

Howard D. Silver  
Arbitrator  
Columbus, Ohio

# 181

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In the Matter of Arbitration  
Between

The State of Ohio

and

Fraternal Order of Police of Ohio, Inc.  
Ohio Labor Council, Inc., Unit 2

Grievants:  
James D. Badgley, Sr.,  
et. al.  
JA 87-0573

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APPEARANCES

For The State of Ohio

Jack Burgess, Management Representative

For Fraternal Order of Police of Ohio, Inc.  
Ohio Labor Council, Inc., Unit 2

Paul Cox, Labor Representative

ISSUE

Were grievants properly classified Security Technicians?

The hearing in this matter was held on April 8, 1988 within the offices of the Ohio Department of Administrative Services's Office of Collective Bargaining, 65 East State Street, Columbus, Ohio. The parties were afforded a full and fair opportunity to present testimonial and documentary evidence, examine and cross-examine witnesses, and make arguments supporting their positions.

The record in this matter was closed on April 8, 1988.

## FINDINGS OF FACT

The grievants in this matter are employees of the Ohio Department of Administrative Services, the Ohio Department of Highway Safety's Bureau of Motor Vehicles, the Ohio Department of Taxation, or the Ohio Bureau of Employment Services, who were, prior to September, 1987, classified Police Officer 1 or Police Officer 2. In September, 1987, each of the positions filled by the grievants was reclassified to the Security Technician classification series, with those grievants who were formerly classified Police Officer 1 reassigned to Security Technician 1, and those grievants who were formerly classified Police Officer 2 reassigned to Security Technician 2.

The Union contends that the reclassification of these positions was improper as it denies Police Officer classifications to state employees who perform Police Officer duties. The Union points out that these reclassifications do not comport with the classification specifications at issue, that this unwarranted and unsupported mass reclassification directly affects the composition of bargaining units, and adversely affects the grievants herein.

The State of Ohio points to the collective bargaining agreement between the parties as the touchstone which must be employed in adjudging this class grievance. Management emphasizes that this matter arises from a grievance which alleges violation of Articles 9 and 55 of the contract between the

parties, and argues if the Union is to prevail in this grievance arbitration it must show that a violation of at least one of these articles has occurred. The State of Ohio contends that no such violation can be shown as no such violation occurred, and therefore urges that the grievance be denied.

Each party offered two witnesses. The Union first called James O. Badgley, Sr., an employee of the Ohio Bureau of Employment Services for the past eight years. Prior to September, 1987, Mr. Badgley was classified Police Officer 1. In September, 1987, Mr. Badgley's position was reclassified Security Technician 1 and Mr. Badgley was reassigned to that classification title.

Mr. Badgley explained that when he inquired about the position prior to his hire in 1980, he had been informed that the position required Peace Officer Training Council certification. Mr. Badgley explained that he had secured the three hundred sixty hours of training required for POTC certification in 1976 when he had completed a police officer training basic course under the auspices of the Columbus Police Department's training school. From December, 1975 to December, 1986, Mr. Badgley served as an auxiliary officer of the Columbus Police Department.

Mr. Badgley testified that during his tenure as an OBES security employee, he has never carried a firearm while on duty nor has he ever effected an arrest. Mr. Badgley explained that while he and other OBES coworkers at one time carried mace, which was removed when it became outdated, and are empowered to carry

wooden nightsticks issued by the State of Ohio or privately owned PR-24 police batons, they are not authorized to carry firearms while on duty.

Mr. Badgley also explained that on those occasions when arrests must be made, the arrests are normally effected by either the Columbus Police Department off the premises of OBES, or by state law enforcement officers empowered to make arrests. Mr. Badgley stated that he believes other OBES security officers have effected arrests for trespassing, but stated that, in his experience, whenever an arrest had to be made, he may have located the individual but the arrest was handled by other law enforcement officers.

Mr. Badgley testified that his duties are primarily directed to the enforcement of laws and security within the premises of an OBES facility located on Dublin Road in Columbus, Ohio. These duties include making sure that the premises are secure, that claimants do not become unruly, and that order is maintained both inside and outside the building to which he is assigned. Mr. Badgley explained that there have been occasions within various OBES offices throughout the State when claimants have threatened others with handguns or other weapons. Mr. Badgley stated that he makes rounds throughout the OBES building and parking lot to which he is assigned on four to eight occasions per day and is directly responsible for protecting lives and property and generally preventing crimes.

Mr. Badgley stated that he is commonly called upon to conduct investigations as to complaints which arise. Many of these complaints involve stolen property, both personal and public. Mr. Badgley explained that he is required to keep daily records of his activities and is also required to interact with the public.

Under cross-examination, Mr. Badgley testified that he was last certified to carry a firearm by the State of Ohio in November, 1986. Mr. Badgley reiterated that he does not carry a firearm while on duty and has never carried a firearm during his employment with the State of Ohio. Mr. Badgley also affirmed that he had effected no arrests.

