

#933

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING  
OHIO STATE HIGHWAY PATROL

AND

FRATERNAL ORDER OF POLICE  
UNIT #15

ARBITRATION AWARD

CASE NUMBER: 15-03-921221-121-97-15  
HEARING DATE: September 30, 1993  
ARBITRATOR: John E. Drotning

## I. HEARING

The undersigned Arbitrator conducted a Hearing on September 30, 1993 at the Office of Collective Bargaining, 106 N. High Street, Columbus, Ohio. Appearing for the F.O.P. were: Paul L. Cox, Esq., Sagida Kazi, Renee Engebach, and the grievance Sgt. David Redecker. Appearing for the Ohio State Highway Patrol were: Lt. Rick Corbin, Capt. Darryl Anderson, Sgt. Howard Hudson, Anne Van Scoy, and Colleen Wise.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence. Post hearing briefs were filed on or about November 12, 1993 and the case was closed. The discussion and Award are based solely on the record described above.

## II. ISSUE

The parties at the Hearing on 9/30/92 agreed that the issue was as follows:

Sgt. David Redecker was not transferred to a particular job and was Management required to give him that job under Article 30.03.

However, in their post hearing briefs, each party put the issues somewhat differently. Management asked:

Did the promotion and transfer of Trooper Howard Hudson to the position of District 9 investigation sergeant violate Section 30.03 of the Unit #15 Contract?

The Union put the question as:

Did the Employer violate Article 30.03? Was Sergeant Redecker entitled to a transfer?

### III. STIPULATIONS

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

In addition, the parties stipulated the following:

Howard Hudson was a Trooper assigned to General Headquarters Office of Investigative Services. On 12/16/92, he was promoted to Sgt. and assigned to District 9 Investigative Services in Jackson, Ohio.

### IV. TESTIMONY, EVIDENCE, AND ARGUMENT

#### A. UNION

##### 1. TESTIMONY AND EVIDENCE

Sgt. David Redecker testified he had been with the Ohio State Patrol for 28 years and is a sergeant at the Athens post. He was a dispatcher in 1964, presumably at the age of 21, and then went to the Hiram post in 1968 as a Trooper and then in 1977-78 was promoted to Sergeant and moved to Athens, Ohio.

Redecker said that he had been an assistant post commander since 1992 and he was involved in work at correctional prisons and the post handled most of the work at the Hocking County Correctional Center.

Redecker said he handled such cases and the majority of inmates were involved in mental health problems, rape, abuse, theft and some were escapees from prisons.

Redecker testified that he took a forty hour course in investigation matters. Redecker wanted the investigative job in Jackson, Ohio as a plainclothesman . There were four sergeants in Athens and a post was created in Jackson and Redecker would go to that post.

Redecker testified that he wanted an investigative job and he talked to Capt. James A. Kusick and in September 1991, an investigative job was created in Columbus.

Redecker said that a Sgt. Robert Gable was offered the Columbus job in District 6. He went on to say that in December of 1992, Trooper Hudson was transferred to the Jackson headquarters and he claimed that he never saw a posting on Hudson's job in Jackson.

Attorney Paul Cox testified on behalf of the FOP that he was the Chief Counsel for Unit #15 for both the first and second contracts. He went on to say that Mr. Tony Ness represented Management.

Cox testified that Article 30.03 is similar to Capt. Anderson's understanding and he went on to say that he had no understanding of the language of the first sentence of the second paragraph.

Attorney Cox noted that highway personnel get promoted and stay right where they are and he cited Joint Exhibit #3. He also talked about the fact that he did not force the State Highway Patrol to bid on aviation questions, etc.

Cox testified that the word "transfer" means transfer and he cited Unit #1, Unit #2, and Unit #15. He went on to say that Article 30.03 is so employees in the Unit could bid on open jobs and that situations would be eliminated where a "plumb" job might never be opened up to sergeants because they were not made aware that such a position was available.

Cox testified that it is incorrect for a junior employee to obtain a position over a senior employee; if the latter asks for the open job.

Cox testified that Management claimed that non-field positions required specific skills as well as seniority. Attorney Cox noted that the Union conceded that Management filled requirements as they wished and Management did not always post openings.

