

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 700

OCB GRIEVANCE NUMBER: 15-03-910625-0074-07-15

GRIEVANT NAME: STROBLE, RONALD J.

UNION: FOP 1

DEPARTMENT: HIGHWAY PATROL

ARBITRATOR: DROTNING, JOHN

MANAGEMENT ADVOCATE: CORBIN, RICK

2ND CHAIR: KIRSCHNER, PAUL

UNION ADVOCATE: SILVERBERG, GWEN

ARBITRATION DATE: NOVEMBER 26, 1991

DECISION DATE: DECEMBER 5, 1991

DECISION: GRANTED

CONTRACT SECTIONS

AND/OR ISSUES: DID THE EMPLOYER VIOLATE THE CONTRACT WHEN IT DENIED THE GRIEVANT'S BID FOR A FIELD POSITION TRANSFER?

HOLDING: GRIEVANT'S ASSIGNMENT FROM SWANTON TO BUCYRUS WAS EFFECTIVE PRIOR TO THE C/B AGREEMENT AND THUS WAS NOT BASED ON 30.02; IT WAS AN ADMINISTRATIVE ASSIGNMENT MADE UNDER O.R.C. 5503. WHEN HIS FORMER POSITION LATER OPENED, GRIEVANT REQUESTED A TRANSFER BACK TO SWANTON. EVEN THO THE GRIEVANT HAD OVER TEN YEARS SENIORITY, A JUNIOR EMPLOYEE WAS AWARDED THE POSITION. THE EMPLOYER ASSERTS THAT IT HAS THE RIGHT TO DENY TRANSFERS TO SERGEANTS WHO HAVE BEEN IN AN ASSIGNED POSITION FOR LESS THAN 18 MONTHS PURSUANT TO ART. 30.05. "THE UNION'S ARGUMENT THAT 30.05 DOES NOT APPLY TO STROBLE'S SITUATION IS PERSUASIVE. THERE IS NO MINIMUM ASSIGNMENT PERIOD FOR STROBLE SINCE HIS TRANSFER WAS MADE BEFORE THE C/B AGREEMENT WENT INTO EFFECT." STROBLE TO BE ASSIGNED TO THE SWANTON POST WITHIN 3 WEEKS OF THIS AWARD.

COST: \$842.75

#700

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING

AND

FRATERNAL ORDER OF POLICE
UNIT 15

ARBITRATION AWARD

CASE NUMBER: 15-03-910625-074-07-15
ARBITRATOR: John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on November 26, 1991 at the Office of Collective Bargaining, Columbus, Ohio. Appearing for the Union were: Gwen Silverberg, Esq., Walter Florence, Esq., Ed Baker, and the grievant, Sgt. Ronald J. Stroble. Appearing for the Employer were: Lt. Rick Corbin, Paul Kirschner, Capt. John Demaree, and Anne Arena.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. No post hearing briefs were filed and the case was closed on November 26, 1991.

The discussion and award are based solely on the record described above.

II. ISSUE

The parties jointly asked:

Whether Article 30, Section 30.05 applies to the grievant's bid for a field position transfer? If not, did the employer violate Section 30.02 by wrongfully denying the grievant's bid for a field position transfer? If so, what shall the remedy be?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1, #2, #3, and #4.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. UNION

1. TESTIMONY AND EVIDENCE ..

Sgt. Ronald J. Stroble testified he was a State Highway Patrol Officer at the Bucyrus post in Crawford County. He said he had been sergeant for ten and one-half years since August of 1981. Stroble said he worked at the Swanton post from 1971 through 1981 and then, was promoted to the sergeant position and remained at Swanton until his reassignment to Bucyrus in 1991. Stroble testified that his family lives in Swanton, Ohio which is about 15 miles west of Toledo. He also said that he is married and has two boys who are in school in Swanton, Ohio.

Stroble said he was administratively transferred because of his sexual activity with a female employee who was also a State Highway trooper. As a consequence of this activity, Stroble said he was disciplined with seven days off without pay and he did not argue that decision. Stroble went on to say that the discipline of seven days supposedly had no bearing on the administrative transfer from the Swanton post to the Bucyrus post.

