

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 742

OCB GRIEVANCE NUMBER: 25-12-910620-0055-05-02

GRIEVANT NAME: BECKER, JEFFERY

UNION: FOP2

DEPARTMENT: ODNR

ARBITRATOR: GRAHAM, HARRY

MANAGEMENT ADVOCATE: COLLINS, CAROLYN

2ND CHAIR: LIVENGOD, RACHEL

UNION ADVOCATE: CREMEANS, KAY

ARBITRATION DATE: MARCH 2, 1992

DECISION DATE: MARCH 14, 1992

DECISION: DENIED

CONTRACT SECTIONS

AND/OR ISSUES: DID MANAGEMENT ENGAGE IN EROSION OF B/U
WHEN IT REQUESTED GRIEVANT TO TAKE A
NORMALLY SCHEDULED WORK DAY AS A HOLIDAY
OBSERVATION DAY?

HOLDING: GRIEVANT'S MANAGER DID NO WORK OUTSIDE OF HIS
CLASSIFICATION SPEC.. NO WORK DONE BY HIM ON THE
HOLIDAY WAS DIFFERENT IN ANY FASHION FROM THE TASKS
ROUTINELY PERFORMED BY HIM ON A DAILY BASIS. GRIEVANT
LOST NO WORK AS A RESULT OF MANAGEMENT'S WORK ON
MEMORIAL DAY.

COST: \$508.81

In the Matter of Arbitration

Between

Fraternal Order of Police-Ohio
Labor Council

and

The State of Ohio, Department of
Natural Resources

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Case Number:

25-12-(6-20-91)-55-05-02

Before: Harry Graham

#742

Appearances: For Fraternal Order of Police-Ohio Labor Council

Kay Cremeans
Fraternal Order of Police-Ohio Labor Council
222 East Town St.
Columbus, OH. 43215

For Department of Natural Resources

Carolyn Collins
Ohio Department of Natural Resources
1930 Belcher Dr., Building D-2
Columbus, OH. 43224

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on March 2, 1992 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. Post hearing briefs were not filed in this dispute and the record was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did Management violate the Collective Bargaining Agreement when they had the Grievant observe the Memorial Day Holiday, May 27, 1991? If so, what shall the remedy be?

Background: The parties agree upon the events that give rise to this proceeding. The Grievant, Jeffery Becker is a Park Ranger at Sycamore State Park. He has a total of nine years of service in various state park facilities. Mr. Becker's regular scheduled shift is from 4:00 p.m. to Midnight. He normally works a Thursday-Monday work week. Tuesday's and Wednesdays are his normally scheduled days off.

Pursuant to the Collective Bargaining Agreement the Park Manager, Alan McCabe, posted the work schedule. As was normally the case, Monday, May 27, 1991 was a scheduled work day for Mr. Becker. In 1991 May 27 was Memorial Day. The schedule indicated that Mr. Becker was to observe Memorial Day. That is, he was to take it as a holiday off work. He was not to report to work on that date.

Mr. Becker regarded this to be a violation of the Agreement. In his opinion the Park Manager performed tasks normally performed by him. As that was the case, he was of the view that by directing him to take off work on Memorial Day the State had engaged in erosion of the bargaining unit. In order to protest this act he filed a grievance. That grievance was not resolved in the procedure of the parties and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points to the tasks performed by the Park Manager, Mr. McCabe. He wore his

uniform to work. He patrolled the park grounds. Memorial Day is typically a very busy day for park staff. Parks are heavily utilized. When Mr. McCabe went off duty at the end of his work day, at 5:00 p.m., the park was unstaffed. Normally Mr. Becker, the Grievant, would have been on duty. Not only is this inappropriate, it had never occurred before. During his tenure at Sycamore, Mr. Becker had always worked on Memorial Day. In fact, it is rare for him to be off duty on any holiday. On one occasion he was off duty on the Fourth of July. He has consistently worked holidays. On this occasion, he was directed not to work and his supervisor, Mr. McCabe performed tasks normally performed by him. This represents a violation of the Agreement according to the Union. Article 7, Section 7.03 provides that "Management shall not attempt to erode the bargaining unit." By directing Mr. Becker to take Memorial Day as a holiday that is precisely what management did in the Union's view.

Section 22.02 of the Agreement mandates that the Employer not change work schedules solely to avoid overtime. In this situation, that is what occurred in the Union's view. Mr. Becker's schedule was changed. He was directed to take off on Memorial Day. The only reason for this action was to avoid overtime pay in the form of holiday pay in the opinion of the Union. In support of that view it points to my decision in a dispute involving the Department of Natural

Resources and Brian Licht, a Ranger at Punderson State Park. Mr. Licht's schedule was changed. The Union alleged the purpose of the change was to avoid overtime pay to him. I found that to be the case. The Union asserts the circumstances are identical in the Licht dispute and the grievance under review in this instance. As that is the case, it urges the grievance be sustained. It seeks an award of 8 hours holiday pay and a transfer of Mr. Becker to the first shift.

