

In the Matter of Arbitration	:	Case Number: 02-10-20130729-0011-01-03
	:	
Between the	:	
	:	
Ohio Civil Service Employees Association,	:	Grievant: Sandi Friel
American Federation of State, County and	:	
Municipal Employees, Local 11,	:	
AFL-CIO,	:	
Union	:	Date of Hearing: February 20, 2014
and the	:	
	:	
State of Ohio, Department of Commerce,	:	
	:	Howard D. Silver, Esquire
Employer	:	Arbitrator

### DECISION AND AWARD OF THE ARBITRATOR

#### APPEARANCES

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AFL-CIO, Union

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## PROCEDURAL BACKGROUND

This matter came on for an arbitration hearing on February 20, 2014 at 9:00 a.m. in a conference room at the offices of the Union at 390 Worthington Road, Westerville, Ohio 43082. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The hearing concluded at 3:45 p.m. on February 20, 2014 and the evidentiary record was closed at that time.

Post-hearing briefs were filed by each of the parties. Both post-hearing briefs were received by the arbitrator by March 13, 2014 and exchanged between the parties.

This matter proceeds under the authority of Articles 36 and 25 of the parties' collective bargaining agreement in effect from March 1, 2012 through February 28, 2015. This matter is properly before the arbitrator for review and resolution.

## AGREED ISSUE STATEMENT

Did the Department of Administrative Services properly apply the point factor system to determine the pay range of the FEIB Investigator (26531) classification in accordance with Article 36.05(A) of the Collective Bargaining Agreement? If not, what shall the remedy be?

## STIPULATED FACTS

1. The issue is properly before the Arbitrator.
2. There are no procedural issues regarding Article 36.05(A)(1).
3. The Jacobs Point/Factor model has been used by the State of Ohio to evaluate classification compensation since January 4, 1976.
4. The Ohio Department of Commerce (Commerce) requested revisions to the Arson Investigation (2653) series on February 2, 2012. The request did not

include a pay range increase.

5. At the time of Commerce's request, the Arson Investigator (26531) was assigned to Pay Range 32. Following DAS' revisions, the classification, now titled Fire & Explosion Investigation Bureau (FEIB) Investigator, remained at Pay Range 32.
6. A meeting was scheduled on May 13, 2013 to discuss the revisions with the Union.
7. A notice of intent to implement the revisions was sent to the Union on May 28, 2013.
8. The Union requested an additional meeting with DAS to discuss concerns they had regarding the review. This meeting was held in conjunction with Commerce on June 12, 2013.
9. Final revisions, as a result of the June 12, 2013, meeting, were forwarded to the Union on June 19, 2013.
10. DAS conducted an independent Point/Factor review, which resulted in no change to the existing pay range.
11. DAS filed the revised classification specification with an effective date of July 28, 2013.
12. On July 29, 2013, the Union filed a class action grievance on behalf of FEIB Investigators challenging the pay range assignment of Pay Range 32.
13. OCB waived mediation on October 7, 2013.
14. The grievance is properly before the arbitrator.
15. The Union is challenging three (3) factors in the Point/Factor analysis: Worker Characteristics, Safety of Others, and Mental Skills.
16. Parties agree to the duties as written in the revised classification specification effective 7/28/13.

## STATEMENT OF THE CASE

On February 2, 2012, the Director of the Ohio Department of Commerce, David Goodman, directed correspondence to the Interim Administrator of the Ohio Department of Administrative Services that proposed a Class Revision and Class Series Title Change to Ohio's Classification Plan for the Arson Investigation classification series (2653). In his letter of February 2, 2012, Joint Exhibit 4, Director Goodman noted that his request proposes major changes to Minimum Qualifications and the Series/Class Title(s). The Director of the Ohio Department of Commerce states in his letter that current minimum qualifications are not sufficiently detailed and do not provide for consideration of law enforcement/criminal justice experience which the Director believes to be just as important as the Firefighter/Fire Science experience that appeared in the minimum qualifications at that time. The Director of the Ohio Department of Commerce also referred in his February 2, 2012 correspondence to the addition of a requirement for OPOTA Peace Officer Certification that reflects a statutory change that occurred in 2009.

