
In the Matter of Arbitration

Between

Fraternal Order of Police-
Ohio Labor Council

and

The State of Ohio, Department
of Natural Resources

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Case No.:

25-12-881123-0008-05-02

Before:

Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

Paul Cox
Chief Counsel
Fraternal Order of Police-Ohio Labor Council
3360 East Livingston Ave.
Columbus, OH. 43227

For Ohio Department of Natural Resources

William F. Demidovich, Jr.
Labor Relations Specialist
Department of Natural Resources
Fountain Square, Building D-2
Columbus, OH. 43224

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing both parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer violate the Collective Bargaining Agreement when it assigned David Casasanta to duty at the Heritage Days Festival at Malabar Farm State Park in September, 1988? If so, what shall the remedy be?

Background: There exists no controversy over the facts that give rise to this proceeding. The Grievant, David Casasanta, is employed as a Park Ranger with the Ohio Department of Natural Resources, Division of Parks and Recreation. His work site is at the Hueston Woods State Park. That Park is located in the Division's administrative area known as District V.

Each year in the Fall the Department conducts a large-scale event at Malabar Farm State Park known as the Heritage Days Festival. That event entails demonstrations of farm life in Ohio at the end of the 19th Century. As a festival, crowds at Heritage Days are large, in the vicinity of 30,000-40,000 people in the course of a weekend. To deal with the numbers of people associated with the event it is necessary that staff at Malabar Farm be increased. Consequently the Division of Parks assigns staff from other facilities to Malabar Farm for the festival weekend. Malabar Farm is located in the Division's administrative area known as District III. It is some five hours driving time away from the Hueston Woods facility in District V.

In 1988 the Division confronted its annual problem of staffing the Heritage Days Festival at Malabar Farm. In planning for the event each District was required to identify staff from various facilities who would be detailed for duty at Malabar Farm. In District V, East Fork State Park was to

send a horse patrol and Deer Creek State Park was to send a motorcycle patrol. In fact, East Fork found itself in difficulty with respect to meeting its commitment to send staff to Malabar Farm. A serious illness occurred in the family of one of its rangers. Another ranger was promoted and transferred. He was considered to be unavailable for assignment to Malabar Farm. Consequently, East Fork had available only two rangers for duty at that facility. Upon learning of the difficulties confronting the administration of East Fork the Central Office of the Division contacted Hueston Woods and directed it to supply a ranger for duty at the Heritage Days Festival at Malabar Farm. Rangers at Hueston Woods were asked to volunteer in order of their seniority. None did. Consequently, the least senior ranger at Hueston Woods, David Casasanta, was assigned to the Festival at Malabar Farm.

Mr. Casasanta regarded his assignment to the Festival to be improper. He filed a grievance protesting that assignment. It was processed through the procedure of the parties without resolution and they agree that it is properly before the Arbitrator for determination on its merits.

Position of the Union: At Article 22, Section 22.02 the Agreement provides that work schedules must be posted for a minimum of four (4) weeks in advance. After posting, schedules may not be changed except to deal with emergency

situations. The Grievant worked the 10:00PM - 8:00AM shift at Hueston Woods. On the evening of September 19, 1988 he first received notice of his assignment to Malabar Farm. This was confirmed on September 20, 1988. He worked the 9:00AM - 5:00PM shift at Malabar on September 24, 1988. On September 23, 1988 he had travel time and compensatory time. In the Union's view this sequence of events indicates beyond doubt that Mr. Casasanta's schedule was changed well within the four week period during which such change is prohibited by the Agreement.

Section 22.02 of the Agreement makes reference to the concept of "emergency." There was no emergency in this instance. The Division conducts the Heritage Days Festival each year. It knows well in advance that it will require additional staff to be present. Mr. Casasanta was assigned three days prior to the event. When the Division is aware a year in advance of its needs and assigns staff with but a few days notice it is impossible to believe that an emergency in any sense of the word exists according to the Union.