Position of the Employer: The State points out that the Park Manager, Alan McCabe, did no work on Memorial Day, 1991, that was not normally part of his duties. He worked his normal shift. He patrolled the grounds. He checked on the condition of buildings and equipment. He performed his routine paperwork. The tasks he performed were within the classification specification for his position and were conducted by him on a daily basis. The Grievant works on the second shift. Mr. McCabe worked on the day shift. But for one hour, between 4:00 p.m. and 5:00 p.m., there was no overlap between them. Under no stretch of the imagination can it be said that bargaining unit work was performed by the Park Manager in the opinion of the State.

There is at Sycamore State Park a primitive camping facility. Reservations must be made for people to use that facility. On Memorial Day, 1991 no reservations were made.

That meant that no check of the facility would be required in the evening. Hence, there was little need for Mr. Becker's services in the opinion of his supervisor, Mr. McCabe.

In the course of deciding whether or not to assign Mr. Becker to duty on Memorial Day 1991, Mr. McCabe examined the history of utilization rates for the park on that holiday. He found it to be low. The peak of activity at Sycamore State Park occurs from July 4 into the Fall. As historical data and the fact that no camping reservations had been made showed that activity at the park would be low on Memorial Day, 1991, Mr. McCabe made a proper decision when he decided to have Mr. Becker observe the holiday rather than work it according to the State.

In support of its action in this instance the State points to the Management Rights clause, Article 6, of the Agreement. That clause permits the Employer to "Effectively manage the work force." That is precisely what it did in this instance according to the State. No need existed for Mr. Becker to work. Consequently, the State determined that it was appropriate for him to take the holiday off.

Section 38.01 of the Agreement prescribes that members of the bargaining unit "will" have certain holidays. Included is Memorial Day. The Employer did not have a need for Mr. Becker's services on Memorial Day, 1991. Accordingly, it directed him to observe the holiday. As both the Management

Rights and Holiday articles of the Agreement support its action, the State urges the grievance be denied.

Discussion: The Union asserts that this situation represents an attempt by the State to erode the bargaining unit by directing Mr. Becker to take the Memorial Day off. The rhetorical question "where is the erosion" is appropriate in this instance. Mr. McCabe, the Park Manager, did no work outside of his classification specification. The tasks he performed on May 27, 1991 were no different from those he performed on his other work days. He was in uniform. He patrolled the park and checked its facilities. No work done by him on the holiday was different in any fashion from the tasks routinely performed by him on a daily basis.

Mr. McCabe's hours of work were on the first shift. Mr. Becker, the Grievant, worked on the second shift. That Mr. McCabe worked his normal hours on Memorial Day and did not work hours that were the province of Mr. Becker is indicative of the fact that his action did not serve to erode the bargaining unit. Mr. Becker lost no work as a result of Mr. McCabe's work on Memorial Day, 1991.

As part of his decision to direct the Grievant to observe the Memorial Day holiday Mr. McCabe evaluated the probable attendance at the park. He expected it to be low. In his view as the responsible management official the services of Mr. Becker would be unnecessary. His review of expected

attendance was thorough. It was based on past history and the fact that no reservation had been made for the camping site. He made a managerial judgement. He is entitled to do so under the terms of the Management Rights article of the Agreement. Section A, permits the Employer to determine the "standards of services." Section H, allows the State to "Effectively manage the work force." Section K frees the State to "Determine and manage its facilities, equipment, operations, programs and services." That proper exercise of managerial authority is what the State did in this instance.

The position of Mr. McCabe, the Park Manager, is ambiguous in a labor relations sense. Many of the tasks he performs on a routine basis duplicate tasks performed by bargaining unit members such as Mr. Becker, the Grievant. At the same time, Mr. McCabe has management responsibilities as well. He must exercise those responsibilities such as effectively managing the work force. The burden is on the Union to show that by his actions Mr. McCabe eroded the bargaining unit. It has failed to do so in this instance. As Mr. McCabe did no work on Memorial Day, 1991 that was different from his normal tasks, it cannot be determined that by directing Mr. Becker to take the day off he eroded the bargaining unit in any way. No work was performed by the Park Manager that in any way took work away from Mr. Becker, a member of the bargaining unit.

In arbitration proceedings the parties often seek guidance for future behavior in the decision of the neutral. In disputes of this nature such guidance is impossible to provide. Cases of this sort must be decided on a case-by-case basis. In some instances it may be determined that the Employer's action has deprived bargaining unit members of work opportunities properly due them under the Agreement. In other instances, such as this one, it may be that the action of the Employer is sanctioned by the Agreement. That this is the case is found in the difference between this dispute and that involving another Grievant, Brian Licht. Mr. Licht is a Ranger at Punderson State Park. He filed a grievance similar in nature to the instant dispute. In the Licht case it was found that the Employer had altered his work schedule in an effort to avoid paying him overtime. That finding cannot be made in the circumstances of this dispute.

Award: The grievance is denied.

Signed and dated this 14th day of March, 1992 at South Russell, OH.

Harry Graham
Harry Graham
Arbitrator