
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 Number:

25-12-(08-03-93)-10-05-02

Before: Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

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

For Ohio Department of Natural Resources

Jon Weiser
Ohio Department of Natural Resources
Fountain Square
Columbus, OH. 43224-1387

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on June 7, 1994 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute 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:

Did the Ohio Department of Natural Resources violate the Labor Agreement by utilizing a private security firm to provide security in the Teater Park area at the 1993 Ohio State Fair? If so, what should the remedy be?

Background: There is no dispute over the events that prompt

this proceeding. Each year there occurs in Columbus, OH. the Ohio State Fair. It is held on a large parcel of land in Columbus, OH. and annually attracts multitudes of visitors. As part of the Fair the Ohio Department of Natural Resources conducts various displays. This activity on behalf of the Department has been ongoing for many years and the Department has reserved to it a section of the Fairgrounds known as Teater Park. In order to protect the facilities and equipment of the Department it has historically utilized the services of its own employees. Park Officers have come to Columbus from various areas of the State in order to ensure the safety of the Department's assets. This practice has been occurring for many years.

In 1992 the Department received a grievance from the Park Officers who were performing security at Teater Park. It was their view that they were in an ambiguous legal position. As part of their security tasks they performed enforcement duties. It developed that no legal authority existed for performance of those tasks. Hence, they were directed to contact the Ohio Highway Patrol when enforcement work was necessary.

In order to deal with the 1992 grievance the Department changed the method by which it performed security work at the Fair. It employed a private security firm to perform tasks that had hitherto been performed by Park Officers. (At the

hearing it was unclear if the firm was Moling and Associates or Pinkerton. In order to ensure clarity of presentation the work will be attributed to Pinkerton for purposes of this decision). In order to protest what was regarded as an erosion of the bargaining unit a grievance was filed. It was the view of the Grievants that employees of Pinkerton had performed work properly within the province of bargaining unit members. That grievance was processed through the procedure of the parties without resolution and is now 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 that it has been violated by the State in this instance. In relevant part the Agreement provides that:

Management shall not attempt to erode the bargaining unit, the rights of bargaining unit employees, or adversely affect the safety of employees.

In the Union's view what transpired in this instance was the erosion of the bargaining unit which is prohibited by the Agreement. The record is clear. Employees of the Department provided security at the Fair. In 1993 they no longer did so. To the contrary, Officers assignments at the Fair were different from those they had performed in the past. They did public relations work. Moreover, Officers had historically been on a four shift work schedule at the Fair. In 1993 no Park Officer was on a shift assignment. Work that Park

Officers had historically done was performed by employees of Pinkerton. The Agreement guarantees to Officers a lump of work that they and only they can perform. As they did not do so in 1993 the sort of bargaining unit erosion prohibited by the Agreement occurred in this case. The Union seeks a finding in its favor and an award of one compensatory hour into the comp time bank of affected employees to remedy the violation.

Position of the Employer: The State points out that in 1993 it was attempting to deal with the issue raised in the 1992 grievance. That is, it had Officers at the Fair who were unable to legally perform enforcement tasks. This was a concern that had been voiced by the Union with which the State had come to agree. In this situation the Union seeks restoration of precisely the work its members did not want to perform. In essence, the State views the position of the Union as expressing its desire to have it both ways. That cannot occur according to the State.

Examination of the record in this dispute is instructive in the State's view. In 1993 Park Officers who worked at the Fair performed 160 hours of work. They did public relations type tasks. In 1992 Park Officers worked exactly the same number of hours at the Fair, 160. The nature of the work was different. It was security but the amount of work was the same. Under no stretch of the imagination can it be said that erosion of the bargaining unit occurred in this instance. No

work opportunities were lost to bargaining unit members. No layoffs took place. No overtime hours were denied to members of the bargaining unit.

At the arbitration hearing it was acknowledged by all that a major element of the normal tasks performed by Park Officers is public relations. Nothing changed in this situation but the location of that work. It was performed at the Fair in Columbus rather than the parks of the State. While the private security firm, Pinkerton, did security work that had been done by Officers, no work opportunities were lost to them. Nor did they do any tasks they did not normally perform. In the State's view, the conclusion is inescapable that no erosion of the bargaining unit occurred in this situation. Hence, it urges the grievance be denied.

Discussion: This dispute involves a situation in which the State has contracted out work once performed by bargaining unit employees. Employees of Pinkerton's are doing work that State employees did in the past. In the ordinary course of events whether or not that action has violated the Agreement is subject to whatever restrictions upon the State's ability to act as it did in this instance are found in the Agreement. While there is no specific language prohibiting subcontracting in the Contract, the Union is correct to point to Article 7 as bearing upon this dispute. The Recognition Article ensures the integrity of the bargaining unit and

prohibits the employer from making an "attempt to erode" it. In this situation it is impossible to conclude there has occurred the bargaining unit erosion alleged to have taken place by the Union. The number of hours worked by Officers at the Fair in 1992 and 1993 was exactly the same. The character of the work changed but the opportunity for work did not. That is the standard to be applied to disputes of this nature. There has been no harmful effect upon members of the bargaining unit by the action of the State under review in this proceeding. The same number of employees are at work as were before the contract for security was let to Pinkerton. No layoffs occurred. Opportunities for overtime were not reduced.

The work performed by Officers in 1993 was a normal part of their daily tasks. That public relations rather than security became the focus of their work does not alter the fact that the amount of work performed did not change from one year to the other. It is the amount of work made available to bargaining unit employees that is crucial. That amount of work was not diminished by the action of the State in this instance.

An important element of determining the existence of a contract violation in disputes of the nature is the presence or absence of good faith. That is, did the Employer attempt to dupe the Union by its actions? In this situation that did

not occur. When it altered the assignment of Officers in 1993 the State was responding to a legitimate concern they had raised in 1992. Officers were in a difficult situation with respect to performing law enforcement tasks that were incidental to, and perhaps integral to, their security duties. In order to deal with the ambiguity raised by the 1992 grievance the State acted to deal with the problem. Its actions were in good faith and undertaken to deal with the concerns of Officers. It cannot be concluded that the State acted to harm the bargaining unit or its members by its actions in this case.

Provision of security at the Ohio State Fair is a minor part of the duties performed by Officers during their work year. When such work was done by Officers it was performed for only a few weeks in a 12 month period. The remainder of the yearly duty hours were spent in normal work at the facility to which officers are assigned. That remains the case today. Officers who wish to work at the Fair continue to be given the opportunity to do so. Under the these circumstances, the erosion of the bargaining unit claimed to have taken place by the Union did not occur.

Award: The grievance is denied.

Signed and dated this 23rd day of June, 1994 at South Russell, OH.

Harry Graham
Harry Graham
Arbitrator