Stroble was asked what sort of interaction occurred between himself and the female trooper and he said they held hands and kissed. He said he told the post commander about the incident and both he and the female trooper received days off as noted above.

Stroble testified that he observed the job opportunity or opening for a highway patrol sergeant at the Swanton post and he put in for a transfer for a host of reasons. Stroble testified

that he lives in Swanton; owns his home there; and his sixteen year old boy is in high school in Swanton. As a consequence of his transfer, Stroble noted that he has to live in Bucyrus; that is, within 30 miles of a patrol post and he has to pay \$300 per month for housing.

Stroble said he accepted the initial transfer to Bucyrus but given the opening for a patrol sergeant at Swanton, he submitted his transfer and assumed that such a request would be approved because he had more seniority than any other candidate.

Stroble said that his transfer request was denied (see Joint Exhibit #3) because of the limited time in his new assignment at Bucyrus.

Stroble testified that a Sgt. Dunn got the position and the latter had two years of seniority as a sergeant whereas he had almost ten years.

On redirect, Stroble said that the female trooper with whom he had been involved was no longer at Swanton and, in fact, had transferred to Walbridge.

The Union called Edward Baker, a staff representative for the Ohio Labor Council, who testified he was involved in the Contract, Unit #15 in early 1991. Baker said he was aware of Article 30.05.

Baker testified that it was his understanding or perception that the Contract language would take effect after the Contract was resolved.

The Union cross examined Management witnesses. Capt. John M. Demaree testified that no one was exempt from Section 5503 of the Ohio Motor Vehicle laws.

On cross, Capt. Demaree said that Article 30.05, entitled "Minimum Assignment" was the language of the Employer and it was not discussed by the parties. He went on to say that he agreed that Article 30.02 deals with seniority for field transfers. He went on to say that of all the bidders, Sgt. Stroble was the most senior. However, he also testified that the job at Swanton went to a sergeant with less seniority than Sgt. Stroble.

2. ARGUMENT

The Union points out that the grievance dates back to February 1991. Sgt. Stroble, notes the Union, was transferred from the Swanton post to the Bucyrus post and that was an administrative proceeding according to the State.

At the same time, the Union notes that it was involved in negotiations with Management and there was an agreement between the parties as of March 22, 1991 and it became effective on March 26, 1991 and that Contract terminates on February 29, 1992 (see Joint Exhibit #1).

The Union notes that in May, the State Highway Patrol posted a job opening at the Swanton post and it states that any present Highway Patrol sergeant interested in the position must submit a transfer request. Sgt. Stroble did and the Union notes that sergeants have the right to bid on a vacancy and the selection shall be based on seniority.

The Union goes on to say that Sgt. Stroble bid for the job in Swanton which he had held for about ten years and his bid was denied on the grounds that Article 30.05 allows the Employer to deny any transfer requested if the sergeant had been assigned to a position for less than eighteen months.

In any event, Sgt. Stroble's former position at Swanton was given to another sergeant who had two years of seniority. The Union argues that Sgt. Stroble has the most seniority and under 30.02, he should be selected and seniority is the only qualification.

The Union argues that Article 30.05 does not apply because Stroble was administratively transferred to the Bucyrus post well before the Contract went into effect. The Contract was not meant to apply to events which took place before the Agreement went into effect. The Union notes that the State based their denial of Stroble's transfer solely on Section 30.05.

The Union, however, reiterates in its closing argument that Section 30.05 cannot apply to the grievant's situation. The Union points out that Stroble was transferred in February and the Contract did not take effect until March 25th so it cannot be applied retroactively. The Union asserts that Article 30.05 does not apply to Stroble's transfer since it was done well before the

Contract was completed. Moreover, the Union notes that Ed Baker said that retroactivity was not discussed as part of the Contract.

The Union also argues that the Employer violated Article 30.02 which indicates that sergeants have the right to bid and the selection shall be based on seniority.

The Union also notes that Stroble, as a result of the incident with the female trooper, was disciplined with a seven day layoff and in addition, he received an administrative transfer. Moreover the female officer who worked at Swanton is no longer at the post.

