**OCB AWARD NUMBER: 2719**

SUBJECT: Arb Summary # 2719

TO: All Advocates

FROM: Eric Eilerman

OCB GRIEVANCE NUMBER: DNR-2022-06503-02
DEPARTMENT: Ohio Department of Natural Resources

UNION: Unit 2

ARBITRATOR: Sarah Cole

GRIEVANTS NAMES: Sean Lentini

MANAGEMENT ADVOCATE: Andrew Shuman

UNION ADVOCATE: Kimberly Rutowski

OCB REPRESENTATIVE: Eric Eilerman

ARBITRATION DATE: April 5, 2023

DECISION DATE: May 23, 2023

DECISION: DENIED

CONTRACT SECTIONS Article 7.01, Article 7.03, Article 31.05, Article 55.03

OCB/BNA RESEARCH CODES: Promotion, Erosion

KEYWORD SEARCH TERMS: Promotion, Erosion, Law Enforcement, OPOTA

**HOLDING:** The Union did not establish that the Employer violated 7.01, 7.03, 31.05 or 55.03 as it relates to the NRO Cadet Pre-Service Training program. A Cadet in the field was not eroding the bargaining unit and the Employer maintained the right to determine the contents of the Pre-Service Program. **Grievance DENIED.**

**Facts:** The grievance involved how DNR Natural Resource Officer (NRO) Cadets who were already OPOTA certified progressed through the Academy and Pre-Service Training program versus Cadets who were not OPOTA certified. Non-OPOTA certified Cadets went through the full OPOTA academy. A Cadet who was already certified was not required to go through the full academy and was instead assigned to a park under the supervision of a Field Training Officer. During the field training, the Cadet performed functions such as patrolling, issuing citations, teaching classes and engaged in criminal investigations under direct supervision. The OPOTA certified Cadet then rejoined the non-certified Cadets for physical fitness training, weapons training, and other final elements of the Pre-Service program prior to completion of the program.

**The Union argued:** The Union argued that the OPOTA certified cadet should have been promoted once he met all elements for promotion. They argued this included being placed in the field as well as having passed the physical fitness testing thresholds. Union argued this occurred in October 2022 when the Cadet had been in the field and had also passed the physical fitness tests. Further, the Union argued that once a Cadet was put into the field, they were put “into service” and were acting as an Officer. Union argued that, otherwise, there was erosion of the bargaining unit because the Cadet was taking away work from the Officers. They also argued that he was portrayed to the public as an Officer due to his uniform, badge, weapon, etc.

**The Employer argued:** The Employer made an arbitrability claim that the grievance was either late or premature due to the union’s allegations of when the Cadet should have been promoted to an NRO Officer. As to the merits, DNR argued that the Cadets were all in one class, regardless of whether they were OPOTA certified. All the Cadets completed the actual physical fitness test in January 2023 and finalized the Pre-Service Training program in February 2023. A Cadet’s placement into the field does not equal being put “into service” as they were still directly supervised and were not able to work independently. Further, the fitness tests performed by this Cadet during the fall were simply practice sessions to allow the Cadet to stay in shape, akin to the fitness training done by the Cadets in the Academy. DNR also argued that they had the ability to determine what was contained in the Pre-Service Training Program and when and how it would be completed.

**The Arbitrator found:** The Arbitrator denied the arbitrability claim raised by Employer. To the merits, Article 55.03 of the contract states that NRO Cadets shall be promoted upon successful completion of the Pre-Service Testing Program. While the Program is not defined in the contract, the issue is when the Cadet completed the program. The Employer had the right to determine the contents of the Pre-Service Training Program, which indicated that all the Cadets completed it at the same time. Further, a Cadet in the field was not eroding the Officer’s work – it led to more Officer work as they had to directly supervise the Cadet. The grievance was **DENIED.**