Had Mr. Casasanta worked his normal shift at Hueston Woods on Friday, September 23, 1988 and then traveled and worked at Malabar Farms the State would have run afoul of Section 22.06 of the Agreement dealing with Report-Back Pay, known in the parlance of the parties as a double back. This would have required the State to make premium pay for the

hours worked by Mr. Casasanta on September 24, 1988. The State was aware of this possibility according to the Union; hence the assignment to Malabar Farms on September 23, 1988.

The Union points out that this grievance does not deal with the authority of the State to assign staff to particular events. Rather, it deals with the question of whether or not the assignment of Mr. Casasanta was properly done within the framework of the Agreement. According to the Union, it was not.

Position of the Employer: The State claims that it acted correctly in this instance and that its actions are sanctioned by the Agreement. Article 6 of the Agreement is the Management Rights provision. It permits the Employer to "direct" its employees. It may also "effectively manage the work force." That is what it did in this instance according to the State.

In fact, when the sequence of events involved in this situation is examined, the State insists it acted properly. Staff at Hueston Woods were informed as early as September 5, 1988 that the possibility of assignment to Malabar Farm existed. Staff at another facility, East Fork, were properly detailed. Unforeseen and unforeseeable difficulties developed with the assignment of East Fork staff. A serious illness in the family of one officer and the promotion of another reduced the complement available for duty at East Fork. Staff

had to be assigned to Malabar Farm. Mr. Casasanta's assignment was proper under the circumstances in the State's opinion.

The Grievant has not been harmed in any fashion by his assignment to Malabar Farm. In fact, he has been advantaged. As a result of discussions earlier in the grievance procedure he received two additional hours of compensatory time. For the week in question his total pay was 44.5 hours. This resulted from pay for 40 hours worked plus three total hours of compensatory pay at the time and one-half rate. A premium was paid. The Grievant expressed agreement with this resolution at step one of the Grievance procedure.

Essentially, the State says "enough is enough." As unforeseen circumstances prompted the assignment of Mr. Casasanta to Malabar Farm and the State is permitted to "direct" the workforce, it insists its actions in this situation were correct. Consequently it urges the grievance be denied.

Discussion: The Agreement contemplates unusual operational situations at several locations in the text. Thus, at Article 6, M the State is permitted to take "all necessary and specific action during emergency operational situations." At Article 22, Section 22.02 the State has agreed that work schedules will remain unaltered "except in emergency situations." In this case, the State made plans to staff the Heritage Days Festival at Malabar Farm. Staff from various

facilities were assigned. Those assignments had to be changed. Serious illness occurred in the family of one of the officers assigned to the Festival. Another officer had been promoted and transferred away from East Fork. Its normal complement of four officers was reduced to two at the time of the Festival at Malabar Farm. This sequence of events was unexpected. The concept of surprise is precisely that associated with an emergency. Webster's Encyclopedic Dictionary of the English Language defines "emergency" as "A sudden, unexpected, occasion or combination of events calling for immediate action." That definition fits the facts under scrutiny in this proceeding. The plans for staffing of the Heritage Days Festival went awry. The State had to respond to the changed circumstances it faced.

In fact, the State acted with the utmost fairness when it assigned Mr. Casasanta to Malabar Farm. He was given the choice of a number of ways to meet his assignment. For the week in question he received premium pay. It cannot be said that the State singled him out to work the Festival for any improper motive. To the contrary, by determining that the officer at East Fork who was experiencing illness in his family did not have to work the Festival the State was acting out of consideration for him. The compassion it showed to the East Fork staff member resulted in inconvenience and disruption to Mr. Casasanta's schedule. He was compensated

for that disruption and inconvenience. As the State could not be expected to foresee the illness in the family of one officer at East Fork and the simultaneous promotion and transfer of another officer at that facility it must be determined that the concept of "emergency" as used in the Agreement has been met.

Award: Based upon the preceding discussion the grievance is DENIED.

Signed and dated this 13th day of February, 1990 at South Russell, OH.

Harry Graham
Harry Graham
Arbitrator