

ARBITRATION AWARD SUMMARY

OCB Award Number:

432

OCB Grievance Number:

25-18

890.529

~~052989~~-12-05-02

/ Class Action  
Telephone Pay

Union:

FOP

Department:

ODNR

Arbitrator:

Mary Graham

Management Advocate:

Jon Weiser

Union Advocate:

Paul Cof

Arbitration Date:

5/15/90

Decision Date:

5/25/90

Decision:

Denied

\*\*\*\*\*

In the Matter of Arbitration

Between

Fraternal Order of Police-  
Ohio Labor Council

and

The State of Ohio, Department  
of Natural Resources

\*\*\*\*\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

Case No.:

25-18-(5-29-89)-12-05-02

Before: Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

Paul Cox

Fraternal Order of Police-Ohio Labor Council

3360 East Livingston Ave.

Columbus, OH. 43227

For Ohio Department of Natural Resources

Jon E. Weiser

Labor Relations Administrator

Ohio 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 on May 15, 1990 before Harry

Graham. At that hearing the parties were provided complete

opportunity to present testimony and evidence. No post

hearing briefs were filed in this dispute and 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 State violate the Collective Bargaining

Agreement when it failed to pay the Home Office

Supplement to the Grievants? If so, what shall the

remedy be?

Background: The events which give rise to this proceeding are not a matter of controversy. When the parties negotiated their 1986-89 Agreement they included a Wildlife Division Supplement at Article 60. That payment of \$40.00 per month was to be provided to Wildlife Investigators and Game Protectors 1 and 2 who worked out of their homes on a permanent basis. It was to compensate them for the use of their homes as office space and for such other business related functions as maintaining a publicly listed telephone and storage of equipment used in their work.

When the parties came to negotiate for the 1989-92 Agreement they agreed to increase the \$40.00 per month payment to \$60.00 per month. They also agreed to add another job classification, Wildlife Education Officer, to the classifications that were already receiving the Supplement. There was also negotiated a change in the language of Article 60. The 1986-89 Agreement provided that the supplemental payment would go to people who "are required by their Employer to work out of their homes on a permanent basis." The 1989-92 Agreement provides the payment is to be made to people who are "required by their Employer to maintain an office in their homes on a permanent basis."

On January 18, 1989 the Chief Negotiator for the Department of Natural Resources, Jon Weiser, wrote his

counterpart in the Union, Paul Cox, to confirm the results of the bargaining on the issue of the supplemental payment. In that letter Mr. Weiser indicated the understanding of the State that the Wildlife Education Officers who maintained an office in their home, "including a publicly listed office phone" would receive the home office supplemental payment. In due course two Wildlife Education Officers met the requirement of having what the State regarded as a "publicly listed office phone" and payments to them commenced. The other Wildlife Education Officers did not meet the contractual standard in the opinion of the State. Consequently, it has not made the \$60.00 per month payment provided for in Article 60 to them. In order to protest the failure of the State to make the \$60.00 per month payment a grievance was filed. It was processed through the machinery of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Union: According to the Union its objective in negotiations was to secure identical treatment of the Game Protectors, Wildlife Investigators and Wildlife Education Officers. When the prior Agreement omitted the Wildlife Education Officers from eligibility for the home office supplemental payment they informed the Union that they indeed did work out of their homes. In that respect, they

functioned in a fashion similar to the Wildlife Investigators and Game Protectors. There is no requirement that people in those classifications list their home telephone numbers in the yellow pages or blue government directory pages of the telephone book. The Union sought that people in all three classifications be treated equally. By the plain language of the Agreement it achieved its objective it asserts. During the course of negotiations the State told the Union that if the Wildlife Education Officers worked at home they would be treated in the same fashion as the Game Protectors and Wildlife Investigators. The Union relied upon the representation of the State. In essence, it asserts that if the State prevails in this dispute it will have been duped. If the State was of the view that Wildlife Education Officers had to have a listed telephone number on the yellow or blue pages of the telephone book it should have told the Union. It did not do so. The Union bargained for the supplemental payment to Wildlife Education Officers. It is not being made to seven of the nine people in that classification. This is a clear violation of the Agreement that must be remedied according to the Union.

