. Gales worked from a position classified Account Clerk 1. Ms. Gales' immediate direct supervisor at the time of the job abolishment, Tanya Rutner, assumed the position of Director of CPIM in March, 2015.

During the late spring of 2015 the Employer began a review of its table of organization to determine whether there were positions in the table of organization that could be abolished due to lack of work. Three positions at the Ohio Treasurer's Office were identified as no longer needed due to lack of work: a Secretary position in the Trust Department, a Printing Coordinator position, and the Account Clerk 1 position in CPIM filled by Ms. Gales.

On September 2, 2015 the Ohio Treasurer's Office directed a written Notice of Intent to Layoff to the Union, addressed to "Director, OCSEA." Within this September 2, 2015 notice, Joint Exhibit 2, page 1, there is mention of the position numbered 2007413, the Account Clerk 1 position filled by Ms. Gales. Attached to this notice was a brief statement of the reason for the abolishment of the Account Clerk 1 position that stated the abolishment was the result of lack of work due to increases in administrative self-service, gains in technology, and a reduction in community education events. See Joint Exhibit 2, page 7.

On September 2, 2015 written notice of the abolishment of the Account Clerk 1 position filled by Ms. Gales was directed to Ms. Gales, informing Ms. Gales that the effective date of the abolishment of Ms. Gales' position would be September 28, 2015. See Joint Exhibit 2, page 13.

On September 3, 2015 the same information directed to "Director, OCSEA" on September 2, 2015 was directed via hand-delivery to "Christopher Mabe, President, OCSEA." Included in the

September 3, 2015 packet of information, Joint Exhibit 3, is written notice to the Union of the intention of the Employer to abolish the position of Account Clerk 1 effective September 28, 2015, Joint Exhibit 3, page 1, and a brief statement of the reason for the abolishment of the Account Clerk 1 position, Joint Exhibit 3, page 7.

On September 14, 2015 a written grievance form, Joint Exhibit 6, page 2, was filed by the Union with the Employer charging a violation of Article 16, Layoffs and Article 1, section 1.03, Bargaining Unit Work, in the abolishment of the position filled by Ms. Gales and the layoff of Ms. Gales. As expressed within this written grievance form (that addressed three grievants when it was filed, including Ms. Gales):

TOS is abolishing the grievants positions for lack of work. The rationale for layoff does not provide the Union notice of evidentiary work levels as prescribed (sic) in Article 16.02. The rationale distributes work to exempt staff. Some or all of the grievants' duties have been moved to exempt staff in order to establish "lack of work".

As to "Remedy sought," the grievance form filed on behalf of Ms. Gales reads: "Grievants to maintain full time permanent positions and to be made whole."

On September 23, 2015 representatives of the Employer and the Union met to discuss the abolishment of the Account Clerk 1 position filled by Ms. Gales. On October 5, 2015 the Employer issued its response to the grievance at Step 2 of the parties' grievance procedure. In its Step 2 response the Employer noted that through improved technology and increases in self-service by other employees the number of hours needed from the Account Clerk 1 position filled by Ms. Gales had decreased. In its response the Employer denied that the duties formerly assigned to the Account Clerk 1 position when filled by Ms. Gales had been moved to exempt positions to establish "lack of work." The Employer found that the duties remaining for the Account Clerk 1

position did not require a full-time position. The grievance was denied at Step 2 by the Employer. See Joint Exhibit 5.

On October 7, 2015 the Union directed written notice to the Employer expressing the Union's wish to advance grievance number TOS-005-15 to arbitration, pursuant to Article 23, section 23.02 of the parties' contract. See Joint Exhibit 6, page 1.

SUMMARY OF TESTIMONY

Kirk Walker

Kirk Walker is an employee of the Ohio Treasurer's Office and has been so employed for twenty-nine years. Mr. Walker began his employment with the Ohio Treasurer's Office as an Account Clerk 2 within an accounting section, moved to a Fiscal Specialist position in the Forgery /Wire Room where he worked for thirteen years, and for the past six years has worked as an Account Examiner 3 within the Ohio Treasurer Office's Trust Department.

Mr. Walker began serving as a Union steward in the 1990's and has served as the local Union's Treasurer for twelve years. Mr. Walker serves as a chief Union steward in the Ohio Treasurer's Office and participated in bargaining the last four or five collective bargaining agreements between the parties.

Mr. Walker referred to Joint Exhibit 2, notice received by the Union at 9:30 a.m. on September 2, 2015, a notice entitled: "Notice of Intent to Layoff." Mr. Kirk testified that employees were notified that day, September 2, 2015, for the first time, that job abolishments were to occur effective September 28, 2015. Mr. Kirk testified that those employees to be laid off effective September 28, 2015 were advised that their last day on the payroll would be September 25, 2015.