Also testifying at hearing was James L. Kenny, an OBES security employee assigned to an OBES office in Canton, Ohio. Mr. Kenny has worked for OBES for the past five years and is responsible for the protection of lives, property and safety within an OBES office in Canton, Ohio.

Mr. Kenny explained that there are eighty employees in the OBES Canton office and Mr. Kenny is the only Security Technician assigned to it. Mr. Kenny works Monday through Friday, 7:00 a.m. through 4:00 p.m., and patrols the grounds, parking lot and throughout the OBES building in order to provide security. Mr. Kenny stated that he is always moving throughout the building and premises of the OBES Canton office in order to promote and protect the safety of employees and claimants.

Mr. Kenny testified that he has received no peace officer training, but had been told originally that the position did require three hundred sixty hours of Peace Officer Training Council instruction. Mr. Kenny stated that he took the position when it was offered to him with the understanding that he would secure POTC certification within a twelve month period. Due to circumstances beyond Mr. Kenny's control, Mr. Kenny was not able to secure the necessary three hundred sixty hours of training for certification, but explained that he has continued in his employment, providing security for the OBES Canton office.

Mr. Kenny testified that he spends 80% to 90% of his time patrolling the grounds and building of the OBES Canton office, protecting lives and preventing crimes, but does not carry a firearm and does not have arrest powers. Mr. Kenny stated that he has assisted law enforcement agencies when arrests had to be effected, but he himself has not been empowered to make arrests.

Mr. Kenny testified that he carries out criminal investigations as needed and estimated he is engaged in the investigation of criminal activity 30% to 40% of his scheduled work time. Mr. Kenny also maintains the full panoply of activity related records necessary to a security force.

Under cross-examination Mr. Kenny admitted that when his classification went from Police Officer 1 to Security Technician 1 he suffered no loss in pay. Mr. Kenny also stated that while classified Police Officer 1, prior to September, 1987, he also did not carry a firearm and was not invested with arrest powers.

The first witness called by the State of Ohio was Marlaina Eblin, a sixteen year employee of the State of Ohio, and for the past two and one-half years an employee of the Office of Collective Bargaining. Ms. Eblin is a Labor Relations Specialist who works within Contract Compliance within the Office of Collective Bargaining.

Ms. Eblin explained that during the process of negotiating collective bargaining agreements with employee representatives it was determined that police officers should be classed together on the basis of whether they may exercise arrest powers and carry firearms. It was further decided during this process of negotiation that the determination of whether carrying of firearms and arrest powers while on duty was authorized, should depend upon express authorization within Ohio statutory Law.

Ms. Eblin then identified a number of exhibits, including correspondence between the Office of Collective Bargaining and employee representatives as to the intention of the State of Ohio to revise the classifications Police Officer 1 and Police Officer 2, and the establishment of new classifications, Security Technician 1 and Security Technician 2.

Under cross-examination Ms. Eblin explained that the specifications attaching to these classifications were revised by the Ohio Department of Administrative Services within a section supervised by Gail Lively.

The second witness called by the State of Ohio was Gail Lively, the Chief of the Classification and Compensation Section

within the Division of Personnel of the Ohio Department of Administrative Services. Ms. Lively is a Personnel Administrator 2 and has worked for the State of Ohio within classifications for the past sixteen years. Ms. Lively supervises the personnel technicians who revise and create classification specifications, including the specifications at issue in this matter.

Ms. Lively explained that she too was involved in the revision and creation of these specifications and had worked with the head of Contract Compliance within the Office of Collective Bargaining at that time. According to Ms. Lively, the Office of Collective Bargaining had wanted to separate security personnel by means of whether they were authorized to carry firearms and had arrest powers while on duty. Ms. Lively stated that the Office of Collective Bargaining had determined that those who were authorized to carry firearms and did have arrest powers were to remain classified Police Officer 1 and Police Officer 2. For those security personnel who did not have the authority to carry firearms and were not invested with arrest powers, it was determined that they should move to the Security Technician series. Ms. Lively then identified a number of Ohio Revised Code sections which address the training and certification requirements necessary for carrying a firearm while on duty and for being invested with arrest powers, identifying those particular state departments which authorize the carrying of firearms and execution of arrests. These statutes include O.R.C. 109.78(D), which denies authority to carry a firearm to anyone



who lacks P.O.T.C. certification; O.R.C. 5123.15, which grants arrest powers to security personnel within the Department of Mental Retardation and Developmental Disabilities, but denies them the authority to carry firearms; O.R.C. 5119.14, a statute which grants arrest authority to employees of the Department of Mental Health, but denies them the right to carry firearms while on duty; O.R.C. 5503.09 which addresses the authority of security personnel employed by the Ohio Department of Highway Safety, specifically on the grounds of the Ohio Exposition Center; and Ohio Revised Code Section 5907.02, a provision which addresses the Ohio Veterans' Home.

Ms. Lively then identified the specifications for the classifications Police Office 1, Police Officer 2, Security Technician 1, Security Technician 2, and Security Officer 1. See Joint Exhibits 3 through 10, and Employer's Exhibit 6.

