OPINION AND AWARD

In the Matter of Arbitration

Between

Unit 2 Association

And

The State of Ohio

Case Designation

DNR-2020-01997-02

Date of Briefs: July 7, 2021
Date of Award: August 20, 2021

APPEARANCES

For the Union
Kimberly A. Rutowski, Esq., Lazarus & Lewis, LLC, Advocate
Bret W. Vetter, Esq., Lazarus & Lewis, LLC, Advocate

For the Employer
Eric Eilerman, Policy Analyst, Office of Collective Bargaining, Advocate

The parties agreed to submit their dispute to the arbitrator via briefs and exhibits; no hearing was held. The issue submitted is whether the grievance is arbitrable. The parties have mutually agreed that the question of substantive arbitrability is properly within the purview of the arbitrator for a final and binding decision.

The Employer submitted the following documents as exhibits: Grievance #DNR-2020-01997-02 designated as Employer Exhibit 1 (E1); legislative draft contract language for Article 65 from the 2015-2018 collective bargaining agreement (CBA) between the parties designated as Employer Exhibit 2 (E2); the classification specification for classification series #2252 – Natural Resources Officer effective date 5/10/20 designated as Employer Exhibit 3 (E3); an email dated 4/28/20 from Eric Eilerman to Stephen Lazarus, Subject: NRO/I pay range Letter Of Agreement (LOA) designated as Employer Exhibit 4 (E4); an email dated 4/28/20 from Stephen Lazarus to Eric Eilerman with Cc to Unit 2 members, Subject: NRO/I

Pay Range LOA designated as Employer Exhibit 5 (E5); the fully signed LOA designated as Employer Exhibit 6 (E6); a series of emails dated 3/12/20 between Stephen Lazarus and Toni Brokaw-Farmer, Subject: Re: Dates, designated as Employer Exhibit 7 (E7); Article 31 of the applicable CBA designated as Employer Exhibit 8 (E8); Article 20 of the applicable CBA designated as Employer Exhibit 9 (E9).

The Union submitted the following documents as exhibits: Grievance #DNR-2020-01997-02 designated as Union Exhibit 1 (U1); the current CBA between the parties designated as Union Exhibit 2 (U2); the fully signed LOA designated as Union Exhibit 3 (U3); a letter dated 5/19/20 from Stephen Lazarus to Toni Brokaw-Farmer, Re: Natural Resources Sergeant designated as Union Exhibit 4 (U4); American Arbitration Association Labor Arbitration Rules effective 7/1/13 designated as Union Exhibit 5 (5); Elkouri & Elkouri, How Arbitration Works 8th Ed., Chapter 6 designated as Union Exhibit 6 (U6); statement of Matthew Kruse dated 7/6/21 designated as Union Exhibit 7 (U7).

All exhibits were admitted into the record. Both parties timely submitted their briefs. All materials were reviewed and considered by the Arbitrator in reaching this decision.

RELEVANT CONTRACT PROVISION:

Negotiated agreement between The State of Ohio and The State of Ohio Unit 2 Association, effective July 18, 2018 – June 30, 2021

ARTICLE 20 – GRIEVANCE PROCEDURE

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20.02 Definitions

1. A grievance is an alleged violation, misinterpretation or misapplication of a specific article(s) or section(s) of this Agreement.
2. Disciplinary grievance refers to a grievance involving a reprimand, suspension, removal or a reduction in pay and/or position.
3. Day, as used in this Article, means calendar day. The days and times shall be computed by excluding the first and including the last day, except when the last day falls on Saturday, Sunday or legal holiday, the act may be initiated on the next succeeding day which is not a Saturday, Sunday, or legal holiday.
4. A Unit 2 Association Representative is an Associate or a Unit 2 Association staff representative.

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20.06 Grievant

A grievance may be initiated by any bargaining unit member who believes himself/herself to be aggrieved by a specific violation of this Agreement.

When a group of bargaining unit members desires to file a grievance involving an alleged violation which affects more than one member in the same manner, the grievance may be filed by the State of Ohio, Unit 2 Association provided that at least one member so affected signs the grievance. Grievances so initiated shall be designated Class Grievances. The title on the grievance shall bear the name of the one (1) affected member plus the designation 'class action.' Class Grievances shall be filed within twenty (20) days of the date on which any of the like affected grievants knew or reasonably could have had knowledge of the event giving rise to the class grievance.