Mr. Walker was referred to Joint Exhibit 3, a Notice of Intent to Layoff issued by the Employer dated September 3, 2015 and directed to "Christopher Mabe, President, OCSEA," as described in the notice, "*VIA HAND DELIVERY.*" Mr. Walker noted that while employees were required to receive fourteen (14) calendar days of advance notice prior to the job abolishment and resulting layoff, the Union was to receive twenty-five business days of advance notice for the September 28, 2015 job abolishments and layoffs, but did not.

Deborah Gales

Deborah Gales, the grievant in this proceeding, was hired by the Ohio Treasurer's Office in October, 1998 and remained employed within the Ohio Treasurer's Office for the ensuing eighteen (18) years. Ms. Gales began her employment in the Ohio Treasurer's Office as a Clerk in debt management and later worked in revenue management over a span of twelve years, and had served as an Account Clerk 1 for six years in the Ohio Treasurer's Office. At the time of the abolishment of the Account Clerk 1 position filled by Ms. Gales on September 28, 2015 Ms. Gales' position had been located within the Center for Public Investment Management (CPIM) within the Ohio Treasurer's Office.

Ms. Gales explained that CPIM provides financial management education conferences for city treasurers, county treasurers, and other officials responsible for the investment of public funds.

Ms. Gales testified that during the three months prior to the abolishment of Ms. Gales' Account Clerk 1 position Ms. Gales had served under the direct supervision of Tanya Rutner, the Director of CPIM. Ms. Gales testified that at no time did Director Rutner speak directly to Ms. Gales nor was Ms. Gales invited to attend any meetings. Ms. Gales testified she was given no work to do other than to clean out a storeroom, clean out a desk, and place conferences on the calendar.

Ms. Gales testified that when her position was abolished and she was laid off there had been no bargaining unit member employed in CPIM to perform the work formerly performed by Ms. Gales.

Under questioning by the Employer representative, Ms. Gales testified that about forty percent (40%) of her duties were devoted to CPIM conferences, requiring Ms. Gales to field telephone calls for purposes of registration and answering questions concerning credit hours. Ms. Gales confirmed that there are today fewer CPIM conferences and fewer participants at CPIM conferences. Ms. Gales testified that at present there are eight to nine annual two-day conferences overseen by CPIM.

Megan Kish

Megan Kish is the Director of the Human Resources Department within the Ohio Treasurer's Office and has served in this capacity for the past year. Ms. Kish is now in her fifth year of employment with the Ohio Treasurer's Office.

Ms. Kish testified that in the late spring of 2015 a discussion occurred within the Ohio Treasurer Office's Department of Human Resources as to the need for all of the full-time positions then in the table of organization of the Ohio Treasurer's Office. This discussion led to the identification of three full-time positions that were found to lack full-time work and were determined not needed. One of the full-time positions identified as having a lack of work was the Account Clerk 1 position in CPIM filled by Ms. Gales.

Ms. Kish testified that Tanya Rutner began as Director of CPIM in March, 2015. Ms. Kish discussed with Ms. Rutner whether there was a continuing need for Ms. Gales' full-time Account Clerk 1 position.

Ms. Kish testified that ultimately the Treasurer of Ohio ordered the abolishment of three positions within the Ohio Treasurer's Office, a Secretary position in the Trust Department filled

by Diana McNeal; a Printing Coordinator position filled by Dave Tudor, and the Account Clerk 1 position in CPIM filled by Ms. Gales.

Ms. Kish was referred to Joint Exhibit 3, the September 3, 2015 packet of information and notice directed to: "Christopher Mabe, President, OCSEA." Ms. Kish referred to Joint Exhibit 3, page 7 as presenting an executive summary regarding the abolishment of the Account Clerk 1 position filled by Ms. Gales.

Ms. Kish testified that Joint Exhibit 2, the Notice of Intent to Layoff and packet of materials dated September 2, 2015 addressed to "Director, OCSEA" was presented to the Union on September 2, 2015.

Ms. Kish identified Joint Exhibit 6, page 2 as the September 14, 2015 written grievance form filed by the Union with the Employer on behalf of Ms. Gales, and Joint Exhibit 6, page 1 as the Union's October 7, 2015 written notice directed to the Employer making known the Union's wish to move the unresolved grievance involving Ms. Gales to arbitration.

Ms. Kish identified Joint Exhibit 4 as the information required to be posted by Article 16, section 16.10 at least fourteen (14) days prior to any layoff, a posting that is to include a listing of the names of those affected, classifications, types of appointment, and each listed employees' Treasurer of State seniority.

