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 In the Matter of Arbitration \*  
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 Between \* Case Number:  
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 Fraternal Order of Police-Ohio \* 25 18 (9-30-91) 32 05 02  
 Labor Council \*  
 \* Before: Harry Graham  
 and \*  
 \*  
 The State of Ohio, Department \*  
 of Natural Resources \*  
 \*  
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Appearances: For Fraternal Order of Police-Ohio Labor Council

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

For Department of Natural Resources

Greg Rees  
 Labor Relations Officer  
 Ohio 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 August 10, 1992 before Harry Graham. At that hearing the parties were accorded complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

Issue: The parties are in agreement upon the issue in dispute between them. That issue is:

Did Management violate the Unit 2 Agreement by not providing overtime compensation to the Grievant for five (5) hours of work assigned by Management and performed

by the Grievant on August 6, 1991? If so, What shall the remedy be?

Background: There is no disagreement over the events that prompt this proceeding. The Grievant, James Rhome, is a Wildlife Investigator employed by the Division of Wildlife of the Ohio Department of Natural Resources. He has approximately twenty-eight (28) years of service. Wildlife Investigators routinely work out of their homes. They normally do not have a fixed reporting and ending time to their work day. Rather, they have a great deal of flexibility in ordering their work schedules, subject to the normal work requirement that they work 40 hours per week in order to qualify for a full week's pay. When reporting their activities for pay purposes Wildlife Investigators complete a Time and Activity Report which sets forth their activities during the pay period and the hours they spent on the various tasks they performed. The hours worked are totaled on the Report which is signed by the Employee and forwarded through the appropriate levels of the Department in order for pay to be made.

The events under review in this proceeding occurred in the July 28-August 10, 1991 pay period. In that period Mr. Rhome claimed that he was due his normal 80 hours of pay plus 5 hours of overtime pay for a total of 85 hours pay. His report indicated that on August 6, 1991 he had worked five hours of overtime investigating a report of a pollution

induced fish kill on the Ottawa River. When Mr. Rhome's Time and Activity Report was submitted his supervisors regarded it to be incomplete. That is, they felt there was insufficient documentation of his work activities during the pay period to warrant approval of the five hours overtime pay claimed by Mr. Rhome. That pay was denied and the Grievant received his normal 80 hours pay. A grievance protesting the denial of the five hours overtime pay was promptly filed. It was processed through the procedure of the parties without resolution and they agree it is now properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points out that Mr. Rhome is a veteran of approximately 28 years of service with the Department. Never once in that time has his claim for pay been questioned. During that great length of service he has had one minor incident of discipline, a reprimand for not completing his paperwork in timely fashion. It is ludicrous to believe that he falsified his pay claim in order to secure five hours of overtime pay according to the Union.

In fact, it is not disputed that Mr. Rhome was telephoned by his supervisor, Terry Sunderhaus, and directed to investigate the reported fish kill on the Ottawa River in Lucas County. While on the telephone with Mr. Sunderhaus the Grievant informed him that he had worked eight hours on August 6, 1991 and that he would be in overtime status for

his work hours investigating the fish kill. Mr. Sunderhaus indicated that was not a consideration for the Department. Pollution was a serious situation, warranting immediate attention. To Mr. Sunderhaus' knowledge there was a pollution induced fish kill on the Ottawa River that required investigation. Mr. Rhome was directed to proceed to the site and he did so. It is the policy of the Department to investigate reported fish kills involving fish worth \$50.00 or more dollars. In fact, the value ultimately placed upon the dead fish in this situation was \$1.56. That does not alter the fact that Mr. Rhome worked the overtime in question. As that is the case, he is due the pay according to the Union.

When employees keep track of their activities for Departmental purposes there is a certain amount of imprecision. There may occur what might be termed "rounding" for reporting purposes on the Time and Activity Report. Fine gradations of five or ten minutes are not logged. That Mr. Rhome Time and Activity Report was in hourly segments does not make it invalid. The report in question is no different from that he and his colleagues have submitted hundreds of times and that have been accepted without question by the Department. Nothing is different with this particular Time and Activity report to justify calling it into question the Union insists.

When Wildlife Investigators are working with investigations they are to submit appropriate reports. In the terminology of the Department, these are known as 104's. In this case 104's are not on file for all activity performed by the Grievant in the pay period in question. That is not uncommon. Two other Investigators testified at the arbitration hearing. They indicated there was a certain element of discretion permitted to them over whether or not to submit a 104. In this situation as there was no bona fide problem involving the fish kill Mr. Rhome did not submit a 104 report. This is in accord with well accepted procedure. There is no question that Mr. Rhome worked the hours of overtime in this situation. As that is the case, pay at the appropriate rate must be made in accordance with Article 22.07 of the Agreement according to the Union.

