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In the Matter of Arbitration *
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Between * Case Number:
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Fraternal Order of Police - * 25-12-(031894)-21-05-02
Ohio Labor Council *
*
and *
*
The State of Ohio, Department *
of Natural Resources *
*

Appearances: For Fraternal Order of Police-Ohio Labor Council

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Introduction: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this case 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 management violate the Labor Agreement when it posted a work schedule at Cleveland Lakefront State Park on March 4, 1994? If so, what shall the remedy be?

Background: There is agreement over the events that give rise to this proceeding. There is located on the shore of Lake Erie in the Cleveland Metropolitan area a large State park; Cleveland Lakefront State Park. In common with State operated parks it is staffed with Park Officers and Park Officer Specialists. People in those classifications are members of the bargaining unit.

Employees at Cleveland Lakefront are scheduled to work on a shift basis. This is due to the desire of the State to ensure coverage at all hours of the day, all days of the year.

When the parties came to negotiate their initial Agreement in 1986 it contained language dealing with shift assignment and selection. That terminology provided that shift assignments would be done by seniority. For some reason that language was not applied at Cleveland Lakefront. Rather, the parties agreed to a shift assignment system unique to them. It provided for a form of shift rotation. From time to time employees raised concerns about that scheduling. When they did so, the Employer told them that if one officer was dissatisfied with the shift assignment system at Cleveland Lakefront the system would be abandoned. The Employer committed to working within the framework of the Agreement if employees were dissatisfied with the shift assignment system at the Cleveland park.

On March 4, 1994 the Employer posted a schedule of shift assignments from April through August, 1994. That schedule (Joint Exhibit 3) set forth the daily shift assignment for each officer at Cleveland Lakefront. It indicated that during the April - August 1994 period officers would work two periods on the shift of their first preference. The other shift period would be on the shift of their second preference. Three Park Officers and one Park Officer Specialist regarded this schedule to violate the Labor Agreement. A grievance protesting the perceived violation was filed. It was advanced through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Union: The Union points to Section 22.02 "Posting of Work Schedules" and insists that the State has violated it in this instance. The relevant sentence in Section 22.02 is "Shift assignments will be established by seniority within a classification...." In this situation senior officers were assigned to shifts without regard to their seniority status. This is in clear disregard of the language in Section 22.02.

The Union acknowledges that when the first Agreement was negotiated that the parties at Cleveland Lakefront deviated from it with respect to shift assignment. This was done with agreement by employees at Cleveland Lakefront, the Union, and

park management. Employees and management at that facility desired a shift rotation system. The Union acquiesced in this departure from the negotiated terms of the Agreement. No formal agreement was reached. No side letter or memorandum of understanding exists. No commitment to rotate shifts in perpetuity was ever made by the Union. As part of the understanding, the parties understood that if one officer sought strict compliance with the terms of the Agreement that the understanding was nullified. That occurred in this situation. Officers no longer desire to continue the departure from the negotiated manner in which shifts shall be selected. As the Union urges the terms of Section 22.02 be read, they clearly provide for shift assignment on the basis of seniority. That was not done. The Employer issued a schedule disregarding seniority in shift assignment for April through August, 1994. That cannot occur insists the Union.

In this situation the terms of the Agreement are clear. They provide for shift assignment by seniority. The Employer did not do that in this situation. Hence, the Agreement was violated. The Union urges the Grievance be granted and that employees whose seniority rights were violated be compensated with an extra one-half hour pay for each hour of improper assignment in the April - August, 1994 period.

Position of the Employer: The State points to the history of scheduling at Cleveland Lakefront Park in support of its

position that it has not violated the Agreement in this situation. In 1986 the staff at that park agreed to schedule by platoons. That is, a group of people rotated shifts together. This situation was satisfactory to all concerned for a number of years. In 1989 a degree of dissatisfaction with that system developed among the officers. In order to deal with it a fourth platoon was added to the rotation. That system worked well for some time but once again some employees became dissatisfied. In order to deal with that situation the April - August, 1994 schedule was developed. It represents an attempt by the Employer to deal with concerns about scheduling raised by some officers. The disputed schedule facilitates leave approval, helps the Employer cope with absenteeism and provides satisfactory coverage of the park. The schedule is advantageous to all concerned. Senior officers get their first choice of shifts two-thirds of the time. Their second choice is honored for the remaining shift. This system does not violate the Agreement in the opinion of the State and it should not be altered.

The Employer asserts that there is another Section of the Agreement that is relevant to this dispute. Section 22.03 is concerned with "Work Schedule/Split-Shift." It provides that the Employer may determine the work schedule. That is what it did in this instance. As that is the case, no violation of the Agreement occurred. The grievance should be denied in its

entirety according to the State.

Discussion: The State is correct when it claims that Section 22.03 has not been violated. The State may determine work schedules that have "fixed starting and ending dates or times whichever is applicable." That the State has not violated Section 22.03 is not determinative of the outcome of this dispute in which the Union asserts that Section 22.02 has been violated by the Employer. Notwithstanding the trite and hackneyed phrase, "clear and unambiguous," some contract terms meet that standard. One is found in Section 22.02 which states that "Shift assignments will be established by seniority within a classification...." (Emphasis added). That phrase operates to guarantee to senior employees a preference with respect to shift assignment over their junior colleagues. The reasons to depart from that scheme of preference advanced by the State are irrelevant. The Agreement confers certain rights upon employees. Those rights were negotiated by the Union and are inviolable, no matter how bona-fide the rationale advanced by the State to negate them. The Employer may determine the starting and ending times of each shift. It did so in this situation and the Union does not claim any violation of the Agreement with respect to the determination made by the Employer. Once the State decides upon the hours it wishes to constitute a shift, it must then make assignments to the various shifts by

seniority. That is unmistakably the text of Section 22.02 of the Agreement. In this case, the State did not do that. In the April - August, 1994 period it complied with the Agreement two-thirds (2/3) of the time. Senior employees received their first shift preference for two sections of the schedule. They were awarded their second choice for the third scheduled period. That is not permitted by the clear text of Section 22.02 of the Agreement which provides that "shift assignments will be established by seniority...."

Ordinarily violations of Collective Bargaining Agreements carry with them a penalty. If this were not the case the violator would be encouraged to repeatedly breach the terms of the Agreement to which it has agreed to be bound. In this situation the parties have explicitly conferred upon the arbitrator authority to fashion a remedy. This is found in the second part of the issue upon which the parties agreed. If a violation is found, as has occurred as set forth above, the parties agreed that the second question to be answered is "If so, what shall the remedy be?" Remedies for contractual violations committed by the employer are ordinarily framed in monetary terms. Money compensates for damages experienced by employees who experience a contractual wrong perpetrated by an employer. That must be the case in this situation as well. To hold otherwise would result in a situation wherein a contractual breach was determined to have

occured but no remedy is effectuated. That is an anomolous situation which should be avoided if at all possible. In this case, a remedy is easily fashioned. It is the one proposed by the Union.

Award: The grievance is SUSTAINED. The grievants and their colleagues at Cleveland Lakefront State Park are to staff the various shifts required by the Employer by seniority according to the terms of Section 22.02 of the Agreement. The grievants are to receive an extra one-half compensation (Total 1.5T) for each hour worked on a shift on which they worked but would not have worked but for the contractual violation committed by the Employer in this situation.

Signed and dated this 16th day of August, 1994 at South Russell, OH.



Harry Graham
Arbitrator