Ms. Kish referred to Joint Exhibit 9, emails between the Employer and the Union that note that Diana McNeal and Dave Tudor, the incumbents of the Secretary and the Printing Coordinator positions, respectively, wish to exercise their bumping rights.

Ms. Kish testified that Ms. Gales had been on the payroll of the Ohio Treasurer's Office through September 28, 2015.

Under questioning by the Union representative, Ms. Kish testified Ms. Gales had been paid for September 28, 2015.

Ms. Kish testified that the Director of CPIM, Tanya Rutner, had assumed the position of CPIM's Director in March, 2015.

Walt Myers

Walt Myers has been employed by the Ohio Treasurer's Office for two years and since May, 2015 has served as the Chief Financial Officer in the Ohio Treasurer's Office. Prior to his present assignment Mr. Myers worked as the Director of the Ohio Treasurer Office's Trust Department. Mr. Myers joined the Ohio Treasurer's Office in February, 2014.

Mr. Myers provided testimony about the Secretary position in the Trust Department formerly filled by Diana McNeal.

Christina Roberts

Christina Roberts is a Compliance Manager within the Trust Department in the Ohio Treasurer's Office and has served in this capacity for six years. Ms. Roberts has served the Ohio Treasurer's Office for seventeen years. Ms. Roberts testified about Ms. McNeal's Secretary position in the Trust Department.

Tanya Rutner

Tanya Rutner is the Director of the Center for Public Investment Management within the Ohio Treasurer's Office, having assumed this position in March, 2015. Ms. Rutner described CPIM as a coordinator of continuing financial management education for fiscal officials who are responsible for the investment of public monies. Ms. Rutner explained that CPIM hosts

conferences, provides online courses, offers webinars, and accredits professional organizations for the provision of courses approved by CPIM.

Ms. Rutner pointed out that beginning February 8, 2016 CPIM had made the transition to a paperless operation, with all interaction now occurring online.

Ms. Rutner testified that when she assumed the directorship of CPIM Ms. Gales had been working in a position classified Account Clerk 1 in CPIM. Ms. Rutner became the direct supervisor of Ms. Gales and in this role observed Ms. Gales in her Account Clerk 1 position.

Ms. Rutner identified State's Exhibit 14 as an email from Deborah Gales to Ms. Rutner dated March 4, 2015 with the subject line: "What's Deb Working On." This email presents:

Mailing and faxing yearly exempt forms to participants

Entering checks in my database for auditors

Making copies of exemption forms

Taking phone calls pertaining to CPIM participants and any other calls

What am I trying to work on?

Trying to establish viewing rights only to aspire to view if participant is registered, paid, and how many credits if any.

Ms. Rutner identified State's Exhibit 15 as a list of duties carried out by Ms. Gales from her Account Clerk 1 position in CPIM, a list prepared by Ms. Rutner. This list provides:

Job Duties

Used to:

- Make copies of exemptions and alphabetize.

Now:

- V-cards, notes – 10 minutes x 3/week
- Printing of emails - 10 minutes x 1/week
- Interoffice mail – 10 minutes x 3/week
- Phone calls - 30 minutes x 5/week
- Miscellaneous projects – 8 hours x 1/week

Miscellaneous projects include:

Maintaining storage room

Print and assemble cross-training manual for CPIM

Identify counties of all CPIM attendees in 2014 – This project will go away

Ms. Rutner testified that the copying of exemptions and alphabetizing that used to be done by Ms. Gales was accomplished through creating hard copies. As CPIM has gone paperless these duties are no longer needed.

Ms. Rutner explained that in the past CPIM had overseen fourteen to twenty annual conferences but now oversees four annual conferences. Ms. Rutner identified State's Exhibit 18 as presenting the number of CPIM conferences, attendees, and materials packets from 2005 through 2015, showing that in 2015 nine conferences occurred.

Ms. Rutner testified that the number of conferences overseen by CPIM is down; the number of attendees at CPIM conferences is down, and these circumstances served to decrease the job responsibilities of the Account Clerk 1 position in CPIM.

Ms. Rutner testified that during Ms. Rutner's supervision of Ms. Gales beginning in March, 2015, Ms. Gales had had assigned work that had required less than one-half day per week. Ms.

Rutner testified that by September 15, 2015 the workload assigned to the Account Clerk 1 position in CPIM required four hours per week to perform.

Under questioning by the Union representative, Ms. Rutner agreed that invoices generated by CPIM continue to be paid. These invoices are approved by Ms. Rutner and directed to the Fiscal Department for issuance of payment.