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20.09 Arbitration

1. Permanent Arbitrators

The parties will select six (6) individuals as the permanent arbitrators, who will decide all contract disputes for the life of the Agreement, including any previously filed grievances in the electronic grievance system which are open (i.e., not closed, withdrawn, settled or arbitrated) on the date of ratification. An arbitrator shall serve for the duration of this Agreement, unless he/she is unable to serve, or his/her services are terminated earlier by mutual agreement of the parties. The arbitrator shall be notified of his/her termination by a joint letter from the parties. The arbitrator shall conclude his/her services by responding to any grievances previously heard. A successor arbitrator shall be selected by the parties within thirty (30) days after the resignation or termination of the arbitrator.

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Should the parties be unable to agree on any of the other details of the arbitration process, all unresolved questions shall jointly be submitted to an arbitrator, for resolution, whose decision will be binding on the parties.

Rules applicable to this Article shall be based, insofar as is practical, on the Voluntary Rules of the American Arbitration Association.

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5. Limitations of the Arbitrator

Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the language of this Agreement. Employees who are terminated and subsequently returned to work without any discipline through arbitration, shall have the termination entry on their Employee History on Computer (EHOC) stricken.

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ARTICLE 31 – SELECTION, PROMOTIONS AND TRANSFERS

31.01 Vacancies

A bargaining unit vacancy is defined as a full or parttime permanent position in the bargaining unit which the Employer has determined to fill by promotion, permanent transfer or lateral transfer.

1. A promotion is the movement of a permanent full or part-time employee to a position in the bargaining unit which is assigned a higher pay range or the movement from part-time to full-time within the same job classification.

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ARTICLE 65 – CLASSIFICATION

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65.02 Classification Changes

The Employer, through the Office of Collective Bargaining, may create classifications, change the pay range of classifications, authorize advance step hiring if needed for recruitment problems, or other legitimate reasons and issue specifications for each classification as needed. If any pay range is decreased, then the Office of Collective Bargaining will negotiate the change with the Unit 2 Association. The Office of Collective Bargaining shall notify the Association at least twenty (20) days in advance of any of the aforementioned actions.

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BACKGROUND

Within the Ohio Department of Natural Resources, the classification series Natural Resources Officer (Series No. 2252) plays a significant role. The classification is laid out in a paramilitary fashion and the primary purpose of the Series is to provide law enforcement services. The Series' job titles begin at the entry level with Natural Resources Officer Cadet and reach their highest rank as Natural Resources Major. In the Series, Natural Resources Officer (NRO) is a step up from the NRO Cadet job title and is considered the full performance level. The NRO classification is followed in series advancement by NRO Investigator and NR Sergeant. All four of these classifications (i.e., Cadet, Officer, Investigator and Sergeant) are bargaining unit classifications represented by State of Ohio Unit 2 Association. NR Sergeants function as lead workers within the Unit. Natural Resources Lieutenant, Captain and Major, are bargaining unit exempt supervisory and administrative classifications. Prior to May 4, 2020, the NRO job title was assigned to pay range 10 and the NR Investigator job title was assigned to pay range 11, as was the NR Sergeant job title.

In the recent past (at a time unspecified in the case record) the Employer exercised its management right to undertake a study of the NRO Classification Series (presumably to address

recruitment and retention issues within the bargaining unit job titles) and determined through that study that there was a need to increase the pay ranges of the NRO job title and the NRO Investigator job title. These two job titles were each increased by one pay range – NROs to pay range 11 and NRO Investigators to pay range 12. The Union was informed of the classification study outcome and through email was provide with a draft of the planned changes to the Series (i.e., pay range changes and designated edits to job duties, worker characteristics and qualifications) along with a Letter of Agreement (LOA) for signature. The LOA identified the planned pay range changes and the implementation plan for increasing the pay for individuals in the affected job titles. The LOA was signed by both parties as of May 4, 2020.

On May 19, 2020, the Union sent a letter to the Department of Natural Resources Chief of Human Resources laying out its concern that the pay range increase for the NRO job title had led to the adverse consequence of placing NRO positions into the same pay range as NR Sergeants, which are lead worker positions and heretofore considered a promotional opportunity for NROs. The letter cited the CBA definition of promotion and referenced the CBA at Section 31.01, paragraph 1, *"a position is the movement of a permanent full or part-time employee to a position in the Bargaining Unit which is assigned a higher pay range…"* The letter requested that the NR Sergeant job title be raised to pay range 12 to reestablish its place in the overall Series as a promotional advancement from the NRO job title. The Employer replied that no further changes to the NRO Classification Series would be undertaken, denying the Union's request.

