

In the Matter of the  
Arbitration between

**STATE OF OHIO, UNIT 2  
ASSOCIATION**

and

**THE STATE OF OHIO DEPARTMENT  
OF PUBLIC SAFETY**

Grievance #DPS-2023-00528-02

Grievant: Robert Thompson/Class Action

Arbitrator: Tobie Braverman

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OPINION AND AWARD

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APPEARANCES:

For the Employer:

Victor Danridge, Labor Relations  
Administrator II  
Kaitlin Fuller, Lieutenant, Ohio State  
Highway Patrol  
David Brown, Captain, Ohio State Highway  
Patrol  
Eric Eilerman, OCB Policy Analyst

For the Union:

Stephen G. Lawson, Counsel  
Jeffrey D. Gray, Counsel  
Mark Buffenbarger, Police Officer 2 / Union  
Representative  
Robert Thompson, Police Officer 2

The State of Ohio Department of Public Safety (hereinafter referred to as "Employer") and the State of Ohio, Unit 2 Association (hereinafter referred to as "Union") have submitted the class action grievance of Robert Thompson to the Arbitrator for decision. Hearing was held at Columbus, Ohio on November 15, 2023. The parties submitted post hearing briefs which were received by the Arbitrator on December 1 and December 15, 2023, and the hearing was declared closed on the latter date. The parties stipulated that the grievance is properly before the Arbitrator for decision, and further stipulated that the issue for decision is as follows:

Did the Employer violate Article 7.03 of the Collective Bargaining Agreement ("CBA") when it reassigned the duties and responsibilities of Police Officer 2's ("PO2") in the control room of the Shipley Building to OCSEA Security Officers, and if so, what shall the remedy be?

### **FACTS**

There is very little dispute as to the underlying facts of the instant case. The evidence at hearing established that bargaining unit members in the classification of PO2 had manned the control room at the Shipley Building for ten years prior to the change which led to the filing of this grievance. Prior to that time, the control room was staffed by PO2's together with radio operators, a classification which no longer exists, was merged in to the dispatcher classification and is part of a different bargaining unit. PO2's are police officers with OPATA certification and training. At Post 98, they are responsible for security of the buildings, parking lots and perimeters for the Shipley Building as well as a number of adjacent and near by State properties. PO2 and Union Representative, Mark Buffenbarger, testified that he had been assigned to Post 98 at the Shipley Building since 2016. According to a Standard Operating Procedure presented as an exhibit at hearing which is undated, but which Buffenbarger located in the copy of the SOP's in the control

room desk, the control room is to be staffed by one officer twenty-four hours per day.<sup>1</sup>

The purpose of the control room is to monitor and vet employees and contractors entering the building. In addition, the duties of the PO2's in the control room included monitoring security cameras for suspicious persons or parcels, monitoring radio traffic among officers, taking phone calls from other state agencies and civilians who may call in, monitoring the fire panel, conducting safety drills, and controlling entrances. Prior to the change in personnel, there was additionally a LEADS terminal located in the control room to enable officers to conduct background checks, run license plates, and search arrest and warrant records. Buffenbarger testified that in his time assigned to the Shipley Building control room, he has been called upon to exercise many functions typical to law enforcement, including making arrests, escorting persons from the building, investigating criminal activity and assisting other law enforcement with arrests and investigations.

By email dated February 24, 2023, Lieutenant Michael E. Christy advised all affected members of the bargaining unit that Security Officers, who are not law enforcement officers and who are in a bargaining unit represented by OCSEA, would be manning the control room on day and afternoon shifts effective February 27, 2023. The email further indicates that current PO2's assigned to the control room on those shifts would be expected to train the security officers in the daily operations of the control room. The email finally advises the PO2's that after the one week training period, they will be assigned as a "roving unit" patrolling the parking lots, Columbus Developmental Center, Twin Valley Behavioral Health and Ohio Department of Transportation facilities.

Although there was no testimony that any incident requiring back up had occurred, Buffenbarger testified that because there is no longer an Officer in the control room, any necessary back up would have to be provided by an officer at Post 96. This would increase travel time, potentially causing substantially increased response time. Additionally, the LEADS terminal has

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<sup>1</sup> The SOP's are unilaterally promulgated by the Employer, and are subject to change. There was no evidence that the SOP in question was ever officially adopted or changed.

been removed from the control room since Security Officers are not authorized to use it. This results in an inability to search the backgrounds of those entering the building, individuals encountered or vehicles on the premises from the control room.<sup>2</sup>

Captain David Brown testified that he was involved in the decision to man the control room with Security Officers on the day and afternoon shifts. He testified that the motivation for the change was a need for additional PO's, who have the authority to arrest and detain individuals, to perform the work of outside patrols of the parking lots and buildings of Employer properties. He noted that the attempt to recruit new officers is on going and there is a posting on the Jobs Ohio website for new officers. The current complement of officers is twenty-five, well below the authorized number of forty-six, and new officers are added as recruitment permits.