Ms. Rutner identified State's Exhibit 16 as the position description for an Account Clerk 1 position within the Treasurer of State's Office within the Community Education Division, with a usual working title of Community Education Coordinator. The duties on this position description begin with: "Assists facilities and event planners for continuing education programs ..."

POSITIONS OF THE PARTIES

Position of the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, Union

The Union argues that the Employer in effecting the job abolishment and layoff of the grievant, Deborah Gales, did not properly execute the obligations of the Employer under the parties' collective bargaining agreement. The Union notes that at the arbitration hearing the Employer provided facts, figures, charts, and analyses covering nearly a decade. The Union wonders why this information was not provided with the rationale for the claimed lack of work. It is the position of the Union that the Employer provided a rationale for the abolishment of the grievant's position but failed to provide "adequate information" as required by the language of Article 16, section 16.02 of the parties' Agreement.

The Union claims that under the parties' collective bargaining agreement the Employer must compare work levels at two points in time - when a lack of work did not exist and when a lack of work is alleged to exist. The Union claims the Employer is required to define the duties of

the classification attaching to the position in question, and the Employer must be specific as to which duties were eliminated and which duties were diminished. The Union claims that this is required to provide to the Union “adequate information” as demanded by the language of Article 16, section 16.02 when lack of work is the rationale for the job abolishment. The Union claims that “adequate information” would be required to be presented in compartments of time or pieces of work product. The Union argues that the rationale provided by the Employer does not suffice as “adequate information” provided to the Union.

The Union points out that within the Union’s obligations as an exclusive representative of the bargaining unit are services to be provided to bargaining unit members who face being laid off. The Union points to the need of bargaining unit members affected by layoffs for information and an understanding of the options available to them. The Union notes that it can never have enough time to prepare its membership for layoffs, so each day of advance notice as bargained for by the Union in the parties’ collective bargaining agreement to provide such advance assistance is precious.

The Union argues that it bargained for twenty-five (25) days of advance notice about a layoff and the testimony from Ms. Kish and Mr. Walker was to the effect that the notice of layoff directed to the Union was received by the Union on September 3, 2015. The Union notes that while the Employer claims that its obligation to provide advance notice to the Union is to be computed in calendar days, it is the position of the Union that the intention of the agreed language at issue is that business days be used in the twenty-five day computation under the language of Article 16, section 16.02 about the advance notice to be provided by the Employer to the Union. In support of its assertion in this regard the Union points to express language in Article 16, section 16.02 that refers to providing to an affected employee no less than fourteen (14) “calendar days” of advance

notice prior to the effective date of the layoff or abolishment. The Union points out that no reference to “calendar days” appears in Article 16, section 16.06 in describing the advance notice to be received by the Union under this provision.

At pages 1 - 2 of the Union’s post-hearing brief the following is presented:

The plain language of the article is such that calendar days are used for the employees notice and business days are used for the Union’s notice. The language of the article makes a distinction between the “advance” of the Union in regards to the “advance” of the employees. In order for the language to mean that each is under a calendar day advance, there would need to be just an “and” behind the “twenty-five days”. Meaning that in order for the language to read as the Employer alleges, the language should be written as follows: “... shall notify ... the Union twenty-five days and the affected employees no less than fourteen calendar days in advance.”

The Union asserts that the way the sentence is constructed allows for 2 separate notices with one being business days and the other being calendar days.

It is the position of the Union that even if the arbitrator were to find that the twenty-five days of advance notice to be provided to the Union under the language of Article 16, section 16.02 are calendar days, the notice provided to the Union by the Employer on September 3, 2015 did not provide twenty-five calendar days of advance notice because, as argued by the Union, the last day of work for the grievant had been September 25, 2015, and there are not twenty-five calendar days between September 3, 2015 and September 25, 2015. While the Employer’s witnesses claimed that the layoff date was September 28, 2015, the Union claims that there is no evidence the grievant was in a pay status on September 28, 2015, as shown by State’s Exhibit 7, a Certification of Final Payroll that refers to a final earnable salary date of September 25, 2015.

The Union points out that the grievant, Ms. Gales, had spent her career in the Ohio Treasurer’s Office rising within the table of organization and had believed that she would be able to retire at the conclusion of her career. The Union reminds the arbitrator that it was the Employer

who broke the employment relationship and it was the Employer who defined the grievant's work as that of a full-time Account Clerk 1. In this regard the Union refers to State's Exhibit 16, the position description for the Account Clerk 1 position filled by Ms. Gales.

The Union points out that the position description assigned to the position filled by the grievant begins with a forty percent (40%) assignment of work time to be spent in assisting facilities and event planning for continuing education programs. This assistance is to include helping in resolving conference logistics and arrangements, assisting with auxiliary functions related to travel, and insuring conference site directions are posted clearly and accurately on an appropriate website. The position description refers to assisting with preparation of training materials, correspondence, and disseminating information regarding participation.