A class grievance was filed on behalf of all NR Sergeants on May 23, 2020, citing a violation of the CBA Article 31, specifically section 31.01. The text of the grievance reads as follows:

> *The position of Natural Resources Sergeant (job code 22523) is considered a promotion from the Officer position. In order to obtain a position as a Natural Resources Sergeant, an Officer must apply through the Ohio Hiring Management System when there is a position posting. Officers must meet minimum qualifications, including two years of service as a Natural Resources Officer in order to have the opportunity to compete in an interview for a position of Natural Resources Sergeant.*
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> *In Article 31.01 of the Unit 2 contract it states, "A promotion is the movement of a permanent-full or part-time employee to a position in the bargaining unit which is assigned a higher pay range or the movement from part-time to full-time within the same job classification."*
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> *The Natural Resources Officer Position was recently increased from a pay range 10 to a pay range 11, the same pay range as a Natural Resources Sergeant. This is a violation of Article 31.01 of the Unit 2 Contract.*

Resolution Requested – The Natural Resources Sergeant (job code 22523) classification to be increased from pay range 11 to pay range 12 and to receive back pay from the date of being aggrieved.

Upon receipt of the grievance, the parties had multiple conversations regarding both the arbitrability and merits of the grievance. No mutual resolution was reached regarding either the arbitrability or merits of the grievance. Thus, it was agreed between the parties to submit the question of the grievance's arbitrability to a panel arbitrator for resolution.

POSITION OF THE UNION

A question of substantive arbitrability is appropriate for the arbitrator because of the language of the CBA at Article 20.09 (1) which states, *"Should the parties be unable to agree on any of the other details of the arbitration process, all unresolved questions shall jointly be submitted to an arbitrator, for resolution, whose decision will be binding on the parties."* The rules pertaining to matters of substantive arbitrability are set forth in the *Steelworkers Trilogy*. Of significance here is the Trilogy principle which establishes, where a contract contains an arbitration clause, a presumption of arbitrability exists – doubts should be resolved in favor of coverage.

The grievance at hand pertains to the Employer's violation of Article 31.01 which states, *"A promotion is the movement of a permanent full or part-time employee to a position in the bargaining unit which is assigned a higher pay range or the movement from part-time to full-time within the same job classification."* When the Employer implemented the LOA and moved NROs to the same pay range as NR Sergeants, it placed non-promoted positions at the same level on the pay table (i.e., the same pay range – range 11) as the position of promoted sergeants. These facts are undisputed. Based on these facts, the Union has presented a legitimate disputed issue, citing a specific, relevant section of the CBA pertaining to an issue of wages. The grievance contains all of the elements required in the CBA definition of a grievance – *"A grievance is an alleged violation, misinterpretation or misapplication of a specific article(s) or section(s) of this Agreement."* (Article 20.02 (1)) This is a proper grievance, properly processed under the negotiated grievance procedure; a procedure that ends in binding arbitration for any dispute not resolved at the earlier steps of the procedure. The Union should be permitted to argue before the arbitrator its position that promoted positions may not receive the same pay as the lower position under Article 31 of the CBA.

The Employer's arguments against arbitrability are all red herrings. Contrary to the Employers assertion, a posted vacancy is not a mandatory precursor to grieving a violation of the specific language

referenced in the grievance, which specifically defines a promotion as movement to a higher pay range. Furthermore, the Union acknowledges that the Employer has the right to change the pay range of a classification. This grievance is not about the LOA provision that changes the NRO pay range. The dispute is about whether promoted and non-promoted positions can receive the same pay – a matter addressed in Article 31.01 of the CBA. The Employer's argument that the requested remedy exceeds the authority of the arbitrator is without merit. The Union's requested remedy, which is to raise the pay range of promoted sergeants, draws its essence from the CBA because it would be the logical outcome of language in Article 31.01 which defines promotion as movement to a higher pay range. Such a remedy is undoubtably within the authority of an arbitrator. Finally, the Employer argues that the grievance is not arbitrable because the matter at issue stems from a negotiated LOA between the parties. However, the reality is that the decision to increase the pay range of the NRO classification was a unilateral decision made by the Employer; it was not the result of a true give-and-take of negotiation.

A legitimate grievance has been properly filed and processed through the grievance procedure ending in its appeal to arbitration. The presumption of arbitrability establishes that in such a case the arbitrator must find in favor of arbitrating the merits of the underlying disputed matter.