The Union cross examined Management witnesses. Capt. Darryl Anderson testified on cross that he had been involved in labor relations between 1986 and 1989. He noted that a transfer means an employee moves from one position to another. Anderson testified that if a sergeant was assigned to General Headquarters and then moved to District 6, that would be a transfer. He also noted that to go from General Headquarters to the Academy is similar to going from Athens to Ashtabula and both would involve transfers. Thus, Anderson noted that a transfer involves moving from A to B.

Anderson said Trooper Hudson was promoted to sergeant and then moved to Jackson. He also pointed out that Sgt. Redecker could have been transferred to Jackson.

Capt. Anderson indicated that employees can get promoted without a transfer. He pointed out that a trooper may become a sergeant and that does not necessarily require a transfer. Capt. Anderson testified that some troopers were promoted and stayed in their previous jobs.

Capt. Anderson testified about a posted job for Sgt. Hudson and apparently Sgt. Redecker might have bid and he went on to say that he reviewed the alternatives and Anderson stated that Article 30.03 meant he had a right to select Hudson and he cited paragraph 2.

Anderson went on to say that if he wanted an employee to take on a non-field job then he would look at seniority but if he wanted a promotion for an employee, there would be no posting or bidding.

The Union did not cross examine Sgt. Howard Hudson.

## 2. ARGUMENT

Sgt. Redecker is at the Athens post and has been with the State Highway Patrol for about 28 years. Trooper Hudson was promoted to Sergeant and transferred to a new position. Thus, was Redecker entitled to the transfer?

Article 30.03 allows Management to promote Unit #1 employees into non-field positions without bidding. Thus, Management violated Article 30.03, asserts the Union.

Article 30.03 and 30.02 are distinctly different, argues the Union. Section 30.02 requires posting vacancies for sergeant based on seniority and 30.03 requires postings only if a transfer is involved. If no transfer is involved, no posting is required. Article 30.03 does not address the word "promotion" but 30.03 requires job postings whenever a transfer takes place.

Sgt. Redecker was interested in a transfer but the position he wanted was filled by another officer without a required posting.

Thus, the Union, to accept the Employer's argument, must give meaning to the word "transfer" which states under point 1: A general transfer from one location or position to another and item 2: To transfer with promotion. Thus, the Union asserts that according to Capt. Anderson, a transfer almost universally means a move from one position to another. Under either of those definitions, the Union argues that the Contract requires to first post a position if one moves from one transfer to another.

Sgt. Hudson moved from Columbus to Jackson; thus, he was transferred from one place, Columbus, to another, Jackson, Ohio. The position filled by Sgt. Hudson was by transfer and given that a transfer was necessary, the position of Sgt. Hudson's would have to be posted, asserts the Union.

## B. MANAGEMENT

### 1. TESTIMONY AND EVIDENCE

Capt. Darryl Anderson testified he had been with the Ohio State Patrol for about 23 years and had been involved in Collective Bargaining Agreements and was familiar with Article 30. In fact, he said, he was the lead writer for the Management team on Article 30 and he cited Article 30.03. Anderson noted that there were considerable discussions over Article 30.03.

Capt. Anderson said that Article 30.03 meant that Management had the exclusive right to transfer whereas the Union wanted bidding. He went on to say that he talked about three positions. He noted that a field sergeant supervises shifts and posts and non-field positions involve investigative officers. Anderson noted that a field position was subject to bid and they are open by incumbent sergeants. He noted that promotions come into play after an incumbent sergeant had the right to take a lateral transfer.

Anderson reiterated that non-field positions because of job duties are different. He pointed that for example a field sergeant may not have the skills to supervise so he wanted a lateral transfer and he wanted to promote a trooper to a sergeant position which would involve a distinctly different job than a field position. He reiterated that non-field and speciality jobs are different than field positions. Anderson wanted to fill a non-field or speciality position in situations which he felt were appropriate.



Anderson also talked about posts opening up and he cited Lancaster where a sergeant could transfer and if there were two sergeants that wanted the job, the most senior would be transferred (see Article 30.02). He then cited Article 30.03 which talks about non-field positions and he stated that if he filled a non-field job by promotion, there would be no bidding and he could fill jobs by promotions.

Anderson testified that a transfer is going from A to B and he reiterated that promotions usually involve transfers.

Anderson testified that if there was a non-field vacancy, he can promote a person to a non-field job.

Anderson testified that the Union was not particularly happy with the Articles 30.03 and 30.04, etc..