The Union notes that thirty percent (30%) of the work time described by the position description for the Account Clerk 1 position in question refers to creating and maintaining records and databases related to educational conferences, scheduling participants to attend, and confirming enrollment reports. The thirty percent (30%) of duties described in the position description refer to maintaining and tracking accurate records concerning continuing education unit hours for participants.

The remaining thirty percent (30%) of the duties described by the position description for the position filled by the grievant refer to preparing and filling requests for educational/information materials and performing related duties as assigned.

The Union notes that the position description for Ms. Gales' Account Clerk 1 position, State's Exhibit 16, describes the work the Employer carved out of the Account Clerk 1 classification specification that the Employer assigned to the incumbent of the CPIM Account Clerk 1 position. The Union claims that the Employer in March, 2015 began to cut the tasks

assigned to Ms. Gales and distributed these tasks to other staff in the section. The other staff members are exempt employees; Ms. Gales had been the only CPIM staff member who had been a bargaining unit member.

The Union notes that State's Exhibits 18 – 29, exhibits identified by Ms. Rutner and Ms. Kish, show that Ms. Gales should have been the employee in charge of tracking and maintaining information, and there clearly remained events to plan and conferences to stage. The Union refers to the testimony from Ms. Gales to the effect that for many months she was not assigned any tasks other than two cleaning jobs requested by Ms. Rutner. The Union argues that there is not a lack of work that could be performed by Ms. Gales from her Account Clerk 1 position; what has occurred is simply that duties formerly assigned to Ms. Gales' position have been reassigned to others. The Union claims that a great portion of the duties described by the Account Clerk 1 position description for the position in question remain, need to be performed, and should be performed by Ms. Gales. The Union claims that a great portion of the duties described in the position description for the grievant's position are still being performed.

The Union claims that it is entitled to every day of advance notice that the Union bargained for under the parties' collective bargaining agreement. The Union claims that the rationale provided, stating little more than the job abolishment and layoff were necessary, does not comprise "adequate information" about the proposed abolishment and layoff.

The Union urges the arbitrator to sustain the grievance, order the grievant returned to her Account Clerk 1 position, order the grievant paid back pay, and order that the grievant be made whole for all benefits from September 25, 2015, with no loss in seniority. The Union also asks that the arbitrator order the Employer to pay the grievant's Union dues from September 25, 2015 through the date of Ms. Gales' reinstatement.

Position of the Treasurer of the State of Ohio, Employer

It is the position of the Employer, Ohio's Treasurer of State, that the full-time position classified Account Clerk 1 was abolished as a result of lack of work. The Employer argues that increases in administrative self-service, gains in technology, and a reduction in community education events reduced or made obsolete duties formerly assigned to the Account Clerk 1 position.

The Employer notes that when serving within the Account Clerk 1 position Ms. Gales performed general administrative tasks that included answering the telephone, maintaining records, and sending and receiving paperwork. The Employer points out that duties assigned to the Account Clerk 1 position filed by Ms. Gales were entirely dependent upon Center for Public Investment Management (CPIM) programming.

The Employer notes that CPIM is a statutorily mandated program that provides continuing education to Ohio's public funds managers and to these managers' oversight authorities. Ohio has about 4,000 public funds managers, with 1,700 of these managers required to obtain continuing education in public funds management every year. To secure such credits a public funds manager may participate in in-person conferences managed by the Treasurer of State, participate in in-person conferences hosted by a CPIM-accredited professional association, or may participate in an online Treasurer of State financial management course.

The Employer notes that CPIM staff perform administrative functions associated with holding in-person training, registering public funds managers for such training, processing public funds managers' payments for their coursework, and accrediting professional associations and organizations to conduct CPIM-approved training. CPIM staff members also track and report the amount of training credits secured by each public funds manager and receive and maintain

exemption forms from about 2,300 public funds managers who are exempt from statutory, continuing education requirements.

The Employer notes that the position filled by Ms. Gales prior to September 28, 2015 was responsible for answering telephone calls from public funds managers who had questions regarding CPIM trainings or questions about the amount of CPIM credits they had accumulated or were required to obtain in a given year; registering public funds managers for training over the telephone; sending and receiving continuing education paperwork to and from public funds managers; maintaining a log of payments received by CPIM from public funds managers; and mailing, faxing, copying, and alphabetizing annual exemption forms for public funds managers who are exempt from statutory continuing education requirements.

