

#1981

IN THE MATTER OF ARBITRATION
BETWEEN
STATE OF OHIO – DEPARTMENT OF PUBLIC SAFETY
AND
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME LOCAL 11, AFL-CIO

Grievant: Tom Lambrecht – Class Action

Case No. 31-02(022307)01-01-07

Date of Hearing: April 17, 2008

Place of Hearing: OCSEA – Columbus, Ohio

APPEARANCES:

For the Union:

Advocate: Karen Vorman, OCSEA Staff Representative

2nd Chair: John Porter – OCSEA Associate General Counsel

Witnesses:

Tom Lambrecht – Account Clerk

John Porter – OCSEA Associate General Counsel

Harold Emnett – Highway Patrol Officer

For the Employer:

Advocate: Ashley Hughes

2nd Chair: Mike Ducco - OCB

Witnesses:

Mike Ducco – OCB

Nancy Dragani – Executive Director

OPINION AND AWARD

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: May 29, 2008

INTRODUCTION

The matter before the Arbitrator is a Grievance pursuant to the Collective Bargaining Agreement (“CBA”) in effect March 1, 2006 through February 28, 2009 between the State of Ohio Department of Public Safety (“DPS”) and the Ohio Civil Service Employees Association AFSCME Local 11, AFL-CIO (“Union”).

The issue before the Arbitrator is whether Article 13.15 was violated on February 14, 2007 when Wood County was not included in the weather emergency from 10:00 a.m. to 5:00 p.m.

This matter was heard on April 17, 2008. Both parties had the opportunity to present evidence through witnesses and exhibits at the hearing. Post hearing statements were not filed in this matter. The Record was closed after the oral arguments on April 17th, 2008, and the matter is properly before the Arbitrator for resolution.

BACKGROUND

The facts in this matter are not in dispute regarding the events which occurred on February 14, 2007. Due to a winter storm, all state employees in the eighty-eight (88) Ohio counties were under a declared weather emergency from 6:30 a.m. until 10:00 a.m. The declaration of the weather emergency relieves employees of reporting to work unless designated as an “essential” employee whose presence is critical to maintaining operations. After reviewing several factors, Henry Guzman (“Guzman”), Director of DPS, extended the weather emergency from 10:00 a.m. until 5:00 p.m. for only forty-nine (49) counties. Wood County, located in northwestern Ohio, was the only county in that area that was not included in the State’s weather emergency declaration from 10:00 a.m. to 5:00 p.m.

The Union contends that Management's decision not to include Wood County beyond 10:00 a.m. was arbitrary and capricious, and the Union points out that all bordering counties remained under the emergency declaration.

The Employer initially raised a substantive arbitrability issue arguing that Article 13.15's language is clear that the Director of the Department of Public Safety has the sole authority to declare an emergency and an Arbitrator has no authority to add, subtract or modify that language. The parties stipulated that the Arbitrator could resolve this matter. However, the Employer's participation in this matter does not waive this argument for future emergency declarations subject to Article 13.15.

The Employer indicated that meetings occurred prior to the snow storm and the morning of February 14, 2007 to review the characteristics of the storm and assess the appropriate action to pursue. After reviewing several factors, which included the downgrading of the level of emergency by the Sheriff's Department, Wood County was not included in the extended declaration.

ISSUE

Did the Employer violate the contract by failing to include Wood County in the February 14, 2007 weather emergency from 10:00 a.m. to 5:00 p.m.? If so, what shall the remedy be?

RELEVANT PROVISIONS OF THE CBA

ARTICLE 13 –WORK WEEK, SCHEDULES AND OVERTIME

13.15 – Emergency Leave (in part)

A. Weather Emergency

Employees directed not to report to work or sent home due to a weather emergency as declared by the Director of the Department of Public Safety, shall be granted leave with pay at regular rate for their scheduled work hours during the duration of the weather emergency. The Director of the

Department of Public Safety is the Governor's designee to declare a weather emergency which affects the obligation of State employees to travel to and from work. Employees required to report to work or required to stay at work during such weather emergency shall receive their total rate of pay for hours worked during the weather emergency. In addition, employees who work during a weather emergency declared under this section shall receive a stipend of eight (\$8.00) dollars per hour worked.

An emergency shall be considered to exist when declared by the Employer, for the county, area or facility where an employee lives or works.

Employees who are designated as essential employees shall be advised of the designation and provided appropriate documentation. Essential employees shall be advised that they should expect to work during weather emergencies unless otherwise advised. However, they are not guaranteed work. Nothing in this section prevents an appointing authority from using his or her discretion in sending essential employees home or instructing them not to report for work once a weather emergency has been declared. Essential employees who do not report when required during an emergency must show cause that they were prevented from reporting because of the emergency. During the year, extreme weather conditions may exist and roadway emergencies may be declared by local sheriffs in certain counties, yet no formal weather emergency is declared by the Governor or designee and State public offices remain open. Should this situation occur, agency directors and department heads are encouraged to exercise their judgment and discretion to permit non-essential employees to use any accrued vacation, personal or compensatory leave, if such employees choose not to come to work due to extenuating circumstances caused by extreme weather conditions. Non-essential employees with no or inadequate accrued leave may be granted leave without pay. Nothing in this section prevents an appointing authority from using his/her discretion to temporarily reassign non-essential employees to indoor job duties, consistent with their job classification, so that such employees are not performing unnecessary road- or travel-related duties during days or shifts of especially inclement weather.

