

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 603

OCB GRIEVANCE NUMBER: 25-12-901024-0043-05-02

GRIEVANT NAME: COOK, ET AL

UNION: FOP UNIT 2

DEPARTMENT: DEPARTMENT OF NATURAL RESOURCES

ARBITRATOR: GRAHAM, HARRY

MANAGEMENT ADVOCATE: WEISER, JON

2ND CHAIR: KIRSCHNER, PAUL

UNION ADVOCATE: COX, PAUL

ARBITRATION DATE: MAY 16, 1991

DECISION DATE: MAY 25, 1991

DECISION: DENIED

CONTRACT SECTIONS

AND/OR ISSUES: WAS MANAGEMENT IN COMPLIANCE WITH THE AGREEMENT WHEN THEY UTILIZED A MAINTENANCE SUPV. FROM MOSQUITO LAKE STATE PARK INSTEAD OF PARK OFFICERS FOR AN O.T. DUTY ASSIGNMENT AT PUNDERSON STATE PARK? (PUNDERSON WAS POSSIBLE SITE OF BURIAL OF BODIES FROM KIRTLAND CULT MASS MURDERS).

HOLDING: "IT CANNOT BE CREDIBLY ARGUED THAT A SEARCH FOR BURIED BODIES CONSTITUTES OTHER THAN AN EMERGENCY. THE SEARCH OF PUNDERSON PRODUCED NO BODIES; THAT DOES NOT MEAN THAT AN EMERGENCY DID NOT EXIST. THE UNION CANNOT CREDIBLY ARGUE THAT SUCH DUTIES ARE PART OF THE PARK OFFICER'S NORMAL TASKS. THEIR CLAIM ON O.T. INVOLVED IN THIS SITUATION IS NON-EXISTENT."

ARB COST: \$594.82

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In the Matter of Arbitration	*	
	*	
Between	*	Case No.:
	*	
Fraternal Order of Police-	*	25-12-(10-24-90)-43-05-02
Ohio Labor Council	*	
	*	Before: Harry Graham
and	*	
	*	
The State of Ohio, Department	*	
of Natural Resources	*	
	*	
	*	

#603

Appearances: For Fraternal Order of Police-Ohio Labor Council

Paul Cox
 Fraternal Order of Police-Ohio Labor Council
 222 East Town St.
 Columbus, OH. 43215

For Ohio Department of Natural Resources

Jon E. Weiser
 Labor Relations Administrator
 Department of Natural Resources
 Fountain Square
 Columbus, OH. 43224

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on May 16, 1991 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. Post hearing briefs were not filed in this dispute and the record 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:

Was Management in compliance with the Unit 2 Labor Agreement when the utilized a Maintenance Supervisor from Mosquito Lake State Park instead of Park Officers

from Mosquito Lake State Park for a duty assignment that ultimately included overtime duty at Punderson State Park? If not, what shall be the remedy?

Background: There is no dispute over the events that prompt this proceeding. The Ohio Department of Natural Resources operates parks throughout the State. In Geauga County, OH, in the northeast section of the State, is found Punderson State Park. About forty-five minutes travel from Punderson is another park, Mosquito Lake State Park. Mosquito Lake is found in Trumbull County.

In the summer of 1990 officials of the Division of Parks and Recreation were aware of reports of possible misdeeds that involved the Punderson facility. It was learned that there existed the possibility that a number of bodies were buried on the site. The State was particularly sensitive to the possibility of bodies being buried at the site as a mass murder had occurred in the vicinity some months earlier. Known locally as the Kirtland Cult Murders it involved the killing of a number of people in a ritual murder situation. Kirtland is situated about ten (10) miles from Punderson.

Though the Division of Parks had become aware that bodies might be buried at Punderson in the summer of 1990 no efforts at discovery were made. The situation remained quiescent until the end of September, 1990. Digging to search for the bodies began on October 1, 1990. Among the people detailed to the Punderson dig was Norman Swann. Mr. Swann is

classified as a Park Maintenance Supervisor 1. He works at Mosquito Lake State Park. Given his facility with operating a back hoe, setting up field lighting systems, and the fact that he possessed a law enforcement commission from the State of Ohio, the Division of Parks thought him well suited for participation in the search. During the week of October 1, 1990 Mr. Swann worked 46.5 hours at Punderson.

A number of Park Officers at Mosquito Lake felt that Mr. Swann worked at Punderson to be inappropriate. They were of the view that he did not perform tasks associated with his position. Rather, he performed law enforcement tasks such as patrolling the work site. In their opinion he did little or no maintenance duties. In order to protest the fact that Mr. Swann had been assigned to Punderson and they had not, a grievance was filed. It alleged that Mr. Swann neither performed maintenance tasks nor worked on his normal shift, 8:00AM-4:30PM. The officers at Mosquito Lake regarded this to be a violation of the Agreement. No resolution of the grievance was had in the procedure of the parties and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points to Article 7, Section 7.03 of the Agreement and asserts it was violated by the Employer in this situation. Section 7.03 provides that except in emergency circumstances overtime opportunities for work

normally performed by bargaining unit employees must first be offered to bargaining unit members. It must be offered to them before it may be offered to seasonal or exempt employees. Mr. Swann was not a bargaining unit member. He worked while members of the bargaining unit did not. The Agreement explicitly prohibits such activity according to the Union.