At page 2 of the Employer's post-hearing brief the following appears:

... Because these duties were dependent upon the number of CPIM trainings TOS itself conducted, the number of PFMs who called with questions regarding CPIM trainings, and the number of PFMs who registered for TOS-run CPIM trainings, the amount of work Ms. Gales' duties decreased when TOS began conducting less of its own CPIM trainings, made each PFM's balance of accumulated CPIM credit hours accessible online, and began accepting registration and conducting classes online.

The Employer points out that from 2005 to 2010 the Ohio Treasurer of State conducted an average of thirteen CPIM trainings per year and processed paperwork and collected fees from an average of 1,154 public funds managers each year. From 2011 to 2015 these figures have decreased to about seven CPIM trainings per year and processing paperwork and collecting fees from an average of 785 public funds managers each year. Because of an increase in the number of professional associations conducting CPIM trainings, the Treasurer of State went from providing training to nearly all 1,700 public funds managers in 2005 to providing training to 642 public funds

managers in 2015. This reduction resulted in decreased paperwork and fewer telephone calls directed to the Account Clerk 1 position filled by Ms. Gales, a reduction in the number of CPIM trainings staged by the Treasurer of State's Office, and reduced the work Ms. Gales was required to perform that was associated with coordinating each training.

The Employer points out that much of what used to be handled by a CPIM staff member is today handled online, including checking credit hour balances, registration and payment for trainings, and online Treasurer of State-run CPIM trainings.

The Employer argues that because of the changes cited above, the workload assigned to the Account Clerk 1 CPIM position decreased greatly. The Employer points out that Ms. Rutner testified that in the several months leading up to the abolishment of the Account Clerk 1 position that position had had only approximately five hours of work to be performed each work week. The Employer notes that the position was abolished effective September 28, 2015 and notice was directed to the Union and the grievant that included a rationale that referred to increases in administrative self-service, gains in technology, and a reduction in community education events.

The Employer refers to Article 16, section 16.06 of the parties' Agreement which places the burden of justifying the statement of rationale for a job abolishment upon the Employer by a preponderance of the evidence. The language of Article 16, section 16.06 also provides: "... Absent a showing of abuse of discretion by the Employer, the arbitrator shall accept the rationale." The Employer points out that "abuse of discretion" connotes more than an error in law or judgment; an abuse of discretion implies an attitude that is unreasonable, arbitrary, or unconscionable. In this regard the Employer cites the Ohio Supreme Court case of *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d, 217, 219.

The Employer argues that it has complied with all procedural requisites necessary to the abolishment of a position and the layoff of the abolished position's incumbent. The Employer points out that the twenty-five days of advance notice required to be provided to the Union was provided on September 3, 2015 for the abolishment of a position to occur on September 28, 2015. The Employer argues that the information required by Article 16, section 16.02 to be in the notice of the job abolishment and layoff includes the reason for the action (lack of work), the effective date of the abolishment (September 28, 2015), the employee's accumulated seniority, a statement describing bumping rights, a statement about recall rights, a statement about maintaining a current residence address with the Employer, and a statement about the option to convert unused, accrued leave pursuant to Article 16, section 16.09. The Employer notes that this information was posted, as required by the parties' Agreement, on September 11, 2015, seventeen days prior to the effective date of the job abolishment and layoff. This posting included the names of the employees affected, the classifications of the employees affected, the types of appointment of the employees affected, each employee's Office of the Ohio Treasurer of State seniority, and identification of the employees to be laid off. See Employer's Exhibit 4.

The Employer points out that nowhere in the parties' collective bargaining agreement are the words "day," "calendar day," or "business day" defined. The Employer argues that the twenty-five days of advance notice required to be provided to the Union under the language of Article 16, section 16.02 does *not* indicate anything other than days upon the calendar, and there is nothing to indicate that the twenty-five days referred to in the express language of Article 16, section 16.02 refer to twenty-five business days. The Employer argues that had the parties intended that the twenty-five days of advance notice to be provided to the Union span twenty-five business days, such language would appear in this Article, but such language does not appear.

The Employer argues that the statement of rationale provided to the Union and Ms. Gales contained “adequate information” about the Account Clerk 1 abolishment that was based on lack of work. The Employer notes that the statistical data mentioned in Article 16, section 16.02 is not required to be provided but may be provided. The Employer points out that the statement of rationale that was provided to the Union and Ms. Gales referred to a significant reduction in the duties of the position being abolished due to gains in technology, an overall decrease in the number of events sponsored by the Treasurer of State, a switch to email communications, and a general phasing out of duties associated with reproducing hard copy educational and informational materials.