POSITION OF THE EMPLOYER

The Employer presents multiple bases upon which it objects to arbitration of the grievance.

The grievance presents a hypothetical issue rather than an actual occurrence. The Union alleges that unit members are being deprived of a promotional opportunity by placing the NRO and NR sergeant classifications in the same pay range. However, the Employer has not posted a NR Sergeant position since September 2019. This being the case, there is no individual bargaining unit member who has been deprived of a promotional opportunity. The Union cannot show that any employee of the unit has been harmed by the pay range adjustment. Arbitrator Graham ruled in another matter between the State and OCSEA/AFSCME that "the State must have done something, to someone, to prompt the filing of a grievance." Further on in his award, Arbitrator Graham states, "Arbitration is not a forum for resolving hypothetical disputes unless the parties desire that be the case." In the case at hand, the Employer does not mutually agree to put a hypothetical case before the arbitrator.

Under prior contract language, the Union had the right to compel the Employer to study, and potentially change, the pay range of bargaining unit classifications. The Union gave up that contractual right in the 2015 negotiations in exchange for an economic package that included specified pay

increases to the second and last steps of the Unit's pay ranges. The Union's right to challenge a bargaining unit classification's pay range was found in Article 65.03 of the prior contract – a section that no longer exists in the current CBA. With this grievance the Union is seeking to regain through arbitration a right that it once had but that it voluntarily gave up through negotiations. The Union cannot now seek a pay range change for a classification by citing an unrelated Section of the CBA which speaks to the posting and filling of vacancies.

The Union had an opportunity to address the NR Sergeant pay range through the LOA. There were multiple communications between the parties regarding the extent of changes to the NRO Classification Series – what was contemplated, how it would be implemented. The Union failed to raise its concerns pertaining to the NR Sergeant classification. The Union signed-off on the LOA as drafted, knowing that the NRO and NR Sergeant classifications would be in the same pay range. The Union agreed to this change. It cannot then, in good faith, grieve the very agreement to which it is a party.

There is no provision in the CBA that provides for the remedy the Union seeks with its grievance. The Union's requested remedy is to raise the NR Sergeant classification pay range from 11 to 12. Nowhere in Article 31 (the allegedly violated Article) does the language exist that contemplates, or allows for, such a remedy. Likewise, in a review of the entire CBA, the only place where pay range changes are mentioned is Article 65, wherein the right to change a pay range is reserved to the Employer, who then is only, and expressly, required to negotiate with the Union if a pay range is decreased – not if it is increased. Not only is the grievance defective in its construction because of a lack of remedy, the lack of a contractually based remedy places it beyond the scope of the arbitrator's authority to render a contractually based remedy. The CBA prohibits the arbitrator from adding to, subtracting from or modifying any of the terms of the CBA, and states that, *"nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the language of this Agreement."* (Article 20.09 (5))

The Union has a responsibility to process only those grievances they reasonably believe to be meritorious and to weed out those that are frivolous. This grievance clearly lacks merit based on all of the reasons herein cited and is patently non-arbitrable. For all of these reasons the Employer asks that the grievance be deemed non-arbitrable.

DISCUSSION

The sole question before the arbitrator is that of the substantive arbitrability of the issue raised in grievance # DNR-2020-01997-02. In the submission of this issue to the Arbitrator it is mutually agreed by the parties that a final and binding decision on the question of substantive arbitrability is within the Arbitrator's jurisdiction. Therefore, what is at issue before the Arbitrator for determination is the question of whether the underlying claim of grievance # DNR-2020-01997-02 falls within the Arbitrator's jurisdiction to decide and by logical extension whether it is a claim for which the Arbitrator can render a proper remedy. The Arbitrator is asked to rule on this question of substantive arbitrability without straying into a discussion of or giving any attention to the merits of the underlying claim.

