**OCB AWARD NUMBER: 2120**

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| **SUBJECT:** | **ARB SUMMARY # 2120** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **25-12-20100824-0007-05-02** |
| **DEPARTMENT:** | Ohio Department of Natural Resources |
| **UNION:** | FOP |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Thomas Lorenz |
| **MANAGEMENT ADVOCATE:** | Carrie Spradlin |
| **2ND CHAIR:** | Jackie Milsom  |
| **UNION ADVOCATE:** | Kay E. Cremeans |
| **ARBITRATION DATE:** | March 3, 2011 |
| **DECISION DATE:** | May 7, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 37; |
| **OCB RESEARCH CODES:** | 116.151—Vacation; 2.01—Management Rights; 124.80—Service Credit |
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**HOLDING: Grievance DENIED. The Arbitrator found the Collective Bargaining Agreement (CBA) was silent on the question of whether the grievant was entitled to vacation service credit for time spent in the Civilian Conservation Corps (CCC). The Arbitrator also found that ORC Section 1553.05(D) specifically excluded participants in the CCC from state employment. The Arbitrator ruled that when the CBA is silent on an issue and a statute addresses the issue, the statute applies.**

The Union arguedthe Employer violated Article 37.01 when it denied the Grievant’s request for vacation service credit for time spent in the CCC. The Grievant spent fourteen (14) months in the CCC with the Employer, was obligated to comply with all of the Employer’s rules and policies, operated State owned equipment and vehicles, and was paid on ODNR pay stubs and checks issued by the Auditor of the State.

The Employer arguedthe Grievant’s request for vacation accrual credit for his time spent in CCC was denied pursuant to ORC § 1553.05(D). (This statute was later repealed but was in effect during the period of time in question.) While CCC participants are considered state employees for 3 limited purposes, liability insurance, equal employment opportunity, and workers compensation coverage, there is no language in the statute that provides for vacation service accrual. The State is not compelled to consider an individual a “State employee” just because he received a warrant from the “Auditor of the State.” Nor is the State compelled to consider an individual a “State employee” just because he was required to abide by the Employer’s rules and policies, wear the Employer’s identifying clothing, and/or operate the Employer’s equipment. The Grievant, while employed as a CCC member, was not considered a State employee pursuant to the ORC.

The Arbitrator foundthis specific issue was never discussed in bargaining negotiations between the Parties. The Arbitrator found that the statute, even if repealed, controlled. Neither the Agreement nor the rest of the record illuminate the Parties’ intent regarding the Grievant’s employment status while in the CCC. Section 1553.05(D) showed a clear intent on the part of the Legislature to consider CCC members something other than State employees. It is a well-settled proposition in Ohio arbitration that when the contract is silent and there is a relevant statute, the statute controls. The grievance is denied.