Anderson noted that employees were transferred without posting. He went on to say that troopers have been promoted and transferred into non-field positions. He cited a particular trooper in District 6 and he also cited two troopers who went into non-field positions in District 6.

Anderson said he is aware of lateral transfers.

On redirect, Anderson testified about Sgt. Redecker and Sgt. Hudson and he went on to say that if a position were posted, both Hudson and Redecker could bid and the issue is who gets the job and he cited the distinction between Article 30.02 and Article 30.03. He reiterated that non-field positions were such that he could either promote or post.

Anderson indicated he promoted and transferred troopers to non-field positions as sergeants. He reiterated that he never filled a field position by promotion until he had relied on all sergeants for that particular position.

Management called Sgt. Howard Hudson who testified that he had been with the Ohio State Patrol for about 12 years and worked at Milton, Ohio between 1981 and 1989. In 1990, he said he became involved in the investigative section which dealt with General Headquarters.

Hudson said he did criminal investigations which involved rapes, assaults, homicides, polygraphs, interrogations, etc.. He did those investigations on a daily basis.

Hudson said that he had a 90 day investigative training session and he had about 27 specialized courses between 1985 and 1992 in investigations as well as courses in supervision.

Hudson testified that half of those courses he paid for and the other half were paid for by the Ohio State Patrol. He also testified that he took five courses in polygraph training and the initial course involved six weeks in Albany, NY.

Hudson testified that one must know polygraph uses as well as the ability to interrogate and interview witnesses and suspects and that is not an easy task.

Management cross examined Union witnesses. Sgt. David Redecker on cross testified he was on the bargaining committee for Joint Exhibit #1.

Attorney Paul Cox testified on cross that the first Collective Bargaining Agreement in the Fall 1990 went to the Spring of 1991. He acknowledged that non-field positions were discussed.

Cox said that if an employee is in a non-field position, it is apparently okay for the Employer to promote without posting but it is not okay to move someone to another position.

## 2. ARGUMENT

Management notes that Trooper Hudson was promoted to Sergeant and the Employer then filled by promotion the position as District 9, Investigation Sergeant which is a "non-field" position (see Article 30.03). The Employer did not post "a non field position", rather it promoted and moved Sgt. Hudson to the position of District 9, Investigator. Thus, can the Employer post all incumbents or can the Employer have the discretion to fill a non-field position.

The Employer states that Section 30.03 reflects the parties' practice since 1991. Capt. Anderson testified, notes Management, that he could "promote" a qualified trooper into a non-field position.

Non-field positions require specific technical experience, asserted Anderson.

The language of 30.03 was written by Capt. Anderson and he felt the Contract gave him the right to promote a qualified trooper to a non-field job.

Management claims that the second paragraph 30.03 means the Employer can assign a trooper to a non-field position without having to post for all employees to bid for that position.

Management notes that a trooper cannot bid for a non-field sergeant's job, since they are in a different unit. Management claims that some troopers become very skilled in investigative techniques. The Employer and the Union agreed, asserts the Employer, that not all non-field positions are posted. Management also points out that 25 non-field positions were posted by incumbent sergeants and six non-field positions were filled by promoting troopers to the rank of sergeant. Management asserts that postings or promotions are distinctly different from transfers. Management also notes Major Hartswell's response (see pages 5 and 6 of the Employer's Brief).

Management reiterates that not every non-field position would be filled by promotion; that is, some non-field positions were filled presumably through postings.

The language of 30.03 may be ambiguous, asserts Management, but since 1991, Management has implemented a consistent practice of 25 sergeant postings and 6 promotions of troopers to non-field sergeant positions.

For these reasons, Management asserts that Contract language over the past years is correct. The Union claim, argues Management, that Contract language is incorrect and misinterpreted must fail.

## V. DISCUSSION AND AWARD

The parties agreed at the Hearing that the issue is:

Sgt. Redecker was not transferred to a particular job and was Management required to give him that job under Article 30.03?

The issue was rephrased in both briefs. Management questioned whether its decision to promote and transfer Trooper Hudson to the investigative sergeant position in question violated Section 30.03? The Union questions whether the Employer violated Article 30.03 and whether Sergeant Redecker was entitled to a transfer?

