#1439

In the Matter of Arbitration	*	Case Numbers:
Between	*	15-00-980317-0045-07-15
	*	25-18-991102-0010-05-02
FOP-OLC	*	25-17-991102-0006-05-02
and	*	Before: Harry Graham
The State of Ohio	*	

APPEARANCES: For Fraternal Order of Police-Ohio Labor Council

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For The State of Ohio

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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. Post hearing briefs were filed in this matter. They were exchanged by the Arbitrator on February 14, 2000. The Arbitrator was subsequently advised to hold the decision in abeyance as the parties were discussing resolution of the dispute. There the matter rested to May 1, 2000 when the Union advised the Arbitrator that settlement discussions had failed. The Arbitrator was asked

to render a decision.

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

> Did the Employer violate Appendix D of the Collective Bargaining Agreement?

BACKGROUND: There is no factual dispute involved in this proceeding. When the parties came to bargain the 1997-2000 Collective Bargaining Agreement they agreed upon Appendix D to be incorporated into the Agreement. That Appendix called for the State to undertake a Classification Review. That Review was limited to the following classifications:

Wildlife Investigator
Liquor Enforcement Agent 1
Liquor Enforcement Agent 2
Liquor Compliance Officer
Watercraft Investigator

That study was to be conducted by the State Classification and Compensation Unit and was to be initiated within six months of the signing of the Agreement. The parties also agreed that no incumbent employee would lose pay as a result of the study. An employee found to be performing duties at a lower pay range would be frozen at their then current rate of pay. Upon completion the results of the study were to be forwarded to the Union for its consideration. The parties also agreed that "The recommendations of the Classification and Compensation Unit shall be final."

The Employer conducted the study provided for in Appendix

A and forwarded it to the Union. (Jt. Ex. 3). Various Union members felt the material provided to the Union was incomplete. Grievances were filed to secure information the Union believed should had been provided in addition to that furnished in Joint Exhibit 3. Those grievances were not resolved in the procedure of the parties and they agree they are properly before the Arbitrator for determination on their merits.

POSITION OF THE UNION: In the opinion of the Union the Agreement is clear. The Employer conducted the studies specified in Appendix D. It did not give the Union the complete results. The entire finding for the Liquor Compliance Officers was provided to the Union. That showed them to be properly classified. Results provided for the other classifications were incomplete. The Union speculates that is due to the fact that the study showed those classifications to have been improperly classified. A pay upgrade is likely warranted. The Union cannot know that for certain without a complete copy of the study. It has not been provided. Under the terms of Appendix D it must be.

The Union did not negotiate in a vacuum. It expected that if the classification study showed certain classifications to be misclassified that an upgrade would be forthcoming. The Agreement is definite on that point. Appendix D calls for the

classification study to be conducted by the State Classification and Compensation Unit. The two concepts are inextricably linked. The former drives the latter. If employees were found to be due an upgrade in their classification, a wage increase must follow.

The parties took pains to protect employees who might be adversely affected by the reclassification study. Those who might have been reclassified downward, to a lower pay range, were guaranteed they would not lose pay. Their pay would be frozen.

As time has passed the upgrade and pay increase issue has become intertwined with negotiations for a successor Agreement. That is improper in the Union's view. The terms of Appendix D provide that the studies must be provided to the Union. They must be provided in their entirety. The Employer may not furnish an incomplete copy of the studies and then assert it has fulfilled its committment under Appendix D the Union insists.

If, as the Union suspects, the studies show the positions must be reclassified upward, a pay increase must be made. The parties contemplated the situation if a downgrade were to be found appropriate. Persons downgraded would not lose income. In order to determine whether or not upgrades occured, a complete copy of the studies must be provided to the Union.

If they show upgrades are appropriate in the opinion of the Classification and Compensation Unit they must be made. The Union urges that the State be directed to provide a complete copy of the studies to it.

POSITION OF THE EMPLOYER: The State asserts that the purpose of the studies was to examine the duties of the itemized classifications. The studies were done. The Employer fulfilled its obligation. It need do nothing more it contends. The duties of the classifications were examined. There is no reference to pay ranges in the Appendix. If the Union thought it was entitled to pay range information and perhaps wage upgrades, it was mistaken. The State never understood it was to provide wage increases if classifications were revised upward.

No matter what the Union believed it had secured in negotiations, only the terms of the Agreement can govern. In this case, they are clear and the Employer complied with them. It gave the Union the classification information. It was not required to provide pay range information.

In the State's opinion the Union is seeking via these grievances to add provisions to the Agreement. The Employer does not have to provide pay information. It is not mentioned in Appendix D. The Union was represented by a skilled negotiator, Joel Barden. Mr. Barden has negotiated hundreds

of labor agreements. He could have insisted and the State could have agreed, that pay information be provided. That did not occur. The Employer did what it should do and provided the product to the Union. No more is required by the Agreement.

In fact, the State has Agreements with other Unions that deal with this issue. The Agreement with OCSEA/AFSCME Local 11 and that with SEIU District 1199 provide for the same sorts of classification studies as those at issue in this proceeding. No reference to pay ranges is made. The Employer knew what it was agreeing to by the terms of Appendix D. No further obligation was assumed and none should be imposed by the Arbitrator. No obligation exists to provide to the Union a pay range study. Hence, the grievances must be denied the Employer contends.

DISCUSSION: The various job classifications of the State's pay plan do not exist in a vacuum. They are related to wages. The Agreement at pages 129-132 shows the job classifications of the State system and the wage associated with each for the term of the Agreement. The State may not properly claim that a classification study exists in isolation. Placement of a particular job, eg. Wildlife Investigator, in a classification carries with it not only the classification but the wage rate associated with that classification. When

the State provides classification information to the Union the wage rate information regarding that classification is part and parcel of the information that must be supplied. To supply the classification without the associated wage information is to supply less than what is required.

The parties contemplated this scenario when they reached agreement on Appendix D. In the section captioned "METHOD" they provided that "The Employer and the Union agree that no loss of pay will take place for incumbent employees as a result of this study. The parties further agree that incumbent employees with duties defined as those of a lower pay range, will be frozen at their present rate of pay." That phraseology contemplates a situation where the classification studies would show employees to be classified above where their duties warrant. In the ordinary course of events a pay decrease would follow. To protect people who might fall into that situation the parties agreed no pay decrease would occur. Had the parties not understood that disadvantageous changes could occur the language quoted above would not have been necessary. The conclusion flowing from the terminology protecting employees against classification downgrades is that the parties contemplated that upgrades might result as well. It was unnecessary to write specific language dealing with the consequences of upgrades as if classifications were

revised upward, pay would be as well. This is due to the linkage of classifications and wage rates shown in the Agreement.

The final paragraph of Appendix D is captioned "IMPLEMENTATION." It provides that "The results of the review shall be forwarded to the Union for its consideration." That phraseology is obviously mandatory. It must be read in connection with the final sentence of Appendix D, "The recommendations of the Classification and Compensation Unit shall be final." It was contemplated that the Classification and Compensation Unit would come to conclusions regarding the appropriate wage to be paid each of the classifications studied. Those conclusions cannot be withheld from the Union.

AWARD: The grievance is sustained. The Employer is to promptly forward to the Union the entire results of the Classification Review conducted by the Classification and Compensation Unit.

Signed and dated this 5th day of June 2000 at Solon, OH.

Harry Graham
Arbitrator