The Employer argues that the arbitrator should accept the rationale provided by the Treasurer of State because the Employer did not abuse his discretion in abolishing the Account Clerk 1 position. The Employer claims its decision in this regard was not unreasonable, was not arbitrary, and was not unconscionable. The Employer claims the Account Clerk 1 position was abolished because it had only five hours of work demanded of it per work week. The Employer claims this conclusion is supported by a preponderance of the evidence in the hearing record and the Employer claims sufficient advance notice about the job abolishment and resulting layoff was provided to both the Union and to Ms. Gales, in compliance with all obligations of the Employer under the parties’ Agreement.

The Employer urges the arbitrator to find that the Employer did not violate the parties’ collective bargaining agreement when the Employer abolished the Account Clerk 1 position and laid off the grievant effective September 28, 2015.

DISCUSSION

The obligations of the Employer under the express language of Article 16 in the parties' collective bargaining agreement are a mixture of procedural and substantive requisites. The procedural obligations on the part of the Employer in the event of a job abolishment and resulting layoff require advance notice to be provided to both the Union and the affected employee. The express language of Article 16, section 16.02 of the parties' Agreement describes the advance notice to be provided to an affected employee to be "... no less than fourteen (14) calendar days in advance of the effective date of the layoff or job abolishment."

The advance notice to be provided to the Union by the Employer under the express language of Article 16, section 16.02 is presented as: "... the Employer shall notify the Executive Director of the Union twenty-five (25) days in advance ... of the effective date of the layoff or job abolishment."

The Union argues that because calendar days are specified for the advance notice to be provided to an affected employee in the language of Article 16, section 16.02 while the twenty-five days of advance notice to be provided to the Union are not described as "calendar" days, this language intends that the twenty-five days of advance notice to be provided to the Union by the Employer be calculated in business days, not calendar days.

The Employer points out that neither "day," nor "calendar day," nor "business day" is defined by language within the parties' Agreement.

The arbitrator is not authorized by the parties' collective bargaining agreement to subtract from, add to, or modify any of the terms of the parties' Agreement, and the arbitrator is expressly prohibited from imposing on either party a limitation or obligation not specifically required by the expressed language in the parties' Agreement. See Article 23, section 23.03, sixth full paragraph.

Article 16, section 16.02 requires that a minimum of fourteen calendar days of advance notice be provided to an affected employee by the Employer; the language of Article 16, section 16.02 requires that a minimum of twenty-five days of advance notice be provided to the Union by the Employer. A preponderance of the evidence in the hearing record indicates that advance notice of at least fourteen calendar days was provided to the grievant. A preponderance of evidence in the hearing record indicates that the Union received advance notice on September 3, 2015, twenty-five days in advance of the effective date of the job abolishment and layoff, September 28, 2015, the effective date of the job abolishment and layoff specified in the advance notice provided.

The Union argues that even if the arbitrator were to use calendar days rather than business days in calculating the minimum advance notice required to be provided to the Union by the Employer under Article 16, section 16.02, the last earned pay status of the grievant was on September 25, 2015, and therefore the twenty-five days of advance notice to be provided to the Union was not satisfied by the Employer.

Article 16, section 16.01 includes the following language:

The Employer shall determine whether a layoff or abolishment of positions shall occur, the timing of layoffs or job abolishments, the number of employees to be laid off or positions to be abolished, and in which classifications layoffs or abolishments shall occur.

The Union points to State's Exhibit 7, a Certification of Final Payroll: Confirm Response, a record maintained by the Ohio Public Employees Retirement System (OPERS) that reports a final earnable salary date for Diana K. McNeal of September 25, 2015, a Friday. The Union argues that the last earnable salary date for the grievant, Deborah Gales, had been the same as Ms. McNeal's, September 25, 2015, and therefore the twenty-five days of advance notice required to

be provided to the Union could not have been provided between September 3, 2015 and September 25, 2015.

The Director of the Department of Human Resources for the Ohio Treasurer of State, Megan Kish, testified at the hearing herein that the grievant, Ms. Gales, had been on the payroll of the Treasurer of State through September 28, 2015. Ms. Kish testified that Ms. Gales had been paid for September 28, 2015.

The arbitrator is unable to resolve the contradiction about the termination of the last earnable salary date of September 25, 2015 being reported to OPERS and the testimony of Human Resources Director Kish to the effect that Ms. Gales was paid for September 28, 2015. If payment to the grievant was made for September 28, 2015 there would be no question that the abolishment occurred on that date and that twenty-five days of advance notice was provided to the Union.