POSITION OF THE PARTIES

UNION'S POSITION

The Union contends that the decision to exclude Wood County from the weather emergency beyond 10:00 a.m. was arbitrary and capricious because every other neighboring county continued under the emergency declaration. Tom Lambrecht

("Lambrecht") testified that the Wood County garage was located approximately 1,000 feet from the Lucas County line, which remained under the day-long declaration. Lambrecht also indicated that roads were impassable (Joint Exhibit (JX) 8) and government offices in several cities located within the county were closed for that day (JX 8).

John Porter ("Porter") testified that the decision by Director Guzman to declare a weather emergency is not the issue but rather, the real issue is whether the decision to exclude Wood County from the declared emergency was arbitrary and capricious considering the conditions that existed on February 14, 2007. The Union concedes that, in the last round of negotiations, Article 13.15 was changed to avoid a plethora of grievances from the counties regarding how to compensate employees for emergency pay. Employees who are "essential" and required to work receive a stipend in addition to their regular pay rate.

In essence, the Union contends that Management's decision to exclude Wood County was unreasonable and violates the agreement. The Union also seeks a remedy to make employees whole who would have received stipend pay by paying them overtime.

EMPLOYER'S POSITION

The Employer argues that the declaration and extension of weather emergencies requires it to consider several factors. In the early morning of February 14, 2007, representatives from the Department of Administrative Services ("DAS"), Ohio Department of Transportation ("ODOT") and DPS met to decide whether to continue the statewide declaration. According to Nancy Dragani ("Dragani"), Executive Director of DPS, information reviewed at that time included: airport delays/closures; school closings; local government office closings; and the level of emergency determined by each county Sheriff's Department.

After a review of the data in relationship to the factors listed above, it was decided that forty-nine (49) counties would remain under the emergency, with the other counties' declarations lifted at 10:00 a.m. Of importance to Wood County is the fact that the Sheriff's Department declared a Level 2 emergency for that time that did not forbid vehicles from traveling in Wood County. If Wood County was declared a Level 3 emergency by the Sheriff, all vehicles would have been prohibited on the roads except for emergency vehicles or individuals whose jobs are essential for operational needs.

The Employer submits that it followed a set of defined criteria in declaring a statewide emergency and considered numerous factors before lifting the ban in all but forty-nine (49) counties on February 14, 2007.

The Employer argues that no contract violation occurred and the Grievance should be denied.

DISCUSSION AND CONCLUSION

Based upon the sworn testimony at the hearing and the exhibits, the grievance is denied. My reasons are as follows:

The Union rests its position primarily on the basis of its proximity to its surrounding counties and argues that weather conditions required that Wood County be treated similarly to its neighbors. It argues, therefore, the Employer must have acted arbitrarily and capriciously in lifting the ban in Wood County. I disagree.

Undisputed facts at the hearing indicate that the decision to lift Wood County's emergency declaration after 10:00 a.m. was based upon a process (Management Exhibit (MX) 1) that involved various state departments, the identification of public safety problems, impact assessment of the snow and recommendations to the Governor and key staff. Also, unrefuted is evidence that DPS considered factors in the February 14th meetings such as: snowfall indicators; road conditions; county sheriffs' snow

emergencies; major airports' statuses; school/university closures; county declarations; and PUCO utility outage reports. Prior to declaring or modifying the declaration of emergency on February 14th, the Employer thoroughly analyzed the weather's impact upon thousands of state employees.

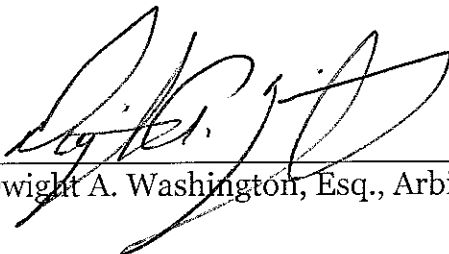
The decision to lift Wood County's declaration was based upon the conditions existing within the geographical area of Wood County, not those of its neighbors. The facts indicate that reliable evidence existed for DPS to decide that lifting the ban on Wood County was appropriate. This is especially true when considering that the County had been downgraded to a Level 2 by its Sheriff's Department whereas all of the neighboring counties remained at a Level 3.

The Arbitrator finds that the decision by DPS in not extending the declaration of emergency beyond 10:00 a.m. for Wood County was not arbitrary or capricious and is, in fact, supported by reliable, probative and substantial evidence.

CONCLUSION

For the reasons cited above, the Grievance is denied.

Respectfully submitted this 29th day of May, 2008.



Dwight A. Washington, Esq., Arbitrator