While one officer was transferred to a different post, none were laid off or reduced in hours as a result of the change in assignment. The Employer noted that both the Security Officer and the PO2 position descriptions include duties for security of building entry. This is noted as a primary duty for Security Officers. PO2's, however primarily perform law enforcement duties which Security Officers do not. The evidence additionally demonstrated that the annual pay of a Security Officer is approximately \$20,000 less than that of a PO2, and the re-assignment of the control room duties thus results in a significant financial savings for the Employer.

A timely grievance was filed alleging that transfer of the control room work to Security Officers violates Article 7.03 of the CBA between the parties and should be returned to the PO2 position. The matter proceeded in due course through the grievance procedure to arbitration.

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<sup>2</sup> There was no testimony, however, that this is routinely required or how often it is necessary to conduct such research on those entering the building. It was also unclear whether the officers still have access to a LEADS terminals in their vehicles or at another location.

## **RELEVANT CONTRACTUAL PROVISIONS**

### **ARTICLE 6 - MANAGEMENT RIGHTS**

The Association agrees that all of the functions, rights, powers, responsibilities and authority of the Employer, in regard to the operation of its work and business and the direction of its workforce which the Employer has not specifically abridged, deleted, granted or modified by the express and specific written provision of the Agreement are, and shall remain, exclusively those of the Employer.

Additionally, the Employer retains the rights to: 1) hire and transfer employees; ... 2) determine the number of persons required to be employed or laid off; ... 6) determine the work assignments of its employees; ... 12) transfer or subcontract work; 13) establish, expand, transfer and/or consolidate, work processes and facilities; ... 15) terminate or eliminate all or any part of its work or facilities.

### **ARTICLE 7 - UNION RECOGNITION AND SECURITY ...**

#### **7.03 Bargaining Unit Work**

Management shall not attempt to erode the bargaining unit, the rights of bargaining unit employees, or adversely affect the safety of employees. ...

## **POSITIONS OF THE PARTIES**

Union Position: The Union argues that it has met its burden of proof to demonstrate that the re-assignment of the work in the Shipley Building control room to Security Officers in the OSCEA bargaining unit violates Section 7.03 of the CBA. The testimony at hearing established that the bargaining unit has been eroded because one officer was transferred to another post and the lack of an officer in the control room makes it more difficult to perform checks on both individuals and vehicles. It additionally increases response times in the event of a call for back up and makes radio communication more difficult, thereby jeopardizing the safety of officers. The Union argues that the conclusion that this action is a violation of Section 7.03 is supported by either an objective or subjective interpretation of the language. The plain language prohibits any

attempt to erode the bargaining unit, and the transfer of the work is a clear erosion. Duties were transferred and there is one less officer at Post 98. The fact that the Employer is advertising for additional officers does not support the conclusion that the Employer has not attempted to erode the bargaining unit by transferring the work. While the erosion is small at this juncture, it will increase if Security Officers are permitted to continue to do the work of the PO2 classification. Further, while the Employer reserves the right to assign employees under the Management Rights provisions of Article 6, those rights are expressly limited by other contractual provisions, including specifically, Section 7.03. The grievance should be sustained and the control room work should be returned to the PO2 classification.

Employer Position: The Employer contends that the Union has not demonstrated a breach of the CBA in this case. The language of Article 6 expressly states that the Employer retains the exclusive right to assign the work of employees. The work in the control room which was transferred to Security Officers is clearly covered by their job description. The work of building security is in fact, noted in the position description as one of the Security Officer classification's primary functions. The primary function of the Police Officers, as set forth in the classification specification, is to patrol grounds and buildings to protect lives and property. This, both positions may be properly assigned the control room duties. The work here was clearly properly assigned pursuant to the Employer's management rights to assign work.. The testimony of Captain Brown demonstrated that the rationale for the transfer of the work was the need to deploy Police Officers in their primary function at a time when there are only twenty-five officers to fulfill those functions. There was no effort to erode the bargaining unit, and the financial savings in using a lower paid group of employees to perform the control room duties was not even a consideration. There has not been either a reduction in hours or lay offs as a result of the change, and in fact, the Employer is still attempting to hire PO's to bring the complement up to its authorized strength. There has additionally not been any demonstrated impact on the safety of employees. The grievance should be denied in its entirety.

## **DISCUSSION AND ANALYSIS**

This being a case of an alleged violation of the contractual language of the Collective Bargaining Agreement, the burden of proof rests with the Union to demonstrate that the Employer has violated the provisions of the Collective Bargaining Agreement by a preponderance of the evidence. In this case there is no question but that the work in question was transferred from this bargaining unit to the OCSEA bargaining unit. There is also no question that the Employer retains broad discretion in the assignment of duties in Article 6 of the CBA. The question which must be answered here is whether the transfer of work constituted an “attempt to erode the bargaining unit” or “adversely affect[ed] the safety of employees” in violation of Section 7.03 of the CBA.