Article 30.03, Non-Field Transfers, states in part:

When the Employer determines that a vacancy in a non-field position shall be filled by transfer, the position will be posted at all Highway Patrol facilities for a period of seven (7) calendar days. The posting will include the specific qualifications and criteria required of the position. Any sergeant who meets the specific qualifications and criteria may bid for the position. The Employer retains the right to determine and select the most qualified from among the bidders. If all qualifications and criteria are determined to be equal, seniority shall be considered for selection to the position.

Grievant Redecker had 28 years with the Ohio Highway Patrol and has been a sergeant at the Athens post since 1977 and wants a job as a plains-clothesman investigator. Redecker grieved when a newly created job in Jackson Ohio was given to recently promoted Sgt. Hudson because he felt that his transfer request should have been honored.

The Union argues that Hudson's assignment involved a transfer and if a non-field position is filled by transfer, the second paragraph of 30.03 clearly means that the vacancy is posted for all sergeants to bid on. The testimony and evidence questioned the definition of "transfer". For field positions where job descriptions and requirements are interchangeable, one would agree with Capt. Anderson's definition of "transfer" as a shift from location A to location B. If Hudson had been a trooper at Jackson, promoted to a sergeant at Jackson, then assigned to the non-field investigative position at Jackson, it is still likely that the Union would raise an issue because the Employer did not post the position for all to bid on. There is logic to defining "transfer" as also being a change from a field to a non-field position within the same location as well as a change in location but that does not answer the basic question. Even though a transfer was involved in Hudson's promotion and assignment to the investigative position at Jackson, was the position filled by "transfer" or by "promotion"?

First, the language requires posting only "When the Employer determines that a vacancy in a non-field position shall be filled by transfer,....". This language suggests that there are other means of filling a vacant non-field position other than by transfer. In contrast to this language concerning non-field positions, Article 30.02 concerning field positions is clear that when there is a sergeant vacancy - for any reason - in a field position, "the employer shall fill the vacancy in accordance with

the procedures contained in this Article." The Employer has no choice given a field position vacancy but to fill it according to seniority of those filing transfer requests.

In the case of a non-field position, the Employer claims that it has the option to fill it by promoting a trooper. There is nothing in Article 30.03 that can be construed to mean that all non-field vacancies must be filled by transfer which involves establishing qualifications, posting, bidding, evaluating qualifications of bidders and selecting the most qualified or the most senior if qualifications are deemed equal. Thus, although "promotion" is not mentioned in the language, promoting a trooper is an option.

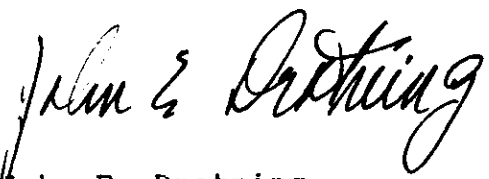
Second, both Cox and Anderson were involved in negotiations for the initial as well as for the successor agreement, and both noted that non-field jobs often require specific skills. It is clear that Management retained the right to establish qualifications and criteria for non-field positions and to fill vacancies on the basis of the most qualified. Capt. Anderson testified that he prepared 30.03 language to conform to the understandings arrived at during negotiations. Throughout 30.03, seniority only enters the picture if qualifications are determined to be equal. Both Cox and Anderson said there were extensive discussions regarding Article 30 and it must be concluded that although, as Capt. Anderson indicated, the Union may not have been "too happy" with the results of negotiations, Management has options regarding filling non-field positions.

Third, since 1991, as well as posting 25 non-field positions for bids from all qualified sergeants, Management apparently has also filled at least six non-field positions by promoting troopers. Thus, there is a past practice for Management to promote Trooper Hudson to sergeant and to assign him to a non-field investigative position in Jackson.

The Union's basic claim that for the Employer to fill non-field positions without posting is unfair to senior sergeants who want transfers is understandable. It may seem that assignments to "plum" jobs are made without being open for applications from all sergeants. However, the testimony and evidence of the Union is not sufficient to conclude that the Contract requires all open non-field positions to be posted. Moreover, there is no basis to conclude that Sgt. Redecker is entitled to the position solely because he had requested a transfer and is more senior.

Based on the language itself, on the testimony concerning negotiations history, and on past practice evidence, there is no basis to conclude that the Employer violated the Contract when it did not transfer Sgt. Redecker to the investigation job in Jackson.

The grievance is denied.

  
John E. Drotning  
Arbitrator

December 13, 1993