Ms. Lively explained that those employees who had been classified Police Officer 1 or Police Officer 2 who did not possess the authority to carry firearms while on duty or to make arrests were to be reassigned to classification titles within the Security Technician series. Ms. Lively explained that the Security Technician classifications were established so that the Police Officers 1 and 2 who were to leave that classification series would suffer no loss in pay. Without the Security Technician classifications the grievants would have been placed, according to Ms. Lively, in a Security Officer series which would have resulted in salary downgrades. Ms. Lively stated that it

had been agreed between the State of Ohio and the employee representatives that such reclassifications would not financially impact employees negatively.

#### CONCLUSIONS OF LAW

It is important to remember that the substance of the classification specifications at issue, that is, the duties and limitations appearing within them, are not in dispute. Both parties admitted the validity of these specifications, and the correspondence appearing in the record of this matter, Employer's Exhibits 3, 4 and 5, supports the finding that each of the classifications was properly promulgated and established.

Section 55.10 of the contract between the parties specifically reserves to management the authority to create classifications and issue specifications for each classification as needed. Unless a pay range has been decreased in the process of creating classifications or specifications, the State of Ohio is only required to provide twenty days advance notice of such actions, and is otherwise unfettered in its discretion to establish classifications and issue specifications.

In the case at hand, the establishment of the classifications did not involve the decrease of pay ranges. In fact, the establishment of the classifications for the Security Technician series was effected so as to avoid a lowering of pay ranges of affected employees. This being the case, the

classifications in question, which took effect in August, 1987, Police Officer 1, code number 26611, Joint Exhibit 7; Police Officer 2, code number 26612, Joint Exhibit 8; Security Technician 1, code number 30211, Joint Exhibit 9; and Security Technician 2, code number 30212, Joint Exhibit 10, are enforceable, both as to their place within the classification plan maintained by the State of Ohio, and as to the provisions within each, promulgated at the discretion of the State of Ohio.

Prior to August, 1987, the State of Ohio employed two separate sets of classifications for police officers. One set enumerated safety related services to be performed while carrying a firearm and while invested with arrest powers. The other set of police officer specifications referred to safety related services, but described employees who were not authorized to carry firearms and were not invested with arrest powers.

Effective August, 1987, the specifications for the Police Officer series were revised, and new classifications, Security Technician 1 and Security Technician 2, were established. Those classification specifications for Police Officers 1 and 2 which, prior to August 10, 1987, had described employees empowered to carry firearms and make arrests, were revised but maintained their titles, Police Officer 1 and Police Officer 2. Those specifications for Police Officer 1 and 2 which, prior to August 10, 1987, described employees who were not authorized by law to carry firearms or make arrests as law enforcement officers were allowed to lapse. In their place new classifications and

specifications for Security Technician 1 and Security Technician 2 were established. As stated above, the revision and establishment of these classifications and specifications are not in dispute.

What is disputed is whether the grievants herein were properly moved under the Security Technician classification series, removing from them their former classification title of Police Officer.

The issue then becomes whether the duties assigned to the positions held by the grievants are better described by the duties within the specifications for Security Technician 1 or Security Technician 2, or whether these duties are better classified Police Officer 1 or 2. It should be noted that this arbitrator, by the nature of this arbitration, has no authority to affect the duties or powers assigned to each of the grievants' positions. While some of the witnesses raised legitimate questions as to the needs of their positions, this arbitration action was not convened to consider what duties should or should not be assigned to positions, only to consider what duties are in fact assigned.

In examining the duties common to the class of grievants herein, it is apparent that all of the grievants are security personnel that are not authorized to carry firearms or exercise arrest powers. These limitations are imposed by law. While certain Ohio executive departments are empowered by statute to employ safety personnel who are authorized to carry firearms and

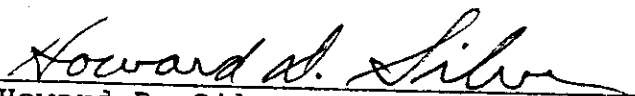
exercise arrest powers, other departments, which also need security personnel, are not statutorily empowered to employ personnel with these types of law enforcement powers.

The specifications presently in effect for Police Officer 1, Police Officer 2, Security Technician 1 and Security Technician 2 mirror the State of Ohio's law on these points. The specifications for Police Officer 1 and Police Officer 2 specifically refer to employees who work for state agencies which are statutorily authorized to employ gun carrying and arrest empowered security staff. The specifications for Security Technician 1 and Security Technician 2 also refer to security personnel, but those who are not authorized to carry firearms or make arrests.

The grievants are employed in positions which do not empower them to carry firearms or enforce arrest powers. This circumstance requires a finding that the grievants are properly classified under the Security Technician classifications.

**AWARD**

The grievants were properly reclassified Security Technicians.

  
Howard D. Silver  
Arbitrator

May 5, 1988  
Columbus, Ohio