The Director of the Ohio Department of Commerce also pointed out in his letter of February 2, 2012 to the Interim Administrator of the Ohio Department of Administrative Services, Joint Exhibit 4, that Ohio Revised Code section 3737.22 refers to a "Fire & Explosion Investigation Bureau." The Director of the Ohio Department of Commerce noted that arson is a crime, and the investigators who work under the classification series 2653 are to investigate the cause and origin of fires and explosions that may include the crime of arson. It is the Director's opinion that continuing to use the term arson investigator is not appropriate when the language of Ohio Revised Code section 3737.22 is considered.

Upon receipt of the request from the Director of the Ohio Department of Commerce for changes to the classification series then titled Arson Investigation, series number 2653, the Ohio Department of Administrative Services performed a point/factor review that resulted in no change to the pay range assigned to the classification numbered 26531, formerly titled Arson Investigator, now titled Fire & Explosion Investigation Bureau Investigator. The action of the Ohio Department of Administrative Services produced no change to the pay range assigned to this position, pay range 32. The changes to the classification specification for the classification series Fire & Explosion Investigation, series number 2653, were effective July 28, 2013 as presented in a final revision of the classification specification for this classification series.

The point/factor review conducted by the Ohio Department of Administrative Services was performed by applying the Jacobs Point/Factor evaluation system, a system created in the 1930s and used to determine state of Ohio classification pay ranges since 1976. The Jacobs Point/Factor evaluation system was revised in 1989.

The Ohio Department of Administrative Services completed its point/factor review under the Jacobs Point/Factor evaluation system and ultimately issued a final, revised classification specification for Fire & Explosion Investigation, classification series 2653, effective July 28, 2013.

On July 29, 2013, the Union filed a class action grievance on behalf of all Fire & Explosion Investigation Bureau Investigators, challenging the assignment of pay range 32 to the Fire & Explosion Investigation Bureau Investigator classification, classification number 26531.

The Union's grievance identifies three categories under the Jacobs Point/Factor evaluation system that the Union contends were not properly applied by the Employer - Worker Characteristics, Safety of Others, and Mental Skills. It is the position of the Union that when the

Jacobs Point/Factor evaluation system is properly applied, appropriate degrees for Worker Characteristics, Safety of Others, and Mental Skills, when added together, produce points under the Jacobs Point/Factor evaluation system that indicate pay range 34 to be the appropriate pay range for the position Fire & Explosion Investigation Bureau Investigator, classification number 26531, or at a minimum, pay range 33.

The class action grievance filed by the Union alleges a substantive violation of Article 36, section 36.05(A)(1). When the grievance remained unresolved between the parties it was submitted to arbitration pursuant to Article 25, section 25.03. As stipulated by the parties, no procedural issues are presented under Article 36, section 36.05(A)(1). See Stipulated Fact 2.

#### POSITIONS OF THE PARTIES

##### Position of the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, Union

The Union notes that the changes to what had been the Arson Investigation classification series, classification series 2653, included changes to the classification specification's class title, series purpose, class concept, job duties, major worker characteristics, training and development, and minimum qualifications. The Union describes these modifications as substantial and contends that the knowledge required to perform the duties of the revised classification specification for Fire & Explosion Investigation Bureau Investigator has broadened and become more complex. The Union argues that pay range 34 is the most appropriate pay range for the classification Fire & Explosion Investigation Bureau Investigator, classification number 26531, under the Jacobs Point/Factor evaluation system, more appropriate than pay range 32 that was determined by the Ohio Department of Administrative Services.

The Union notes that among the twelve categories in the Jacobs Point/Factor evaluation system the parties agreed on nine. The three categories that were not agreed by the parties were Worker Characteristics, Safety of Others, and Mental Skills.

Each of the categories of the Jacobs Point/Factor evaluation system has within it degrees that are to be compared to the duties of the position under review. The degree determined most comparable to the position under review in each category translates to points that are to be added up, producing a total that indicates an appropriate pay range.

