#467

In the Matter of Arbitration	Case Numbers:
Between	45
Fraternal Order of Police-Ohio Labor Council	23-10-900509-0091-05-02 23-10-900509-0092-05-02 23-10-900509-0093-05-02
and	Before: Harry Graham
The State of Ohio, Department of Mental Health	

Appearances: For Fraternal Order of Police-Ohio Labor Council

Ellen Davies
Fraternal Order of Police-Ohio Labor Council
222 East Town St.
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For Department of Mental Health:

Bill Johnson
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Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on July 20, 1990 before Harry Graham. At that hearing the 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 denied pay to John Williams, Robert Dodd and Gary Waldrop for time spent appearing at arbitration hearings? If so, what should the remedy be?

Background: There is no dispute concerning the facts that

give rise to this dispute. The Grievants are all employed as Police Officers at the Massillon Psychiatric Center in Massillon, OH. There is employed at Massillon another Police Officer, Mark Hill. Mr. Hill was discharged from his employment and filed a grievance protesting that act. In due course his grievance reached the arbitration stage of the grievance procedure of the parties. A hearing was scheduled regarding Mr. Hill's discharge before this Arbitrator for March 21, 1990. Gary Waldrop worked the 12:00 Midnight - 8:00AM shift on that date and then reported to Columbus, OH. pursuant to the subpoena. Grievants Williams and Dodd appeared at the hearing in Columbus on March 21, 1990 pursuant to subpoena as well. Neither Williams nor Dodd was scheduled to work on that date.

On April 12, 1990 the hearing concerning Mr. Hill's discharge was reconvened. All the Grievants were subpoenaed to appear and did so. According to the facts stipulated to by the parties Mr. Williams was on his scheduled day off. The other Grievants were scheduled to work. The hearing on April 12, 1990 consumed well more than 8 hours.

All of the Grievants made application for pay for the days the spent in Columbus pursuant to their subpoenas. None was paid for March 21, 1990. It was the opinion of the State that as Williams and Dodd were not scheduled to work on that date pay was not appropriate for them. Waldrop had worked

from 12:00 Midnight to 8:00AM. In the State's opinion he had reported to Columbus on his own time. No pay was due to him in the State's view. On April 12, 1990 the State paid Dodd and Waldrop. The pay was for eight hours at the straight time rate. No premium pay was appropriate in the State's view. Mr. Williams received no pay for April 12, 1990 as he appeared in Columbus on his day off.

In order to protest what it regarded as the improper action of the State when it failed to pay the Grievants for their appearances in Columbus all of them filed grievances. As they were not resolved in the procedure of the parties they were advanced to arbitration. The parties agree that they are properly before the Arbitrator for determination on their merits.

Position of the Union: The Union is of the view that as all of the Grievants reported to Columbus on March 21 and April 12, 1990 pursuant to subpoena that pay is due to them. In support of this opinion it points to the Labor Agreement. Section 20.08.2 indicates that "The Employer agrees to allow witnesses time off with pay at the regular rate to attend the arbitration hearing." That language is clear according to the Union. All the Grievants attended the hearing on March 21, 1990. They were not paid. All attended on April 12, 1990. Williams received no pay. Neither Dodd nor Waldrop received any premium pay for their attendance on April 12, 1990. The

Agreement at Article 20, Section 20.08 indicates that pay should be made to witnesses at the "regular rate." As both spent more than 8 hours at the hearing on April 12, 1990 the "regular rate" that applies to them must include overtime pay according to the Union.

The view that pay is required under these circumstances is bolstered by other language in the Agreement. Article 46 entitled "Court Leave" speaks to this situation. Section 46.01 provides that pay is to be made to employees who are "subpoenaed to appear" before a court "or other official proceeding." The Grievants were subpoenaed to appear at an official proceeding. An arbitration hearing is doubtless an official proceeding as it arose under the Labor Agreement. At Section 46.04 pay is to be made to employees who appear in court or at another "official proceeding based on any action arising out of their employment...." The Grievants appeared at Mr. Hill's arbitration hearings as a result of their employment with the State. Pay is due in the opinion of the Union.