The Union also asserts that Stroble now, as a result of the transfer, is involved in some financial hardships and, in fact, he has to go back and forth on Saturday and Sunday one hundred miles and therefore, his costs are continually increasing.

The Union also notes that prior to this discipline in February, Stroble had never been disciplined before, although there apparently had been some interaction between himself and the female trooper in November of 1990.

For these reasons, the Union asks that Stroble's transfer be honored, that Sgt. Stroble be reappointed to his post in Swanton, and that he be reimbursed for all expenses incurred.

B. MANAGEMENT

1. TESTIMONY AND EVIDENCE

Capt. John Demaree, an executive officer in the personnel section of the State Highway Patrol, testified that Article 5503.03 applied to transfers prior to the Collective Bargaining Agreement. Demaree testified that the Highway Patrol Superintendent utilized transfers as necessary and he said some were administrative transfers and others were voluntary transfers agreed to or asked for by patrol officers.

Demaree testified that Sgt. Stroble's transfer was done under the Ohio Motor Vehicle law 5503.03 (see Management Exhibit #1).

Capt. Demaree testified that the Employer wanted the language in 30.05 for the eighteen month period. He also said that bargaining unit members were not exempted under that language.

Demaree also testified that Stroble had no seniority rights and Management had complete right to transfer him under Section 5503.03.

Management also cross examined Union witnesses. Sgt. Stroble testified he was disciplined along with the female trooper whom he had been involved with. He testified that he supervised that female trooper and he said they kissed and a maintenance employee saw them. He was asked whether he had received previous discipline and he said he had in November of 1990 when he was involved in kissing the same female trooper.

After the second discipline, Stroble testified that he was transferred and he was told it was administrative.

Stroble said that at the time of the posting, he had been at the Bucyrus for about three months.

Mr. Ed Baker on cross testified that he reviewed his notes and he said there was no significant discussion of Section 30.05.

2. ARGUMENT

The Employer asserts that the Union must prove that the Employer violated Section 30.05 after the grievant was not transferred from the Bucyrus post to the Swanton post on June 18, 1991.

The Employer points out that a less senior person was transferred.

The Employer asserts that Section 30.05 states that the Employer can deny transfers to sergeants who have been assigned to a position for less than 18 months and in this case, Sgt. Stroble had only been at Bucyrus for 3 months.

Section 30.05 gives the Employer discretionary right to deny transfers and the Employer asserts that the Union has not met the burden of proof to overwhelm the plain language of the Contract.

Management argues that Article 5503.03 of the Ohio Motor Vehicle Law allows Management to transfer people administratively and it did so in that case; that is to say, Sgt. Stroble was transferred to the Bucyrus post from Swanton in February of 1991. The Employer notes that the Superintendent had the right to transfer because of the discipline involved; that is the

affair with the female trooper. Moreover, the Administration felt the transfer was necessary because of the relationship between Sgt. Strobble and the female trooper. Thus, the Employer had a right to transfer prior to the Collective Bargaining Agreement.

The Employer put forward Article 30.05 and there were no discussions or exemptions with respect to that language.

The Employer also points out that Sgt. Strobble's transfer cannot be considered because he has not been at the Bucyrus post for 18 months. However, the Employer notes that after 18 months, Article 30.02 comes into place and Sgt. Strobble then could apply for a transfer if there is an opening in Swanton.

For all these reasons, the Employer again asserts that the Contract has not been violated.

According to Article 30.02, seniority is the determining factor when filling vacancies either by selecting from among bidders or by surveying the "active transfer file". When there are no bidders or file interest and the employer elects to fill the vacancy by a transfer, the most junior field sergeant is selected.

Thus, the new collective bargaining arrangement placed restrictions on the Employer's rights under Section 5503.03 to transfer and assign sergeants. Primarily, the emphasis shifted from sole discretion to voluntary, requested transfers based on seniority. Denying Stroble's bid violates the sentence in 30.02 which requires that "Selection of the person to fill the vacancy shall be based on seniority".