If, however, it were to be determined that Ms. Gales' active pay status ended on September 25, 2015, the arbitrator remains unpersuaded that this fact means that the job abolishment occurred on Friday, September 25, 2015 rather than Monday, September 28, 2015. If the job abolishment occurred on September 28, 2015, the date determined for the abolishment by the Employer as authorized by the language of Article 16, section 16.01, twenty-five days of advance notice would have been provided to the Union by the Employer. The fact that the grievant was last paid at the close of business on Friday, September 25, 2015 does not persuade the arbitrator that the job abolishment and resulting layoff did not occur on Monday, September 28, 2015 as expressly directed by the Employer.

The arbitrator is persuaded that a preponderance of the evidence in the hearing record shows the job abolishment and resulting layoff of the grievant occurred on September 28, 2015, that the twenty-five days of advance notice required to be provided to the Union by the Employer

was provided on September 3, 2015, and that the procedural requisites demanded of the Employer in terms of advance notice to be provided to the Union were met.

The Union has contended that the rationale provided by the Employer for the abolishment of the Account Clerk 1 position was inadequate as it did not provide “adequate information” to the Union as required by the language of Article 16, section 16.02.

The language of Article 16, section 16.02 includes both permissive and mandatory language relating to the rationale to be provided by the Employer. Article 16, section 16.02 provides that in the case of a layoff for lack of work, the rationale *shall* contain “adequate information” which *may* consist of a comparison between current work levels and work levels when a lack of work did not exist. The language of Article 16, section 16.02 states that such a comparison *may* include statistical data and additional supporting materials. Thereafter within Article 16, section 16.02 there is listed the information that *must* appear in the notice provided to the affected employee.

The Employer could have provided a comparison between current work levels and work levels when a lack of work did not exist and could have provided statistical data and additional supporting materials. This information, however, is not mandatory as expressed in the language of Article 16, section 16.02, and so long as the Employer provided a rationale with “adequate information” and provided the information required to be included in the notice to the affected employee as expressed in Article 16, section 16.02, the language of this provision is met.

“Adequate information” as used in the language of Article 16, section 16.02 is understood by the arbitrator to mean information that affords a reasonable opportunity for the affected employee and the Union to understand the basis of the Employer’s claim of a lack of work for the position to be abolished. The rationale provided by the Employer to the Union on September 3,

2015 and to the grievant more than fourteen calendar days prior to the effective date of the job abolishment and the resulting layoff presented the grounds upon which the Employer based its claim of lack of work. In the case of the Account Clerk 1 position filled by Ms. Gales in CPIM, the reasons provided were increases in administrative self-service, gains in technology, and a reduction in community education events, decreasing the hours required for the position. A preponderance of the evidence in the hearing record indicates a changeover to a paperless operation effective February 8, 2016, a substantial reduction in the amount of continuing education conferences staged by CPIM, and a substantial reduction in the number of public funds managers with whom CPIM interacts in person. The arbitrator finds the rationale provided by the Employer to be substantiated by a preponderance of the evidence in the hearing record and finds the rationale does not arise from an abuse of discretion by the Employer. In the absence of such an abuse of discretion, and in finding that a preponderance of the evidence supports the content of the rationale provided, the arbitrator does not find a violation of Article 16, section 16.02 based upon the rationale provided to the Union and to the grievant.

The arbitrator also finds a preponderance of the evidence in the hearing record proving a substantial decrease in the duties needed from the Account Clerk 1 position formerly located in CPIM. The reduction in educational events, the reduction in educational event participants, the changeover from an operation that relied on hard copies to a paperless operation, and the increase in accredited professional organizations that provide the kind of continuing financial management education required of CPIM, have been proven by a preponderance of evidence in the hearing record with each factor affecting the position by reducing substantially the number of hours required of the position to a number significantly less than forty hours per work week.

As to transferring the CPIM Account Clerk 1 position's duties to other CPIM positions, the hearing record does not reflect a lot of duties remaining to be reassigned. Whatever duties continued, the hearing record indicates by a preponderance of the evidence that the hours of work reassigned were significantly less than forty hours per work week, about five hours per work week. A reassignment of five or fewer hours of work per work week does not contravene the language of the parties' Agreement and does not invalidate the job abolishment or the resulting layoff.

The arbitrator finds the Employer has satisfied the procedural and substantive aspects of the job abolishment and layoff that occurred on September 28, 2015. The arbitrator therefore declines to sustain the grievance.

AWARD

1. The grievance is arbitrable and properly before the arbitrator for review and disposition.
2. The Employer did not violate the parties' collective bargaining agreement when the Employer abolished the grievant's position and laid off the grievant effective September 28, 2015.
3. The grievance is denied.

Howard D. Silver

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Columbus, Ohio
May 2, 2016

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO and the State of Ohio, Treasurer of State, grievance number TOS-005-15, was served electronically upon the following this 2nd day of May, 2016:

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