The Union points out that analogous dispute arose in another bargaining unit that it represents in State service. Bargaining Unit 1, composed of employees of the Highway Patrol, was confronted with the same issue. It was resolved by pay being made to employees confronted with the same situation as that presented in this proceeding. Precedent

supports its position in this dispute. As the issue has been resolved elsewhere the Union urges it be resolved in the same manner in this situation.

Position of the Employer: The State disagrees with the claim of the Union in this instance. According to it Article 46 is irrelevant to this dispute. It is captioned "Court Leave" and provides pay for appearances in court. It has no bearing on this controversy.

Turning attention to Section 20.08.2 of the Agreement the State indicates that those employees who were scheduled to work and did not do so as a result of their required appearance in Columbus were paid at their "regular" rate. Such pay was made to Messrs. Dodd and Waldrop for April 12, 1990 as they were scheduled to work on that date. No premium pay is due to them because the concept of "regular" pay applies to straight time, not premium pay. Mr. Williams is not entitled to pay for April 12, 1990 as he was not scheduled to work on that date. No time off was granted to him for his appearance at the hearing in Columbus that day.

On March 21, 1990 none of the Grievants are entitled to premium pay according to the State. Williams and Dodd were off duty on that date. Waldrop had worked from Midnight to 8:00AM. He was paid. When he appeared at Columbus later that day he was on his own time. No obligation exists for additional pay to be made to him according to the State.

The State points out that two separate Collective Bargaining Agreements exist covering employees of Bargaining Units 1 and 2. That management officials of Bargaining Unit 1 may have agreed with the position of the Union on this issue does not bind management in Bargaining Unit 2. There are a multiplicity of State agencies in that bargaining unit and the situations are not analogous according the State. It urges that the agreement reached to resolve this controversy in Bargaining Unit 1 be disregarded in this case.

Discussion: While the appeal of precedent is indeed strong the State is correct to point out that different bargaining units may interpret the same language differently. If support is provided by the language to the interpretation of the State in this dispute that interpretation may not be disregarded simply because other State officials chose to interpret it differently.

Some of the language cited by the Union in support of its position in this dispute does not bear upon it. Article 46 is entitled "Court Leave." It deals with just that, court leave. When language found in that article is concerned with "other official proceedings" those proceedings must bear some relationship to a court proceeding, not an arbitration proceeding. It is a well accepted principle of contract construction that specific language must control the outcome of a disputed interpretation if specific language can be

found to apply. In this instance the language at Article 46 does not apply to the facts at hand. This issue is concerned with pay for appearance at an arbitration hearing. Article 46 concerns itself with court leave. The concepts are different and have been treated separately in the Agreement.

Article 20, Section 20.08 applies specifically to this dispute. In their Agreement the parties provided explicit language dealing with the circumstances in which witnesses at arbitration hearing will be paid. They provided that the Employer would provide "time off with pay at the regular rate to attend the arbitration hearing." With respect to the hearing on March 21, 1990 the State did not provide "time off" to any of the Grievants. Mr. Waldrop worked from Midnight to 8:00AM. Then he proceeded to Columbus to attend the hearing. No time off was given to him to attend. He was on his own time. Hence, no pay is due to him for that day. Similarly, Grievants Williams and Dodd were not at work on March 21, 1990. No time off was provided to them. As they did not receive time off pay at the regular rate is not required. Pay is required when the Employer provides employees with time off to attend arbitration hearings. As none of the Grievants was given time off to attend the hearing on March 21, 1990 no obligation under the Agreement exists for the Employer to make the pay to them sought by the Union in this case.

On April 12, 1990 pay was made to Mr. Waldrop and Mr. Dodd. It was made at the "regular rate" which must be read to refer to the straight time rate in this dispute. When Messrs. Waldrop and Dodd took more than 8 hours on that date to drive to and from Columbus and attend the hearing they were not being provided time off by the State. Hence, no pay is due to them. Mr. Williams attended the hearing on his scheduled day off. Again, no time off was provided to him by the State. Consequently it incurred no financial obligation to him.

This judgement will doubtless be regarded as harsh and unfair by the Union and the Grievants and indeed it may be so. It is however, the only possible conclusion that may be reached when applying the Agreement of the parties to the situation presented in this case.

Award: The grievance is denied.

Signed and dated this 27th day of July, 1990 at South Russell, OH.

Harry Graham

Harry Graham
Arbitrator