

IN ARBITRATION PROCEEDINGS PURSUANT TO THE COLLECTIVE BARGAINING  
AGREEMENT BETWEEN THE PARTIES

IN THE MATTER OF:

Fraternal Order of Police,  
Ohio Labor Council, Inc.,

Grievance No. 25-12-20111128-0013-05

and

Grievances of Paul Lallier and Paul Creech  
(Holiday/Overtime)

The State of Ohio,  
Department of Natural Resources

Before Arbitrator Sherrie Passmore

**ARBITRATOR'S OPINION AND AWARD**

This arbitration arises pursuant to the collective bargaining agreement (“Agreement”) between the Parties, the Fraternal Order of Police, Ohio Labor Council, Inc. (“Union”) and the Ohio Department of Natural Resources (“Employer” or “Department”). Sherrie Passmore was appointed as the Arbitrator under the authority of the Agreement. The Parties stipulated that the grievances are properly before her.

A hearing was held on June 3, 2013. Both Parties were represented by advocates who had a full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make arguments. Post-hearing briefs were timely filed on or before July 9, 2013.

APPEARANCES:

Paul L. Cox, Chief Counsel, on behalf of the Union

Jackie Sebastian, Labor Relations Officer, on behalf of the Employer

## **ISSUE**

Did the Employer violate the Agreement when it scheduled Grievants to observe the holidays indicated below?

- (1) Grievant Lallier – Christmas, Sunday, December 25, 2011
- (2) Grievant Creech- Christmas, Sunday, December 25, 2011
- (3) Grievant Creech -President's Day, Monday, February 20, 2012
- (4) Grievant Creech -New Year's Day, Tuesday, January 1, 2013
- (5) Grievant Creech -Martin Luther King's Birthday, Monday, January 21, 2013

If so, what shall the remedy be?

## **RELEVANT PROVISIONS OF THE AGREEMENT**

### **ARTICLE 22 - HOURS OF WORK AND OVERTIME**

#### **22.02 Posting of Work Schedules**

It is understood that the Employer reserves the right to limit the number of persons to be scheduled off work at any one time. Work schedules will be posted for a work period of four (4) weeks or greater and shall be posted for a minimum of four (4) weeks in advance. Work schedules shall not be established solely to avoid overtime but for efficient operations. \*\*\*

### **ARTICLE 38 - HOLIDAYS**

#### **38.01 List of Days**

Bargaining unit members will have the following holidays:

1. New Year's Day - (first day in January)
2. Martin Luther King's Birthday - (third Monday in January)
3. President's Day - (third Monday in February)
4. Memorial Day - (last Monday in May)
5. Independence Day - (fourth of July)
6. Labor Day - (first Monday in September)
7. Columbus Day - (second Monday in October)

8. Veterans Day - (eleventh of November)
9. Thanksgiving Day – (fourth Thursday in November)
10. Christmas Day - (twenty-fifth of December)
11. Any day declared as a holiday by the Governor of the State of Ohio or the President of the United States.

For employees who are working other than Monday through Friday schedules, holidays will be observed on the days listed in this section.

### **38.02 Holiday Pay**

Full-time bargaining unit members are automatically entitled to eight (8) hours of holiday pay at regular rate or the number of hours that they are normally scheduled to work over eight (8) hours (e.g. employees scheduled to work ten (10) hours per day should receive ten (10) hours of holiday pay), regardless of whether they work on the holiday. Compensation for working on a holiday is in addition to the automatic hours of holiday pay and shall be computed at the rates prescribed in Section 38.03 of this Article. Employees who work other than a full time schedule shall receive four (4) hours of holiday pay at their regular rate regardless of whether they work on the holiday.

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### **38.03 Computation of Holiday Pay**

Employees shall have their choice of pay or compensatory time for work performed on a holiday resulting in premium pay.

#### **A. Scheduled Holiday Hours**

An employee who is required to work on a Holiday, as part of the regular 40-hour weekly schedule, will receive “Premium Pay” for this holiday work. “Premium Pay” includes pay for the Holiday, itself, at regular rate straight time pay, plus pay at the rate of one and one-half (1 ½) times the regular rate of pay for all hours worked on the Holiday.