Grievance # DNR-2020-01997-02 is a class grievance. The class is set forth within the grievance as "All Natural Resource Sergeants" of which there are 19 identified. The statement of the grievance and requested remedy on the grievance form are as follows:

> *The position of Natural Resources Sergeant (job code 22523) is considered a promotion from the Officer position. In order to obtain a position as a Natural Resources Sergeant, an Officer must apply through the Ohio Hiring Management System when there is a position posting. Officers must meet minimum qualifications, including two years of service as a Natural Resources Officer in order to have the opportunity to compete in an interview for a position of Natural Resources Sergeant.*
>
> *In Article 31.01 of the Unit 2 contract it states, "A promotion is the movement of a permanent-full or part-time employee to a position in the bargaining unit which is assigned a higher pay range or the movement from part-time to full-time within the same job classification."*
>
> *The Natural Resources Officer Position was recently increased from a pay range 10 to a pay range 11, the same pay range as a Natural Resources Sergeant. This is a violation of Article 31.01 of the Unit 2 Contract.*
>
> *Resolution Requested – The Natural Resources Sergeant (job code 22523) classification to be increased from pay range 11 to pay range 12 and to receive back pay from the date of being aggrieved.*

On its face (without consideration given to the merits of the claim presented) this is a dispute related to wages. Wages paid to existing NR Sergeants relative to wages paid to NROs. As such, ordinarily I would agree with the Union that a dispute over wages is so fundamental to the heart and soul of the labor agreement that any such matter would be presumed to be arbitrable under an agreement that contains a grievance procedure ending in final and binding arbitration, as is found in the CBA between the parties. However, that is a general principle and is subject to the facts of the particular case presented for resolution. Thus, it is necessary to understand the facts of the underlying dispute in order to

understand whether the specific alleged violation of the CBA, as claimed by the aggrieved employees, is a subject matter the parties intended to cover in their arbitration clause. To this extent the merits of the case are inextricably intermingled with the question of arbitrability. Per the parties' request, the Arbitrator will endeavor to keep the two matters as separate as is practicable.

In the case at hand, the action that has aggrieved the effected class of bargaining unit members is the pay range increase of NROs to pay range 11, the same pay range as the NR Sergeant. Entered into evidence by both parties is the signed LOA between the parties concerning the changes made to the NRO Classification Series. The LOA was signed by the Union on 4/28/20 and by the Employer at the Departmental level on 4/30/20 and by the State's designee on 5/4/20. Entered into evidence by the Employer are emails between the Employer and the Union exchanged on 3/12/20, some six weeks prior to signing the LOA. In these emails the Union seeks and receives confirmation that the outcome of the NRO Classification Series review is to increase the NRO classification pay range by one range and to leave the NR Sergeant classification pay range unchanged. These emails make clear that the Union signed the LOA in full knowledge of the scope of changes that would occur with the NRO Classification Series. The consequences of the changes were also known (or should have been known) by the Union prior to signing the LOA. The LOA does not expressly prohibit the Union from grieving the subject matter of the LOA; however, as the Employer points out, a LOA is by definition an instrument that contains the details of a mutually agreed course of action. For such an instrument to have value, the parties must be able to rely on the good faith intentions of each other when they enter into such as a binding agreement.

The Union asserts in its argument that there was no mutuality in the LOA; essentially that the LOA was presented by the State as a done deal – there was no actual bargaining between the parties. What is missing from this argument is any supporting evidence that the Union sought to engage the Employer in effects bargaining on any aspect of the LOA and was rebuffed. The evidence submitted into the record only reveals that the Union was apprised of the fact that the NR Sergeant pay range would not be increased, that the NRO would be increased to the same pay range as the NR Sergeant, that the LOA was signed by the Union on 4/28/20, and only after the LOA was signed by the Union did it raise its concern about moving the NRO pay range up to the same pay range as the NR Sergeant (via letter to the Employer dated May 19, 2020).

Also entered into the record is documentary evidence from the Employer regarding the bargaining history between the parties on CBA Article 65, which is directly relevant to the underlying

dispute. Prior to the 2015-2018 CBA between the parties Article 65 - CLASSIFICATION contained a provision (Section 65.03 – Classification Review) which provided the Union with the right to request that the Employer review two bargaining unit classifications per year. Such a review would include a survey of duties, qualifications and salary. Pay range changes resulting from a Union initiated classification review were appealable directly to arbitration. Section 65.03 of the CBA was eliminated from the CBA as of the 2015-2018 contract negotiations. The Employer reports that the quid-pro-quo for deleting the Union initiated classification review and associated arbitration rights was an economic package that included adding $500 to Step 2 and $750 to the final step of each pay range on the Unit's pay table. Since the deletion of Section 65.03 in the 2015-2018 CBA, the rights and duties associated with managing bargaining unit classifications (including pay ranges) has fully reverted solely to the Employer.