The Union argues that the degree for Worker Characteristics should be ten rather than degree nine as determined by the Ohio Department of Administrative Services. The Union contends that Safety of Others should be rated at degree three rather than degree two as determined by the Ohio Department of Administrative Services. The Union argues that Mental Skills should be rated degree seven rather than degree five as determined by the Ohio Department of Administrative Services. The Union argues that, at a minimum, Mental Skills should be rated no lower than degree six.

The Union notes that the degree determinations made by the Ohio Department of Administrative Services produced a total of ninety-seven points, indicating pay range 32. The Union's degree determinations under the Jacobs Point/Factor evaluation system produce 123 points, indicating pay range 34.

The Union notes that the Jacobs Point/Factor evaluation system's manual used by the state of Ohio, Joint Exhibit 2, provides that in completing a point/factor evaluation under the Jacobs system the rationale for the degrees selected must correspond directly to the information reflected in the final draft copy of the applicable classification specification. See Joint Exhibit 2,



page 2, the fourth paragraph of the Preface of the Jacobs Point/Factor evaluation system's manual used by the state of Ohio.

The Union also notes that the Preface in the Jacobs Point/Factor evaluation system manual used by the state of Ohio directs that close attention be paid to the punctuation used in the definitions of the degrees. According to the manual, a semicolon provides an option in the same manner as the word "or" which allows the reader to select the applicable part of the definition. If a semicolon or the word "or" does not appear, the entire degree definition must be satisfied.

The Union notes that Worker Characteristics refer to requirements of reading and/or hearing and understanding instructions; interpreting the meanings involved in a range of material and taking actions accordingly; using numbers and mathematical concepts; applying physical dexterity to the operation of equipment; and possessing skill and technical knowledge. The determinants of the degree for Worker Characteristics are based upon the extent and complexity of the concepts interpreted, the field of knowledge being applied, the problem being solved, or the equipment being operated.

Degree ten under Worker Characteristics within the Jacobs Point/Factor evaluation system reads:

Able to define unusual problems, collect data, establish facts and draw complex conclusions; able to comprehend a wide variety of technical material; able to write and/or edit complex materials for technical audiences; general understanding of the field of law.

The Union notes that in the final revision of the classification specification for Fire & Explosion Investigation Bureau Investigator there was added knowledge of "...police science, or criminal justice, criminal investigation" and ability to "investigate explosions and related

crimes.” The Union notes that minimum qualifications for this classification had also been changed to include OPOTA Peace Officer certification.

The Union points to the testimony from investigator Kris Stage, supervisor Harry Barber, and supervisor Josh Hobbs who stated that the job had become more complex and had broadened over the years, requiring investigators to be more knowledgeable in the performance of their duties. The Union points out that the Ohio Department of Administrative Services added minimum qualifications that broadened the knowledge to be brought to the position as a minimum qualification.

The Union points out that degree ten under Worker Characteristics does not require the completion of an undergraduate core program. The Union notes that the classification Fire & Explosion Investigation Bureau Supervisor, classification number 26535, was assigned degree ten under Worker Characteristics and the supervisor positions were not required to have completed an undergraduate degree program.

The Union points out that prior to 2013, the Ohio Department of Administrative Services had assigned degree ten to the Arson Investigation Investigators. The Union notes that additional requirements have been added to the classification specification now titled Fire & Explosion Investigation Bureau Investigator, classification number 26531, and nothing substantive has been taken away. The Union argues that with the additional knowledge and minimum qualifications that have been added to the classification specification for Fire & Explosion Investigation Bureau Investigator, there is no reasonable rationale for lowering the degree assigned to Worker Characteristics from degree ten to degree nine.

The Union urges the arbitrator to find that degree ten remains appropriate for Worker Characteristics under the July 28, 2013 classification specification for Fire & Explosion Investigation Bureau Investigator, classification number 26531.

As to the category Safety of Others, the Jacobs Point/Factor evaluation system manual refers to the requirement, either by authority or the inherent nature of the job, for complying with or enforcing compliance with standard safety measures and good housekeeping practices and the exercise of care to assure the safety of, and prevent illness of, the general public or other employees in connection with public and employee safety, public health, and similar types of work.

