**OCB AWARD NUMBER: 2213**

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| **SUBJECT:** | **ARB SUMMARY # 2213** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **25-12-20111128-0013-05-02** |
| **DEPARTMENT:** | **Ohio Department of Natural Resources** |
| **UNION:** | **Fraternal Order of Police** |
| **ARBITRATOR:** | **Sherrie Passmore** |
| **GRIEVANT NAME:** | **Paul Lallier and Paul Creech** |
| **MANAGEMENT ADVOCATE:** | **Jackie Sebastian** |
| **UNION ADVOCATE:** | **Paul L. Cox** |
| **ARBITRATION DATE:** | **6-3-2013** |
| **DECISION DATE:** | **7-29-2013** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Article 22- Hours of Work and Overtime, Article 38- Holidays**  |
| **OCB RESEARCH CODES:** | **Holidays- In General 116.101** |

**HOLDING: Grievance DENIED. The Employer did not violate Article 22.02 by scheduling the Grievants to observe holidays with pay, when those holidays fell on days the Grievants normally would have been scheduled to work. The Employer did not schedule the Grievants off of work solely to avoid overtime pay. In contrast, the Grievants were scheduled off of work for efficiency reasons.**

The Grievants are Park Officers. The Grievants were scheduled off of work to observe several holidays. For each of these holidays, the Grievants were given pay. Grievant Lallier typically had Tuesday, Wednesday, and Thursday off. In 2011, Christmas fell on a Sunday and the Employer scheduled Grievant Lallier off that day to observe the holiday and scheduled him off the next three days, December 26 to December 28. On the same holiday, Grievant Creech was also scheduled off of work to observe the holiday. Grievant Creech was given the following two days off, Monday and Tuesday, as his normal schedule dictated. Similar situations took place involving Grievant Creech and other holidays, where he was scheduled off of work to observe the holidays and also scheduled off of work on his normal off days. The Grievants claimed that the Employer scheduled them off of work on holidays in order to avoid premium pay.

The Employer claimed that the issue in this case was holiday premium pay instead of overtime pay. The Employer has the right to schedule employees off on holidays if there is no operational need to require the employees to work. There was no such need for the Grievants to work, and since there was no such need, the Grievants were scheduled off on those days. Additionally, the Employer contended that Arbitration Award No. 653 does not apply. Instead, the Arbitrator should observe Arbitration Award No. 742, as it was analogous to this case. In Award No. 742, the Arbitrator found no violation of Article 22.02. Therefore, the Employer argued that the grievance should be denied.

The Union argued that the Employer’s scheduling practices violated Article 22.02, as the Employer established schedules to avoid premium pay. Previous arbitration awards (Arb. Award No. 653) dictate that under Article 22.02, establishing schedules solely to avoid overtime is a contract violation and that violation extends to holiday pay. The Employer engaged in this violation by scheduling the Grievants off of work to observe the holidays. If the Grievants had worked these holidays, the Grievants would have received time and a half for those hours worked. The Grievants’ supervisor wrote a letter stating that no overtime had been assigned in his region during the holiday weeks in question. Additionally, during questioning, the supervisor testified that he had been instructed not to schedule officers unless there was an operational need. Therefore, the Union asserted that the grievance should be granted.

The Arbitrator found that the Employer’s actions did not violate Article 22.02. By scheduling the Grievants to observe holidays with pay when those holidays fell on days the Grievants normally would have been scheduled to work, the Employer simply committed an act within their rights. The Employer did not schedule the Grievants off of work solely to avoid paying overtime. In contrast, the Employer scheduled these Grievants off of work to establish efficient operations. Under Article 38, the Employer has the right to schedule employees off of work on holidays, as long as it is for efficiency reasons and not to avoid overtime or holiday pay. Furthermore, the Grievants’ supervisor testified that during the holidays in question, the Grievants were not operationally needed. Therefore, the Arbitrator denied the grievance.