The contractual language here contains an ambiguity on its face as to its intended meaning. Specifically, it is unclear what the parties intended when they prohibited an “attempt” to erode the bargaining unit. The language is thus subject to interpretation. Ultimately, it is the Arbitrator’s goal to determine the parties’ intended meaning of the language. Frequently, that intention can be gleaned either through evidence provided as to discussions during negotiations or through the practices of the parties in applying the language to similar situations in the past. Here, the Arbitrator has not been provided with any evidence of either. The language has been in the CBA since at least 1994, and there was no evidence as to bargaining history. While it is clear that the work has been performed by the PO2 classification for the past ten years, it is also clear that it was performed by other employees prior to that time. There is thus no clear history demonstrating that the control room duties belong exclusively to the Union bargaining unit. It is therefore necessary to base an interpretation of the language on the face of the language itself.

In examining Section 7.03, it is first clear that not all erosion of the bargaining unit is prohibited on the face of the language. Had it been the parties’ intention to agree on such a complete prohibition, the language could have easily accomplished that result by simply



providing that the Employer “shall not erode the bargaining unit”. Instead, however, the language here is more nuanced. It states that there may not be an “attempt” to erode the bargaining unit. Following the arbitral axiom that it must be assumed that the parties intended for all of the language used in their CBA to have meaning, and that language should not be interpreted so as to render any language meaningless, it is necessary to interpret Section 7.03 in such a way that the reference to an “attempt” to erode the bargaining unit is given meaning.

The ordinary meaning of the word “attempt” according to the Merriam-Webster Dictionary, is “to make an effort to do, accomplish, solve, or effect”. The parties’ use of this particular language implies that the Employer’s actions must be taken with an effort or intention to erode the bargaining unit. The use of the word “attempt” carries a strong implication that the Employer’s actions which erode the bargaining unit are undertaken in an effort to achieve that particular goal. Evidence of some erosion of the bargaining unit without a demonstrated effort to do so therefore does not by itself demonstrate a violation of the language.

In this case, the evidence was persuasive that the basis for the removal of PO’s from the control room and their replacement with Security Officers was in an effort to free up PO’s to do the work which is their primary function, patrolling buildings and grounds. There was no evidence that the Employer’s motivation was either erosion of the bargaining unit or cost savings alone.<sup>3</sup> The fact that the Employer is actively recruiting police officers supports this conclusion. The Arbitrator must reject the Union’s contention that the recruitment effort is not serious because there is an error in the on-line posting. The error in wages in the posting is more likely than not a failure to update the posting on the web site rather than a surreptitious effort to discourage applications. Certainly the presence of the error alone does not lead to the conclusion that the Employer is not serious in its recruitment efforts as the Union argues.

As importantly, there has been no actual erosion in the bargaining unit. The only effect

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<sup>3</sup> The issue of whether a cost savings motivation alone would violate the language is not before the Arbitrator on the facts of this case, and is not determined herein.



on the numbers of PO2's employed is that there is one less PO2 assigned to Post 98. That Officer, has, however, been re-assigned elsewhere. The same number of Officers remain employed within the bargaining unit, and there was no evidence that either regular work hours or overtime hours have been reduced. Active hiring is ongoing, and the authorized complement of Officers remains at forty-six.

In interpreting this language in a grievance arbitration between these parties<sup>4</sup> in a 1994 Award, Arbitrator Harry Graham found that the subcontracting of security work at the Ohio State Fair did not violate the language because:

[t]here has been no harmful effect upon members of the bargaining unit by the action of the State under review in this proceeding. The same number of employees are at work as were before the contract for security was let to Pinkerton. No layoffs occurred. Opportunities for overtime were not reduced.

The rationale of that prior final and binding interpretation of the language is applicable to the facts of this case.

As noted above, the Union argues additionally that the re-assignment of the control room duties to Security Officers additionally violates Section 7.03 because it adversely affects the safety of the PO's. As explained in the testimony of Buffenbarger, before the re-assignment, in the event of a need for back up by an Officer on patrol at Post 98, the response could be provided by the Officer in the control room. Since the re-assignment, the response is likely to come from an officer at another post, resulting in increased response time. There was, however, no evidence as to the frequency of such an occurrence or that it had happened at all since the re-assignment in March, 2023.

While increased response time can certainly not be dismissed as a potential safety risk, the lack of evidence that this is a risk which has occurred or occurs on any sort of regular basis compels the conclusion that the re-assignment has not been demonstrated to adversely affect the safety of employees. There was additionally no evidence of any actual changed or increased

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<sup>4</sup> At the time, the Union representing this bargaining unit was FOP, Ohio Labor Council, Inc.

safety risk to Officers which has come to pass. Ultimately, the potential for increased response time in the event of a need for back up must be balanced against the need to have Officers on patrol to protect employees, the public and property. Absent more substantial evidence of an adverse impact on the safety of employees, this contention must be rejected.

For all of the foregoing reasons, the Arbitrator finds that the Union has not met its burden of proof to demonstrate a violation of the CBA in this case, and the grievance is therefore denied.

### **AWARD**

The grievance is denied.

Dated: January 22, 2024

  
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Tobie Braverman, Arbitrator