The category Safety of Others provides that the determination of the responsibility for the safety of others is based upon the kind and extent of care which must be exercised, and the probability and severity of accidents attributable to carelessness or negligence of the employee, presuming that others are exercising reasonable prudence in the interest of their own safety, and on the amount of responsibility for supervision of others in carrying out this responsibility.

Degree three for Safety of Others reads as follows:

Requires high level supervisory responsibility or responsibility for inspecting or program monitoring/compliance for public safety or health and for enforcement of the laws and standards of public safety or health.

The Union recalls the testimony from witnesses at the hearing who said that investigators are responsible for making sure a fire scene is secure for an investigation and may be responsible for transporting explosives, entering methamphetamine laboratories, and securing possible arson crime scenes. As noted by the Union, if these investigators do not perform their jobs appropriately, both property and civilians can be harmed.

The Union notes that the point/factor for Safety of Others as determined by the Ohio Department of Administrative Services prior to 2013 was degree three. The Union argues that this job has only broadened over time and the investigator classification remains responsible, if not more responsible now, for the public's safety. The Union contends that the Ohio Department of Administrative Services provided no reasonable rationale or justification for lowering the degree for Safety of Others from degree three to degree two. The Union argues that these investigators have a high level of responsibility for the enforcement of laws and standards that affect public health.

As to the Mental Skills category in the Jacobs Point/Factor evaluation system, it is noted that this category refers to the necessity for, and the extent of analysis, judgment, initiative, ingenuity, and creativity required in performing the duties of the position. The Mental Skills category provides that the determination of the degree for this category is based on the scope, variety, and complexity of tasks and skills required, the importance of decisions made, the extent of planning necessary, the frequency of occurrence of problems, and the difficulty in achieving their solutions. Consideration is given to the extent to which the requirement for mental skills is limited by the repetitive character of the tasks and extent of supervision received.

Degree seven under the category Mental Skills reads:

Requires advanced professional-level methods and principles in the analysis, coordination or interpretation of work of a professional nature and the ability to formulate important recommendations or make technical decisions on the basis of such work.

Degree six under the category Mental Skills reads:

Requires creative ability, resourcefulness and discriminating judgment in the analysis and solution of complex problems; or advanced professional-level

methods in the analysis or interpretation of work; and the ability to formulate recommendations on the basis of such work and to make technical decisions on specialized matters.

The Union points out that the Fire & Explosion Investigation Bureau Investigators are required to make findings based on investigations that are scientific, technical, and complex. As noted by the Union, these investigators must recognize problems, collect data, analyze the data, develop a hypothesis, and prove the hypothesis by using the scientific method.

The Union notes that the Ohio Department of Administrative Services assigned degree five to the category Mental Skills, a degree that reads as follows:

Requires general understanding of operating policies and procedures and ability to apply these to complex problems; or the application of professional-level principles and practices in the use of a wide range of methods in the solution of technical, administrative or legal problems.

The Union notes that the rationale provided by the Ohio Department of Administrative Services for selecting degree five under the category Mental Skills reads:

Requires general understanding of operating policies and procedures, complete familiarity of FEIB and their application to complex problems.

The Union argues that the position at issue requires more than a general understanding of policies and procedures. The class concept within the classification specification for Fire & Explosion Investigation Bureau Investigator refers to *considerable* knowledge of fire science, police science, criminal justice, fire & basic building codes, fire & arson & criminal investigation. The Union notes that the findings of these investigators are required to withstand scrutiny in a court of law, and the Union asks how someone with only a general understanding of

policies and procedures can testify in court, sit as an assistant to prosecutors, and exhibit the kind of expertise needed to be credible at trial?

The Union notes that the Ohio Department of Administrative Services assigned to Mental Skills degree six to the supervisor classification within the classification series Fire & Explosion Investigation, finding that the supervisor requires creative ability, resourcefulness, and discriminating judgment in the analysis and solution of complex fire and explosion problems. The Union emphasizes that this is exactly what is required of an FEIB Investigator and noted that two supervisors testified at the arbitration hearing that they coordinate investigations but it is an investigator who performs the investigation, writes the investigative report and makes findings, and testifies as to report and the investigative findings.