Position of the Employer: According to the State the documentation submitted by Mr. Rhome in support of his claim for overtime pay is insufficient. Mr. Rhome was given every opportunity to present evidence in support of his claim that he worked 85 hours in the pay period in question. He failed to do so. As that is the case the State cannot be expected to pay the overtime in dispute in this proceeding it asserts.

There is in effect in the Division of Wildlife a program of Wildlife Law Enforcement. This program has been in existence since August, 1983. Investigators are to work only

on what are termed "coded" investigations. As that is the case, they must submit a report on a Form 104. Mr. Rhome did not do so in the case of his activity investigating the fish kill on the Ottawa River. Nor did he properly document his activity for the remainder of the pay period. This is particularly the case when he indicated on his Time and Activity Report that he was engaged in surveillance of a suspected deer poacher, one Cleo Thiel. In the final analysis, the State asserts that it lacked the requisite documentation to permit it to pay the overtime at issue in this proceeding.

In fact, Mr. Rhome has a history of laxity with respect to completion of the necessary paperwork associated with his position. In 1986 he received a written reprimand for failing to complete his reports in timely fashion. This is another example of such activity. That Mr. Rhome did not satisfactorily document his pay claim provides ample support for its rejection according to the State. It cannot be expected to pay employees simply on their say so. Documentation of activity for which pay is sought must be provided. In this situation, Mr. Rhome did not supply the necessary documentation to support his claim for overtime pay. As that is the case, the State urges the grievance be denied.

Discussion: Whatever may be the policy of the Department with

respect to provision of documentation in support of pay claims it is apparent from testimony received at the hearing that it has been honored in the breach. Testimony was received from three Wildlife Investigators with over 75 years of combined service among them. They do not have a clear understanding of the circumstances in which a Form 104 is required to be submitted. It is acknowledged that employees of the Department have a great deal of discretion over whether or not to submit a 104 report. There is also discretion left to employees concerning completion of the Time and Activity Report for pay purposes. Some employees may be more precise than others. From the Reports submitted into evidence it is apparent that a certain amount of rounding occurs when employees complete them. This is not indicative of dishonesty or falsification of pay claims. To the contrary, it is a practice well known to all concerned, employees and managerial officials alike. It suits their mutual convenience. With specific respect to the Grievant, Mr. Rhome, never once in his 28 years of service with the Department has it been alleged he falsified his pay claim. Nor is it alleged that he failed to report to the fish kill site on the Ottawa River as directed. Nothing is on the record to indicate that he did not act as directed by his supervisor, Terry Sunderhaus.

That Mr. Rhome did not submit a 104 report on his

activities concerning Cleo Thiel is of no significance to this dispute. In spite of his surveillance, he found no violations to be occurring. As that was the case, he did not submit a report. It was acknowledged at the hearing that many instances of unproductive investigations occur in the course of a pay period or year. This is inherent in the job of the Wildlife Investigator. Mr. Rhome acted no differently with respect to reporting his activities in the July 28-August 10, 1991 pay period than he had on hundreds of prior occasions. There is simply no reason to suspect that he falsified his claim for overtime pay.

Reliance upon the Wildlife Law Enforcement Policy by the Department in support of its actions in this instance is misplaced. Whatever that nine year old document may provide it is obvious that its provisions have not been scrupulously followed. That is clear from the testimony of the two Wildlife Investigators in addition to Mr. Rhome who testified at the arbitration hearing. In practice Investigators have discretion over whether or not to submit reports concerning their activities. This discretion is routinely used and has not been shown to have been abused in this situation. That no report was submitted concerning Mr. Rhome's activities regarding Cleo Thiel cannot be used against him in these circumstances.


Similarly, one instance of a written reprimand,



administered in 1986 scarcely serves to justify the action of the Department in this situation. To the contrary, in this case the documentation submitted by Mr. Rhome was in accordance with the standards required by the Department for payment of overtime as they existed in August, 1991. That this is the case was made abundantly clear by the testimony not only of the Grievant, but of his colleagues as well. No plausible grounds for denial of the overtime pay at issue in this proceeding were shown by the Department. Hence, the position of the Union in this dispute must be sustained.

Award: The grievance is SUSTAINED. The Grievant is to be paid five (5) hours overtime pay at the rate of time and one-half (1 1/2T) for his work on August 6, 1991.

Signed and dated this 17<sup>th</sup> day of August, 1992 at South Russell, OH.

  
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Harry Graham  
Arbitrator