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 In the Matter of Arbitration *
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 Between * Case Number:
 *
 Fraternal Order of Police-Ohio * 25-18-(091895)-12-05-02
 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

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

For Department of Natural Resources

Jon Weiser
 Department of Natural Resources
 1930 Belcher Dr., Building D-1
 Columbus, OH. 43224-1387

Introduction: Pursuant to the procedures of the parties a hearing was held on March 20, 1996 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 on the day of the hearing.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer violate the Collective Bargaining Agreement when it failed to provide the badge and weapon to certain employees who utilized disability retirement? If so, what shall the remedy be?

Background: The facts prompting this proceeding are clear and not a matter of controversy. Three employees of the Department of Natural Resources, Messrs. Cutwright, Becker and Heuseman, came to retire on disability pensions. To this instance the Employer has consistently provided to disability retirees their badge and weapon pursuant to the terms of Article 29, Section 29.05 of the Agreement. Prior disability retirees had left State service with physical disabilities. The Grievants in this case all have psychological disabilities. The State came to view provision of the service weapon to these retirees as a risk to public safety. At all times the Employer has been willing to provide the badge to the Grievants. This was regarded by them as unsatisfactory. A grievance protesting the failure of the State to make the weapon available to these retirees was properly filed. It was processed through the procedure of the parties without resolution and they agree it is before the Arbitrator for determination on its merits.

Position of the Union: The Union points to Article 29, Section 29.05 "Badge" and insists it has been violated in this instance. That Section provides:

All employees shall be given their badge upon retirement and sold their service weapon at the initial price, less 20% depreciation each year until the remaining price is \$1.00.

The language is crystal clear in the Union's opinion. It is mandatory by operation of the word "shall" in the Agreement.

The ability to retire on disability is conferred by statute. An employee retired on disability may be reemployed if the disability improves. Psychological disabilities may be ameliorated or overcome. Notwithstanding, a disability is a disability. The Agreement does not make a distinction between physical and mental disabilities. It refers merely to "retirement." These Grievants were retired. As retirees, they are entitled to the benefits provided them under the Agreement the Union insists.

The Fraternal Order of Police-Ohio Labor Council represents members of other bargaining units in state service. These include members of the Ohio Highway Patrol in bargaining units 1 and 15. The analogous language in those Agreements differs from that at issue in this proceeding. It makes specific reference to employees being provided an opportunity to purchase their service weapon upon retirement "for age and service or disability." The absence of specific reference to disability retirement in the Bargaining Unit 2 Agreement at Article 29.05 is immaterial in the Union's view. The Grievants retired. They must be provided the opportunity to purchase their weapon according to the Agreement the Union insists.

Position of the Employer: The concern of the State is not with the badge. Rather, it is with the gun. Specifically, the Employer points to Ken Cutwright as an example of the

difficulties it has implementing Section 29.05 of the Agreement. Cutwright has attempted domestic violence with his service weapon. He has been hospitalized for symptoms of anger and hostility. His physician is concerned over the Grievant's mental condition. Under these circumstances the State is not disposed to provide him with a gun.

The Employer points to a distinction between the concepts of retirement and disability. Retirement is permanent. Disability may be transitory. A person on disability retirement has the potential of returning to work. Under these circumstances he or she should not secure the weapon.

The analogous contract language in the collective bargaining agreements covering bargaining units 1 and 15 in the Highway Patrol makes specific reference to a disability retiree being able to purchase the service weapon. No such reference is found in the Unit 2 Agreement. The State interprets this to constitute silence on the issue. Hence, no purchase of the weapon should be permitted under these circumstances according to the State. It urges the concept of "retirement" apply only to age and length of service, not disability. As that concept is not found in the phraseology of Section 29.05 the State urges the grievance be denied in its entirety.

Discussion: To reiterate, Section 29.05 provides that "All employees shall be given their badge upon retirement and sold

their service weapon...." (Emphasis supplied). The wording of the Agreement is mandatory in nature. The Employer must sell the service weapon to retirees. The Agreement makes no provision concerning the mental state of the retiree. Nor does it distinguish between age and length of service retirement and disability retirement. Had the parties desired such a distinction doubtless they would have included it. They did not. Under the terms of the Agreement all types of retirement are considered one for purposes of providing the badge and weapon.


That the Collective Bargaining Agreements covering Bargaining Units 1 and 15 and that governing Bargaining Unit 2 have different contract language on this issue is immaterial. It is unnecessary that the Agreement specify "disability" retirement in order to provide the retirement benefit of the gun to a retiree. By not itemizing disability retirement as an exception to provision of the weapon the Agreement includes retirement for such circumstances.

It is not the function of the Arbitrator to pass moral judgement upon the agreement of the parties. The Arbitrator is employed to read the contract and enforce its terms. In this situation the State agreed to provide the service weapon to disability retirees. Mr. Cutwright and his colleagues in this action are disabled. That provision of the gun to them may pose a risk to society is not a situation with which the

Arbitrator can deal. In the Agreement the parties made a bargain to provide the service weapon to retirees. No exception for mentally unstable or potentially violent retirees is found in the Contract. Without such exception the State must carry out the terms of Section 29.05 and provide the service weapon to the Grievants.

Award: The grievance is sustained. The State is to provide the service weapon to the Grievants under the provisions of Section 29.05 of the Agreement.

Signed and dated this 7th day of April, 1996 at Solon, OH..



Harry Graham
Arbitrator