## **BACKGROUND**

This matter arises from the Grievants being scheduled to observe the following holidays:

- (1) Grievant Lallier – Christmas, Sunday, December 25, 2011
- (2) Grievant Creech- Christmas, Sunday, December 25, 2011
- (3) Grievant Creech -President's Day, Monday, February 20, 2012
- (4) Grievant Creech -New Year's Day, Tuesday, January 1, 2013
- (5) Grievant Creech -Martin Luther King's Birthday, Monday, January 21, 2013

Five separate grievances were filed regarding scheduling on the above holidays, but the parties agreed to consolidate them for arbitration. For each of these

holidays, Grievants were given holiday pay.

The Grievants are Park Officers. Their primary responsibility is visitor safety. A normal workweek consists of 40 hours, either five, eight-hour days or four, ten-hour days. Due to the seasonal nature of park operations, Park Officers' days on and off may vary based on operational needs, but an effort is made to keep their schedules consistent where possible.

Grievant Lallier normally works four, ten-hour days each week. His normal days off at the time his grievance arose were Tuesday, Wednesday and Thursday. In 2011, Christmas (December 25) fell on a Sunday. The Employer scheduled Mr. Lallier off that day to observe the Holiday and scheduled him off on the next three days (Monday December 26, Tuesday December 27 and Wednesday December 28).

In December 2011, Grievant Creech generally worked five, eight-hour days. His normal days off were Monday and Tuesday. Like Grievant Lallier, the Employer scheduled Mr. Creech off to observe the Christmas Holiday on Sunday, December 25. Mr. Creech was also given the next two days off, as he normally was, on Monday and Tuesday.

In February 2012, Mr. Creech was working four, ten-hour days each week. His normal days off were Sunday, Tuesday and Wednesday, but varied during the second and third week of the month to allow him to attend required training classes. The Presidents' Day Holiday was on Monday, February 20. The Employer scheduled Mr. Creech off to observe the Holiday and scheduled him off that week on Sunday, Tuesday, and Wednesday, which were his normal days off.

A normal workweek for Grievant Creech during January of 2013 was five

eight-hour days. During this time period, his days off were normally Thursday and Friday. He was scheduled for different days off the week of January 16, 2013 so that he could attend taser training. New Years Day was on Tuesday, January 1 and Martin Luther King Day was on Monday, January 21. The Employer scheduled Mr. Creech off on both those days to observe the Holidays. During those holiday weeks, Mr. Creech was also scheduled off as he normally was on Thursday and Friday.

### **POSITIONS OF THE PARTIES**

#### **Position of the Union**

The Union argues that scheduling the Grievants to be off on the holidays violated Article 22.02 by establishing schedules to avoid premium pay. In support of its position, the Union offered a prior arbitration decision by Harry Graham, OCB Award No. 653. Arbitrator Graham found the express prohibition in Article 22.02 against establishing schedules solely to avoid overtime extends by implication to doing so to avoid holiday pay. He sustained the grievance, finding that the grievant's schedule had been altered during a holiday week in an effort to avoid supplemental pay. The Union contends the exact same thing happened in this case.

According to the Union, the Employer's intent is self evident from the Grievants' work schedules. In each of the holiday weeks, the Grievants would normally have been scheduled to work on the days of the week on which they were scheduled off to observe the holidays. In addition to being scheduled off on the holidays, Grievants were given their normal days off. If the Employer had scheduled

the Grievants to work on the holidays, they would have been entitled to receive time and a half for those hours.

As further evidence of the Employer's intent, the Union points to the testimony of the Grievants' supervisor Daniel Cox and a letter that Cox wrote to Grievant Creech in response to one of his grievances. In a letter dated February 18, 2012, Cox told Creech that no overtime had been assigned in his region during the holiday week at issue. Under cross-examination, Mr. Cox indicated that he was directed by the Department's Columbus office not to schedule officers during holidays unless there was an operational need. The Union believes these facts alone prove the Employer was scheduling to avoid the payment of overtime in violation of the Agreement.