Although Grievance # DNR-2020-01997-02 claims a violation of Article 31.01 the underlying dispute is about the assignment of classifications to particular pay ranges. The Union's requested remedy is to raise the NR Sergeant pay range from range 11 up to range 12. The essence of the underlying dispute pertains directly to the Employer's exercise of its management right to oversee the maintenance of the State Classification System. Where the Union once had a contractual right placing some limitation on the Employer's unfettered right to manage the State's classification system, that specific provision of the CBA no longer exists. Even under an Arbitrator's assumed jurisdiction to impose a standard of reasonableness on the Employer's exercise of its managements rights, for an Arbitrator to so interfere it must be to limit an arbitrary or capricious action that has resulted in harm to the bargaining unit members. Without straying too much into the merits of the underlying dispute, the Arbitrator notes that the grievance does not claim that any of the aggrieved employees were denied selection, promotion or transfer rights (as one would typically deem necessary for a violation of Article 31), nor has any aggrieved employee claimed to have suffered financial loss (either present or future) from the Employer's action, neither have they claimed that the edits to their job description warrant a pay range change which has been unreasonably denied. The grievance claim is simply that non-promoted and promoted positions cannot be in the same pay range. The remedy to the Union's claim is for the Arbitrator to change the pay range of NR Sergeants. In juxtaposition to the Union's claim, the CBA states at Article 65.02 in relevant part, *"The Employer, through the Office of Collective Bargaining, may create classifications,* ***change the pay range of classifications****, authorize advance step hiring if needed for recruitment problems, or other legitimate reasons and issue specifications for each classification as needed."* (Emphasis added)

Any way one slices this question it comes up a dispute over the pay range of the NR Sergeant classification. At one time (prior to 2015) the Union had a contractual right to compel the Employer to arbitration over the pay range of a classification. The Union voluntarily negotiated that right away, returning classification management and pay range adjustments to the arsenal of reserved management rights. It cannot now seek to have a classification's pay range changed through arbitration via a class grievance on behalf of all NR Sergeants under Article 31 governing the selection, promotion and transfer rights of individual bargaining unit members.

SUMMARY

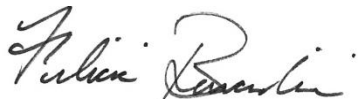
The Union has grieved on behalf of all NR Sergeants requesting that the Sergeant pay range be increased from range 11 to range 12. The Union cites Article 31 – Selections, Promotions and Transfers, specifically the definition of a promotion found in Section 31.01 as the basis of its grievance. This Section states, *"A promotion is the movement of a permanent-full or part-time employee to a position in the bargaining unit which is assigned a higher pay range or the movement from part-time to full-time within the same job classification."* The Union reasons that this contract language establishes that non-promoted and promoted positions cannot be in the same pay range. The circumstances giving rise to this grievance are the Employer's exercise of its management right, established in Article 65.02, to manage the State Classification System and "*change the pay range of classifications."* Two overarching aspects of the case record are sufficient to persuade the Arbitrator that the Employer has not agreed to arbitrate its management of the State Classification System, as it pertains to this bargaining unit. First is the Employer's use of the Letter of Agreement format, rather than a mere notice of intent, to initiate a mid-term unilateral change. The subject of the LOA is the bargaining unit classifications in the Natural Resources Officer Classification series. These classifications are Cadet, Officer, Investigator and Sergeant. The LOA signed by the Union establishes, at a minimum, an implied agreement on the Union's part that it has given considered consent to the planned changes and that, as the LOA states, the agreement *"constitutes the complete understanding of the parties and merges and supersedes all other discussions, agreements, and understandings either oral or written between the parties with respect to the subject matter thereof."* It is reasonable for the Employer to have relied on the Union's signature as a final disposition of the NRO Classification Series – no grievance, no arbitration. Second, the bargaining history of the parties unequivocally shows that the Employer through collective bargaining in 2015 successfully reclaimed its management rights pertaining to the State Classification System. The Union voluntarily gave up its once established explicit right to arbitrate pay range changes that occur as a result of

classification plan management. What was once provided for in Article 65.03 has been abolished. There is no backdoor to be opened by arguing that the dispute is not over the Employer's right to change a pay range, but over the Employer's failure to change a pay range. These two decisions are the flipside of the same management right.

AWARD

For the reasons herein stated the underlying issue of Grievance # DNR-2020-01997-02 is found to be non-arbitrable.

Respectfully submitted at Columbus, Ohio, August 20, 2021.



Felicia Bernardini, Arbitrator