The Union notes that the hearing record contains testimony about how technology has changed over the years, affecting the complexity of the duties required of investigators as they address bombings, changes in technology, arsons, and a broad range of criminal activity associated with fire and explosions. The Union argues that the investigators must have a broader knowledge today than was formerly the case in performing the duties of this complex and broadened position.

The Union urges the arbitrator to grant the grievance in its entirety and order that the Fire & Explosion Investigation Bureau Investigator classification be assigned to pay range 34, or at a minimum, pay range 33. The Union urges that an increase of at least four percent (4%) result for each of the bargaining unit members affected by the arbitrator's order and that no employee be placed in step one of the new pay range when an employee has completed the probationary period.

The Union also asks that the award of back pay be made retroactive to July 28, 2013.

Position of the State of Ohio, Department of Commerce, Employer

The Employer understands the ultimate issue in this case to be whether the Ohio Department of Administrative Services properly applied the point/factor evaluation system. The Employer emphasizes that it is not enough for the Union to disagree with the Ohio Department of Administrative Services' results. For the Union to prevail on its grievance the Union must demonstrate that the Ohio Department of Administrative Services erred in its application of the point/factor evaluation system. It is the Employer's position that the Ohio Department of Administrative Services properly applied the point/factor evaluation system; the analysis performed by the Ohio Department of Administrative Services in this case was the result of a consistent application of the point/factor evaluation system, and the Ohio Department of Administrative Services acted reasonably and logically in applying the point/factor evaluation system.

The Employer refers to a decision and award of Arbitrator Robert G. Stein in a matter of arbitration between the Ohio Department of Transportation and the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO. Arbitrator Stein's decision and award was issued on July 23, 2001 and addressed the issue of whether the Ohio Department of Administrative Services had properly applied a point/factor evaluation system to determine the pay ranges for Highway Maintenance Worker 2 and Highway Maintenance Worker 3. Arbitrator Stein in his decision refers to the application of the Jacobs Point/Factor evaluation system. In the case before Arbitrator Stein the categories under the Jacobs Point/Factor evaluation system in dispute were Supervision Exercised, Policy and Methods, Assets, and Personal Contacts. The case before Arbitrator Stein originated with a request from the Union for the Ohio Department of

Administrative Services to evaluate the classifications at issue under Article 36.05. In the case herein, the request originated with an executive agency, the Ohio Department of Commerce.

In the arbitration case before Arbitrator Stein in 2001 three questions were posed by the arbitrator:

1. Did the Employer conduct the review in an arbitrary or capricious manner?
2. Did the Employer fail to consider all the relevant information?
3. Did the Employer incorrectly apply its standards?

Recalling the testimony of Laura Sutherland, an Ohio Department of Administrative Services Human Capital Management Senior Analyst, concerning the application of the Jacobs Point/Factor evaluation system in determining the appropriate pay range for the position under review, the Employer contends that there was nothing arbitrary or capricious in the review process described by Ms. Sutherland at the hearing and the decision reached by the Ohio Department of Administrative Services was neither arbitrary nor capricious.

The Employer notes that the request from the Director of the Ohio Department of Commerce suggested a change to the job title, a “clean up” of job duty language, and the addition of minimum qualifications. The Employer argues that there is nothing in the evidence of the hearing record that suggests the Ohio Department of Administrative Services failed to consider any information in the conduct of its pay range review.

The Employer points to language within the arbitration decision of Arbitrator Stein from 2001 wherein Arbitrator Stein cited with approval an earlier arbitration decision by Arbitrator Stein in a case that involved a different Union and the state of Ohio, wherein Arbitrator Stein had written:



The rights of the Employer in establishing pay ranges and in analyzing the job duties and responsibilities of classifications are substantial. It must be acknowledged that any classification on the scale of state government is complex and detailed. The Employer is the “chief architect” of the classification system and therefore must be accorded a presumption of expertise in administering this complex system. The perfect system has yet to be devised, and this one has its strengths and weaknesses. (1199/State of Ohio, Case # 02-10-961202-0037-02-00, 1999).

Referring to the testimony from Ms. Sutherland, the Employer notes that old point/factor reviews of comparable classifications are not used in the review of a revised classification. A new review is given each time a classification is revised so that job duties, knowledge, and qualifications may be independently evaluated prior to coming to a conclusion on the pay range. The Employer contends that this is done so as to make an objective determination.