#### Position of the Department

The Department views this case as an issue of holiday premium pay, not overtime. It takes the position that it has the right to schedule employees off on holidays if there is no operational need to require the employees to report to work. There was not a need for Mr. Lallier or Mr. Creech to work on these holidays. As such, they were scheduled to take the holidays off with pay.

Noting its disagreement with Arbitrator Graham's reasoning in Award No. 653, the Department argues that the facts of a second case decided by Graham concerning scheduling during holiday weeks are more like the facts of this case. In that case, OCB Award No. 742, Graham found no violation of Article 22.02.

## **DISCUSSION**

Under the circumstances of this case, I do not find that scheduling the Grievants to observe holidays with pay that fell on days they normally would have been scheduled to work violated Article 22.02. Article 22.02 provides that work schedules are to be established for “efficient operations” and not “solely to avoid overtime.” Grievants were scheduled to take the holidays off with pay as provided for by Article 38 and because there was no need for their services on those days, not solely to avoid overtime or holiday pay. The facts of these grievances are distinguishable from those in Award No. 653 and very similar to those that led Arbitrator Graham to find no violation of the Agreement in Award No.742.

In Award No. 653, Arbitrator Graham found a violation where one of the grievant’s regular days off was changed so it did not coincide with a holiday. Grievant Brian Licht, a Park Ranger, consistently had Sunday and Monday off. During a week in which the Veterans Day holiday was on a Sunday, Licht was scheduled to observe the holiday and his days off were changed to Monday and Tuesday. He was scheduled to work the remaining four days. Had his normal days off not been changed, one of Licht’s days off would have overlapped with the holiday and he would have been scheduled to work five instead of only four days. Graham found that as a result Licht lost eight hours of pay he would have received had his schedule remained unchanged. Finding no operational reason for changing Licht’s normal days off, Graham concluded the change was made to “avoid making the

supplemental pay associated to employees whose day off coincides with a holiday.” The case before me is different. Neither Mr. Creech nor Mr. Lallier’s typical days off overlapped with any of the holidays at issue.

This case is very much like the Becker case, Award No.742. Grievant Jeffrey Becker, a Park Ranger, normally worked a Thursday through Monday schedule, with Tuesdays and Wednesdays off. During a week that included the Memorial Day Holiday on a Monday, he was scheduled to observe the Holiday. That is he was not required to report to work on what would normally have been a scheduled work day, but to take the day off as a holiday with pay. Becker was also given his normal days off on Tuesday and Wednesday. Graham found that the decision to direct Becker to observe the Memorial Day Holiday was sanctioned by the Agreement, based on consideration of operational needs, and a permissible exercise of managerial judgment. Under the circumstances of this dispute, Graham concluded he could not find that the Employer had altered Becker’s schedule in an effort to avoid paying him overtime as he had found in the Licht case.

In each of the holiday weeks at issue in this case, the Employer scheduled the Grievants to observe a holiday on a day they normally would have been required to work. Instead, they were not to report to work but were given the day off with pay as provided for by Article 38 of the Agreement. With one exception, the Grievants’ normal days off were not altered other than to accommodate training. The only exception was where Grievant Lallier’s days off were scheduled contiguous with a holiday so that the Lallier could enjoy more consecutive days off without having to report to work. Giving Grievant those particular days off had no impact on his



compensation. As in the Beck case, there was no change in schedule that deprived Grievants of any work opportunities properly due them under the Agreement.

Article 22.02 is only violated where schedules are established solely to avoid overtime and not for efficient operations. That is not the case here. The instructions regarding scheduling and the decision not to schedule Grievants to work on holidays was based on operational needs. Daniel Cox, the Grievants' supervisor, testified that parks are busiest in the summer months. He explained that visitation is lower overall in the winter months but varies based on park locations. For example, parks with lodge facilities tend to be busy on certain holidays, as are parks where events are scheduled. Taking into consideration the time of year and locations to which the Grievants were assigned, Cox determined there was not a need for them to work on those days.

Under these circumstances, I conclude that the decision to have Grievants observe rather than work the holidays was not a violation of Article 22.02. Scheduling was based on operational efficiency, not solely to avoid overtime or premium pay.

**AWARD**

The grievance is denied.



Sherrie J. Passmore  
Arbitrator

July 29, 2013