The Employer, however, argues that 30.05 overrides 30.02 and gives the Employer the right to deny Stroble's request to be transferred to Swanton since he had been assigned to the Bucyrus post for less than 18 months.

On the other hand, the Union argues that Stroble's assignment to Bucyrus occurred in February 1991 well before the parties reached Contract agreement on March 22, 1991 and thus, Article 30.05 does not apply and the Employer's denial is not correct.

Article 30.05 language, as the Employer points out, is clear and unambiguous, but the applicability of that clear and unambiguous language is not clearcut. The obvious application is when a sergeant has been transferred pursuant to a bid or transfer request under Article 30.02, then he/she must wait at

V. DISCUSSION AND AWARD

Did the Employer violate Article 30 by not awarding Sgt. Ronald Stroble the vacancy at the Swanton Post?

Article 30.02 and 30.05 state:

30.02 Field Position Transfers

When sergeant vacancies are created in field positions for any reason, the employer shall fill the vacancy in accordance with the procedures contained in this Article. When the Employer determines that a vacancy in a field position exists, the position will be posted at all Highway Patrol facilities for a period of seven (7) calendar days. All sergeants shall have the right to bid on the vacancy. Selection of the person to fill the vacancy shall be based on seniority.

Thereafter, the Employer may fill any new field position vacancy created by this initial transfer by surveying the "active transfer file" to determine if any incumbent is interested in filling the position. This transfer, and all subsequent field transfers created by it, shall be based on seniority.

If no bid is received and the Employer determines the position must be filled by transfer, the most junior field sergeant may be transferred.

30.05 Minimum Assignment

The Employer maintains the right to deny any transfer requested by a sergeant who has been assigned to a position for less than eighteen (18) months.

As required by Article 30.02, the Employer posted the vacant sergeant position at Swanton in May 1991 at all highway patrol facilities (see Joint Exhibit #2). Sgt. Stroble bid for the vacancy and expected to be selected to fill the vacancy based on his seniority. However, his request was denied and the vacancy was filled by a less senior sergeant.

least eighteen months before being assured that the provisions of Article 30.02 would apply if he submitted another transfer request. If he/she requests a change before 18 months have elapsed, such a request can be denied. Article 30.05 limits the frequency of a sergeant bidding for or requesting a transfer.

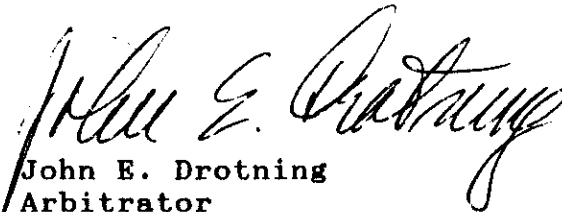
It is less obvious whether 30.05 applies to Stroble's situation. His assignment to Bucyrus was effective prior to the Collective Bargaining Agreement and thus was not based on 30.02 but was an administrative assignment made under O.R.C. 5503.03. That assignment to Bucyrus was not requested, was not voluntary, was not based on contract language and was not based on seniority.

If one looked only at 30.05, one might conclude that it allows the Employer to deny Stroble's bid. However, 30.05 is part of the total transfer article and the whole sense of Article 30 is that seniority dominates. In a sense, 30.05 is auxiliary and places limits on the frequency of transfer requests. It protects the Employer from having to deal administratively with short-term re-assignments of less than 18 months and minimizes problems connected with making personnel changes because of the provisions of 30.02.

The testimony and evidence indicates that there was little discussion about 30.05 and Mr. Baker testified that there was no indication that it would be retroactive. The Union's argument that 30.05 does not apply to Stroble's situation is persuasive. The minimum assignment language applies to those transfers made pursuant to 30.02 and does not apply to a transfer or assignment

made prior to the effective date of the Collective Bargaining Agreement. There is no minimum assignment period for Stoble and his bid for the vacant position at Swanton should have been granted.

Thus, the grievance is sustained and Stoble shall be reassigned to the Swanton post within three weeks of the receipt of this award. No reimbursement for monetary expenses is awarded.


John E. Drotning
Arbitrator

Cuyahoga County, Ohio
December 5, 1991