

ARBITRATION AWARD SUMMARY

OCB Award Number: 286

OCB Grievance Number: 21-04-880610-0006 Timothy Snyder

Union: FOP II

Department: ODLC

Arbitrator: Harry Graham

Management Advocate: Rachel Livingood

Union Advocate: Paul Cox

Arbitration Date: 5-26-89

Decision Date: 6-7-89

Decision: Granted

#286

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 In the Matter of Arbitration *
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 Between *
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 Fraternal Order of Police-Ohio * Case No.: 21-04-880610-
 Labor Council * 0006-05-02
 *
 and * Before: Harry Graham
 *
 State of Ohio, Department of *
 Liquor Control *
 *

Appearances: For Fraternal Order of Police-Ohio Labor Council

Paul Cox
 3360 East Livingston Ave.
 Columbus, OH. 43227

For State of Ohio:

Rachel Livengood
 Chief of Labor Relations
 Department of Liquor Control
 2323 West Fifth Ave.
 Columbus, OH. 43266-0701

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on May 26, 1989 before Harry Graham. At that hearing both parties were provided complete opportunity to present evidence and testimony. Post hearing briefs were not filed in this dispute. The record was closed at the conclusion of oral argument.

Issue: At the hearing the parties were able to agree upon the issue in dispute between them. That issue is:

Did the Ohio Department of Liquor Control violate Article 22.02 of the Collective Bargaining Agreement when it amended the Grievant's work schedule for July, 1988? If so, what shall the remedy be?

Background: There are four (4) Grievants involved in this dispute. They are: Gerald Hook, Dwight Johnson, Timothy Snyder and Stephen Ziton. All of the Grievants are classified as Liquor Control Investigator 2's and are assigned to the Cleveland, OH. Enforcement District. As Liquor Control Agents the Grievants do not necessarily work a Monday through Friday work week. To the contrary, they normally work a schedule that provides them days off that are not Saturday and Sunday. For instance, one of the Grievants who testified at the arbitration hearing, Timothy Snyder, normally had Wednesday and Thursday of each week as his days off.

In the Cleveland office of the Liquor Control Department work schedules are normally posted approximately one month in advance. Thus, at the end of May, 1988 there was posted at the Cleveland facility the work schedule for July, 1988. That schedule set out the days off for the Grievants. Using Snyder as an example it indicated he would have Wednesdays and Thursdays off work. In particular it showed he would be off on July 20 and 21, 1988.

In the Summer of 1988 the Department of Liquor Control was conducting training in defensive tactics for officers of the Department. Included in the training sessions were the Grievants. On May 10, 1988 an Inter-Office Communication was sent to various field offices of the Department announcing the training program and setting forth a schedule for the

training sessions. Included in the training were officers who worked in the Cleveland district. Training for them was scheduled to occur on July 20-22, 1988. This was coincident with the Grevants scheduled days off. Accordingly their schedule of days off was changed. They were given July 18, a Monday and July 27, a Wednesday, off duty. July 20 and 21, 1988, the expected days off, were now on-duty days, with attendance required at the training sessions.

In the opinion of the Union the alteration of the scheduled days off represented a violation of the Agreement at Article 22.02, "Posting of Work Schedules." A grievance protesting the alleged contractual violation was promptly filed and rejected at all steps of the procedure by the Employer. The parties agree that the grievance is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points to the conjunction of facts and the language of the Agreement to support its view that the Contract has been breached in this situation. Article 22, Section 22.02 of the Agreement governs the posting of work schedules. It provides that work schedules be posted a minimum of four weeks in advance. The State complied with that part of Section 22.02. The Section continues to specify that "work schedules shall not be established to avoid overtime but for efficient operations." In fact, the change in work schedules at issue in this proceeding occurred

precisely because the State sought to avoid payment of overtime in this situation according to the Union. The State could have required the Grievants attend the training sessions on July 20 and 21, 1988, their scheduled days off. Had it done so, it would have incurred an obligation for twenty (20) hours pay at the overtime rate. The figure of twenty (20) hours is arrived at by adding to the normal eight (8) hour day, two (2) hours travel pay on each day and is not in dispute. The circumstances in which the Grievants schedules were changed indicates beyond doubt that avoidance of overtime, not attendance at the training sessions, was the principal factor prompting the change. Attendance could have been required without alteration of scheduled days off. Had that occurred, an overtime obligation would have been incurred by the State. In seeking to avoid payment of overtime the State violated its commitment not to alter schedules for that reason. As that is the case the Union insists the grievance be sustained.