In fact, Mr. Swann did not perform the tasks associated with his classification as a Maintenance Supervisor. He did work normally performed by Park Officers. This consisted of tasks associated with providing security to the digging site. While the State may have desired his expertise as a Maintenance Supervisor he did little or no maintenance work. He did not operate a back hoe. Nor did he set up and maintain lights. Digging did not occur during the night time hours. Swann performed tasks associated with the Park Officer classification. Park Officers should perform those tasks, not Maintenance Supervisors according to the Union.

There was no emergency connected with the excavation work at Punderson State Park in the Union's opinion. The State was aware of the possibility that graves were on the site in early summer, 1990. No digging occurred until October, 1990. By its own admission the State had a plan in place for the excavation project. Coordination was had with other law enforcement agencies. Careful plans were laid for

dealing with representatives of the media. Crowd control was included in the plan. By no stretch of the imagination can the State properly term the search for bodies at Punderson an emergency. As this is the case and the Agreement clearly reserves bargaining unit work to members of the bargaining unit the Union urges the Grievance be granted and pay awarded to Park Officers from Mosquito Lake.

Position of the Employer: The State points out that the grievance initially alleged a violation of Section 22.08 of the Agreement. That section deals with assignment of overtime. It provides that overtime will initially be assigned to employees "on duty." If it cannot be worked by such employees it will then be given to the most senior qualified employees "assigned to that work location." The work was at Punderson State Park. The Grievants are at Mosquito Lake State Park. Obviously they do not fall into the same location as people assigned to Punderson. Furthermore, Mosquito Lake employees have no claim to overtime at Punderson as they are not "on duty" there. Their duty site is Mosquito Lake, not Punderson.

The Employer insists that no violation of Section 7.03 occurred in this situation. Under the language of that Section, overtime will first be offered to employees "who normally perform the work." There were no employees in State service who "normally perform(ed) the work." Searching for

bodies buried on State land is not normal work for any State employees. No aspects of normality were involved in this situation. It was abnormal to say the least.

Hotly disputing the contention of the Union that this situation was not an emergency, the State vehemently insists that it indeed was an emergency. It is true that plans were made well before the digging commenced. The State was aware of the possibility that a grave site was to be found at Punderson. There were, however, no plans to dig during the first week of October, 1990. Towards the end of September, 1990 word of the investigation began to leak out. Media speculation began. Given the proximity of Punderson to Kirtland, site of a mass murder by religious zealots some months earlier, public concern was manifested. The State had to act on short notice. Given the possibility that people were buried at Punderson and that excavation was necessary to determine whether or not this was the case, an emergency obviously existed in the opinion of the State.

In support of its view that an emergency existed in this situation the State points to the decision of this Arbitrator in case No. 25-12-(88-11-23)-0008-05-02 involving transfer of an employee on short notice to staff the Heritage Days Festival at Malabar Farm State Park in 1988. I held that as the planned complement of officers to staff the event became unavailable on short notice that an emergency under the

Agreement existed. No violation was found. The State views this dispute to be analogous to that one. It urges the same result occur.

Discussion: The language found at Section 7.03 is quite specific. The State committed itself to give overtime opportunity to employees who normally perform the work except in instances of emergency. It cannot be credibly argued that a search for buried bodies constitutes other than an emergency. This is especially true in this situation when the State's carefully laid plans were disrupted by word of the possibility that people were buried at Punderson becoming public. The State was forced to advance its search for the bodies on short notice. While plans had been laid, their implementation was advanced. In the opinion of responsible officials in the State, speedy action was essential. Under these circumstances, an emergency existed. The freedom to act in such circumstances that the State preserved to itself in the Agreement permits it to act as it did in this situation.

The search of Punderson produced no bodies. That does not mean that an emergency did not exist. As the State points out, there was concern in the area over the possibility that a second multiple slaying might have occurred. It was incumbent upon the State to act expeditiously to allay the fears of area citizenry.

The language at Section 7.03 continues to specify that

overtime will first be offered to employees "who normally perform the work...." Mr. Swann performed tasks associated with the duties of a Park Officer, tasks they "normally perform." However, he performed them under the most abnormal circumstances. He was assisting in a search for bodies. The Union cannot credibly argue that such duties are part of the Park Officer's normal tasks.

Section 22.08 of the Agreement fails to support the position of the Union in this dispute. It provides that if overtime is not offered to the senior qualified employee the overtime will then be offered to the most senior available employee "who is assigned to that work location." The Grievants in this situation were assigned to Mosquito Lake. The bodies in question were at Punderson, some 25-30 miles from the work location of the Grievants. Their claim on the overtime involved in this situation is nonexistent.

In this situation no work normally performed by members of the bargaining unit was lost. The State responded to a situation that may accurately be characterized as an emergency, even though the State had prior knowledge of the possibility of bodies being buried at Punderson. The work was not performed at the work location of the Grievants. No violation of the Agreement occurred when the State assigned Norman Swann to the search crew at Punderson State Park in October, 1990.

Award: The Grievance is denied.

Signed and dated this 25th day of May, 1991
at South Russell, OH.

Harry Graham

Harry Graham
Arbitrator