
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-(89-08-25)-0019-05-02

Before: Harry Graham

Award # 490

Appearances: For Fraternal Order of Police-Ohio Labor Council

Kay Cremeans
General Counsel
Fraternal Order of Police-Ohio Labor Council
222 East Town St.
Columbus, OH. 43215

For Department of Natural Resources:

Gregory A. Rees
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 on September 14, 1990. At that hearing complete opportunity was provided for the parties to present testimony and evidence. The record was declared to be closed at the conclusion of oral argument.

Issue: At the hearing the parties were unable to agree upon the formulation of the issue in dispute between them. They left it to the Arbitrator to determine the wording of the issue to be decided. It is clear to all concerned in this

proceeding that the dispute between the parties involves the use to be given to "classification seniority" in the movement of the Grievant between his position as Park Ranger Specialist and Park Ranger. Accordingly the Arbitrator finds that the issue in dispute between the parties is:

Did the State violate the Labor Agreement by not allowing the Grievant to count his time as a Park Ranger Specialist towards his classification seniority as a Park Ranger? If so, what shall the remedy be?

Background: There is no dispute over the events that give rise to this controversy. The Grievant, Joseph Soukup, was first employed by the Department of Natural Resources on June 20, 1983. His initial position was that of Park Ranger. On December 11, 1983 he was promoted to a higher position, that of Park Ranger Specialist. On May 6, 1989 he voluntarily accepted a reduction in rank to the position of Park Ranger. Subsequently the State began to compute his "classification seniority" as dating from the date of his resumption of the Park Ranger position, May 6, 1989. This had the effect of nullifying his years of prior service for purposes of classification seniority.

In order to protest this action Mr. Soukup filed a grievance. It was processed through the machinery of the parties without resolution and they agree that it is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points out that classification seniority is of great significance to members

of the Bargaining Unit. It is used for such purposes as selection of vacations, allocation of overtime opportunities and selection of shifts. The Grievant's work site, Cleveland Lakefront Park, utilizes rotating shifts. Consequently shift selection is not presently a concern of Mr. Soukup. If the Park should institute permanent shifts it would become his concern. Obviously, the outcome of this dispute is likely to affect other employees of the Department elsewhere in the State where permanent shifts are utilized. Hence, this controversy is of great import for members of the Bargaining Unit.

In this situation an anomaly developed. As can be seen from his date of hire Mr. Soukup has approximately seven (7) years of service with the State. By counting for purposes of Classification Seniority service only from the date of his return to the Park Ranger position, May 6, 1989, he lost approximately six (6) years of Classification Seniority. No question exists but that Mr. Soukup was in State service during the time in question. This development is unfair and was not contemplated by the parties during negotiations. It has resulted in a situation at Cleveland Lakefront Park where people with less total time in State service than the Grievant are above him on the Park Ranger seniority roster. This is a ridiculous situation that the parties did not intend and that cannot be permitted to continue according to

the Union.

The Union points to Article 34, Section 34.02 B as having been violated by the Employer in this situation. That Section of the Agreement provides that continuous service shall terminate when an employee is promoted out of the bargaining unit. That did not occur in this situation. Both of the positions occupied by Mr. Soukup during his tenure with the State are bargaining unit positions. As that is the case, the State cannot disregard his time as a Park Ranger Specialist when he returned to the Park Ranger position according to the Union.

Article 31 of the Agreement is concerned with promotions. If an employee is promoted and does not successfully complete the probationary period he may be returned to his original position without loss of seniority. That situation is analogous to the situation at issue in this proceeding in the Union's view. Mr. Soukup accepted a demotion voluntarily. He should not lose classification seniority as a result the Union asserts. By failing to count his service as a Park Ranger Specialist the State has created a situation which is unfair to the Grievant. Employees with less service than he rank above him on the classification seniority roster. This should not be permitted to occur and is not sanctioned by the Agreement in the opinion of the Union. Hence, it urges the Grievance be sustained and Mr.

Soukup be provided classification seniority for his entire length of service with the State.

Position of the Employer: In support of its position that it acted correctly in this situation the State points to the Labor Agreement. At Article 34 the Agreement is concerned with Seniority. Section 34 B defines "Classification Seniority" as "The length of continuous service in a classification beginning with the last date of hire or transfer into said classification." That definition applies in this situation according to the State. Mr. Soukup returned to the Park Ranger classification on May 6, 1989. That date represents his "last date of ... transfer into said classification." As that is the case the State is required by the plain language of the Agreement to count only his service as a Park Ranger from May 6, 1989 as his classification seniority. To do otherwise would violate the clear language of the Agreement it insists.

Article 34, Section 34 C is concerned with "Classification Series Seniority." That type of seniority is defined as the length of continuous service in a position or succession of positions within the same classification series. As reflected in the Agreement the parties made a deliberate and conscious distinction between Classification Seniority and Classification Series Seniority. If the Union prevails in this dispute that distinction will be

obliterated. In effect, employees will be permitted to carry their entire length of State service with them into various classifications within a classification series. This will void the language of Article 34, B and should not be permitted to occur in the State's view.

The Grievant returned to the Park Ranger position on May 6, 1989. That date represents his last date of transfer into the position. The State has carried his classification seniority on the roster since that date. As it has done so, no violation of the Agreement has occurred. Consequently, the State urges the grievance be denied.

Discussion: The language cited by the State in support of its action in this dispute is specific to the situation resulting from Mr. Soukup's transfer back to the Park Ranger position. That language provides that Classification Seniority is to be defined as "The length of continuous service in a classification beginning with the last date of ... transfer into said classification." (Emphasis added). In effect the Union asks that the words "last date" in Article 34, B be disregarded. This cannot occur as the parties agreed upon a specific date from which to compute classification seniority. That date is the "last date" which in this case is May 6, 1989. By the plain language of the Agreement the State is prohibited from computing Mr. Soukup's prior service as a Park Ranger and Park Ranger Specialist as part of his

classification seniority.

The sections of the Agreement cited by the Union in support of its position in this dispute do not apply to the situation confronting Mr. Soukup. Section 34.02 deals with termination of service upon promotion out of the bargaining unit. At all times in his career as Park Ranger and Park Ranger Specialist Mr. Soukup remained within the Bargaining Unit. Hence the language found at Section 34.02B of the Agreement does not apply to this dispute. Similarly, Section 31.03 of the Agreement is concerned with movement to bargaining unit positions which "pay more." Mr. Soukup moved to a position which paid less. Section 31.03 of the Agreement is not relevant to this dispute.

It is easy to conceive of a hypothetical occurrence within the various Classification Series in State service. If an employee is promoted to a higher position in the series, eg. Park Ranger Specialist, and has more total time in State service than other Park Ranger Specialists, he would leapfrog them on the seniority roster of that classification. That is, he would have more seniority as a Park Ranger Specialist than others who had served in the position. This is not contemplated by the Agreement which refers to the "last date of hire or transfer into said classification." The opposite sequence of events applies in this case as Mr. Soukup transferred to the Park Ranger classification from the

higher rated position of Park Ranger Specialist. Nonetheless, the specific language of the Agreement in Section 34.01B must apply to this dispute.

Award: The grievance is denied.

Signed and dated this 24th day of September, 1990
at South Russell, OH.

Harry Graham
Harry Graham
Arbitrator