Position of the State: The State points out that there is a difference between the Wildlife Education Officers and the other classifications eligible for the home office supplement. Unlike the Game Protectors and Wildlife

Investigators, the Wildlife Education Officers have a choice of whether or not to work out of their home. The State provides them with office space at the various District offices. They can use that space if they so desire. If they prefer to work from home they can do that and receive the home office supplemental payment. The only restriction upon eligibility for the payment is the listing of the telephone. Should the Wildlife Education Officer have a listing in the residential section of the telephone book it renders the general public unable to communicate with him. Ordinary citizens who may have occasion to contact the Wildlife Education Officer cannot be expected to know him by name. Rather, they are seeking to contact the relevant government official to secure services. They cannot do so if there is no appropriate listing in the telephone book.

When the State's negotiator on this issue, Jon Weiser, drafted the letter of January 18, 1989 he made it crystal clear to the Union that eligibility for the home office payment was conditioned upon Wildlife Education Officers maintaining a "publicly listed office phone." That letter was agreed upon by both parties and serves to bind them. As that is the case, the State urges the grievance be denied.

Discussion: At Article 60 the State has committed itself to paying \$60.00 per month to people who are required to maintain an office in their home. Wildlife Education Officers

are not among that group of people. There is an element of discretion present when people in that classification maintain an office at home. In its letter of January 18, 1989 the State emphasized the discretionary element by indicating "this supplement will be provided to those Wildlife Education Officers who maintain an office in their home...." No requirement exists for Wildlife Education Officers to maintain an office in their homes. When Wildlife Education Officers choose to maintain a home office the Agreement indicates payment shall be made to them for use of their home as an office, including the use of the "public listed phone." If there is no telephone listing which identifies the Wildlife Education Officer in some fashion as a representative of the Department there is no "public listed phone" within the meaning of the Agreement. The Wildlife Education Officer remains anonymous to the general public. The citizen seeking to avail himself of the educational services of the Department has no readily available method to contact the person responsible for providing those services. A telephone listing without identification of the number as that of Wildlife Education provides no information to the public. Potential customers for the services of the Wildlife Education Officer cannot be expected to know the name of the provider of those services. They know the State makes available a program of Wildlife Education. It is reasonable

to expect potential customers will seek information about it in the governmental listings in the telephone directory. This leads to the conclusion that in order to meet the contractual requirement of "publicly listed phone" the listing must be by function, not merely under the name of the Wildlife Education Officer.

If a Wildlife Education Officer chooses not to receive telephone calls on State business at his home he may do so. If he makes that choice, he forfeits eligibility for the \$60.00 per month payment. It is the choice of the employee, not the State.

The Agreement does not require that employees maintain a specific "office phone" separate and distinct from their residential telephone. The letter of January 18, 1989 does not impose that requirement either. It refers to a "publicly listed office phone." No testimony was received from witnesses on behalf of the State to the effect that it considered a telephone line dedicated to State business as being necessary to meet the requirement of an office phone. To the contrary, testimony from both parties made reference to family members and answering machines being used by Game Protectors to respond to telephone calls received at their homes. Such an arrangement will suffice for Education Officers if they list their number in the telephone directory as exemplified by Employer Exhibits 1 and 2. If Wildlife



Education Officers choose not to have a telephone line dedicated to State business they may do so. The language of the Agreement gives them the option of making themselves available to the public through listing in the yellow or blue pages, (eg. Employer Exhibits 1 and 2) or not, as they see fit. If they choose to maintain the home office and receive the payment referenced in Article 60, they must make available the telephone number at which they may be contacted with clear identification of the function associated with that number. This is the quid pro quo of the bargain expressed in the Agreement.

Award: The grievance is denied.

Signed and dated this 25<sup>th</sup> day of May, 1990 at South Russell, OH.



Harry Graham  
Arbitrator

