

STEP III ANSWER  
OLR CASE 67-0064  
CSEA INSTITUTIONAL 13,135

Although this grievance alleges violations of Articles 7, 14, 16, 19 and 20 of the NP-8 Contract, the germane article is Article 20, dealing with shift and facility assignments.

Article 20 requires that Bargaining Unit members be allowed to bid for shift preference by seniority. At the time this grievance was filed, all but three DOC facilities were in compliance with the bid shift requirement. Since then, one of the facilities has come into full compliance, one has significantly moved toward compliance and one has not. The facility that has not taken any steps toward compliance has, through pure happenstance, only one employee who is significantly affected by the inaction.

The lack of initial compliance in these three facilities was due to the fact that many of the supervisor positions were being filled by temporary supervisors and the agency did not want to risk having non-permanent or inexperienced supervisors being the only supervisors present on a shift. Notwithstanding this very real concern, Article 20 does not contain a global exemption to the bid shift requirement. There is an exception, contained in Section 4, that seniority is the determining factor when all other factors are equal. There has been no evidence of any individual case where some other factor made individual requests inappropriate and such evidence could certainly result in a finding of no contract violation. However, the undisputed evidence is that the agency simply initially made a unilateral determination to not implement the requirements of Article 20 and that determination, on its face, violated the contract.

In regard to the overall determination to not allow bid shift at the three facilities mentioned during this conference, the contract was violated. The agency is directed to allow bid shift and permit assignment by seniority, subject to the limitations of Section 4, if any. As indicated above, this is now moot at one facility initially mentioned in the grievance.

Subject to the conditions mentioned above, this grievance is sustained.

October 6, 2004  
Conference

October 6, 2004  
Answer

  
Paul Bodenhofer