The Union also points to other language in Section 22.02 in support of its position in this matter. The Section provides that once schedules have been posted that they shall remain in effect for the duration of the posted period except in cases of emergency. There was no emergency in this situation. There was a training program, scarcely an emergency situation. Nonetheless, the schedules were changed

after they were posted. This is a clear violation of the Agreement and must prompt an award in its favor in this situation according to the Union. It seeks an award of twenty hours pay at the overtime rate to each of the four Grievants.

Position of the Employer: As the State reads the Agreement there is a connection between Sections 22.01 and 22.02. Section 22.01 indicates that Liquor Agents shall work a week of five (5), eight (8) hour days. Further, Section 22.02 specifies that people at facilities without work schedules, the Grievants in this case, "shall be notified of special assignments two (2) weeks in advance whenever possible." The Grievants were notified 46 days in advance of the training sessions concerning their schedule change. Obviously the State met its obligation under the Agreement in its view. Hence, no contractual violation occurred.

In the opinion of the State it has no obligation to post work schedules for Liquor Control Agents. It has done so as a matter of courtesy and good personnel practice. As the State has done more than contractually required it is inappropriate for the Union to urge that the schedule change under review in this proceeding represents a violation of the Agreement.

The State points to the history of work schedules in the Liquor Control Department to support its position in this case. With regularity employees have worked eight day weeks as their scheduled day's off changed. That is what occurred

in this situation. There was no intent to evade the stricture requiring that days off not be changed to avoid payment of overtime in this situation. As that was the case, the State urges that the grievance be denied.

Discussion: It is impossible to accept the argument of the State concerning the voluntary nature of the posting of work schedules. At Section 22.02 the Agreement clearly indicates that "work schedules shall be posted for a minimum of four (4) weeks in advance." There is no exception made for the Department of Liquor Control. Section 22.01 of the Agreement is concerned with the work week and work day, not work schedules. It cannot control the obligation of the State to post such schedules, which is clearly set forth in Section 22.02 of the Agreement. Posting of work schedules for Liquor Control Agents is not to be regarded as an act of courtesy. Rather, it is a contractual obligation under the plain terms of the Labor Agreement.

In fact, the State was initially in compliance with the provisions of the Agreement. The work schedule for July, 1988 for Liquor Control Agents in the Cleveland district was posted at the end of May, 1988, well before the contractual minimum of four weeks in advance. The schedule showed the Grievants with Wednesdays and Thursdays in July as off days. When the schedule was altered to accommodate the training session of July 20-22, 1988 there occurred a clear violation

of the Agreement at Section 22.02 which provides that "after the schedule has been posted it will remain in effect for the duration of the posted period except in emergency situations." No emergency existed in this case. Attendance at a training session can scarcely be termed to be an emergency. When the State urges that no violation of Section 22.02 occurred as the Grievants were notified of their "special assignments" 46 days in advance, well before the two week period established in the Agreement it is in error. The Grievants are not employees at facilities without work schedules. To the contrary, the Agreement specifically requires that work schedules be posted for such employees. Thus, it must be concluded that the final sentence of Section 22.02 is inapplicable to this dispute.

That work schedules have changed in this past and employees have worked eight days without a day off is immaterial. The State may institute such a change in work schedules. What is it is prohibited from doing is altering a work schedule to avoid payment of overtime. In this situation the long established and posted work schedules were altered coincident with announcement of the training schedule. No plausible reason for that to occur was advanced. The only conclusion to be reached is that the schedules were changed to avoid payment of overtime to the Grievants. As this is the case it is clear that the State violated the Agreement in

this situation.

Award: The grievance is SUSTAINED. Each Grievant is to be paid twenty (20) hours pay at the overtime rate.

Signed and dated this 7th day of June, 1989 at South Russell, OH.

Harry Graham
Harry Graham
Arbitrator