The Employer notes that as explained by Ms. Sutherland in her testimony at the hearing, Worker Characteristics are tied to minimum qualifications and major worker characteristics, not job duties. The Ohio Department of Administrative Services assigned degree nine to Worker Characteristics, equivalent to a minimum qualification of an undergraduate core program and other abilities to draw valid scientific or technical conclusions. The Employer notes that even with the revisions to the minimum qualifications, an undergraduate core program is not required, the minimum qualifications requiring only an associate’s degree core program, plus experience. Ms. Sutherland testified that an associate’s degree core program would normally result in degree eight because it is less than the undergraduate core program which would receive degree nine. The Employer notes that due to the ability to draw valid technical conclusions and the additional years of experience, Ms. Sutherland concluded that it was appropriate to rate this category degree nine, and this was the consensus of six independent raters applying the same system.

The Employer notes that while knowledge of police science or criminal justice was added to the major work characteristics, these comprise options that may be satisfied in lieu of other requirements. The Employer emphasizes that the addition of these options did not increase the responsibilities of an incumbent of the position but rather provided a broader range of options to show satisfaction of minimum qualifications.

The Employer contends that although degree nine as determined by the Ohio Department of Administrative Services under Worker Characteristics may be different from the 2005 point/factor degree determined for Worker Characteristics, the determination under this category did not unduly influence the outcome of the overall total. The Employer notes that Ms. Sutherland testified that the 2005 point/factor determined for the category Worker Characteristics had been incorrect when it assigned degree ten to Worker Characteristics, awarding too many points given that an undergraduate core program was not required as a minimum qualification.

The Employer contends that degree nine is the most appropriate degree for Worker Characteristics under the 2013 point/factor review of FEIB Investigator.

As to Safety of Others, the Employer notes that this category addresses complying with or enforcing compliance with standard safety measures and assuring the safety of the general public. As noted by the Employer, degree two for Safety of Others refers to “...considerable responsibility for safety or health of others and/or continuous enforcement of the laws and standards of public safety or health.” Degree three under Safety of Others refers to: “...high level supervisory responsibility or responsibility for inspecting or program monitoring/compliance...” The Employer notes that FEIB investigators have responsibility for the safety of others and their duties include the enforcement of laws. Ms. Sutherland in her testimony at the hearing contrasted

an investigator with an inspector. Ms. Sutherland said an inspector would be responsible for public health/safety *prior* to something happening to ensure compliance with the law; the Employer contends an FEIB investigator comes to a scene *after* something has happened to enforce the law.

As to the dangers encountered by FEIB investigators, the Employer points out that the work category Hazards under the Jacobs Point/Factor evaluation system was increased from degree two to degree three, increasing the points assigned from two to four as agreed by the parties. The increase under Hazards, argues the Employer, addresses the unsafe conditions encountered by the FEIB investigators, and an increase under the category Safety of Others for the same reason is not justified.

The Employer argues that although the degree was downgraded in comparison to the 2005 review, inspection duties were removed, a new review was done, and points were reduced. The Employer emphasizes that new points were awarded under the category Hazards and therefore changes in job duties in this regard were properly accounted for in the current point/factor review.

As to Mental Skills, the Ohio Department of Administrative Services determined a degree five while the Union has proposed degree seven or, at a minimum, degree six. The Employer notes that the standard for Mental Skills is defined by the scope, variety, and complexity of tasks and skills required and the importance of decisions made. Referring to the testimony from Ms. Sutherland, the Employer contends that the degree for Worker Characteristics correlates with the degree for Mental Skills due to the knowledge and skills needed to perform the duties of the position under review. Using a Worker Characteristic degree of nine, Ms. Sutherland said that this would normally correspond to a rating for Mental Skills of

degree four or degree five. The Ohio Department of Administrative Services in this case elected to select degree five for FEIB investigators and selected degree six for FEIB supervisors. Ms. Sutherland testified at the hearing that the maximum points, degree seven, would apply to a professional level classification such as an attorney at law, physician, or engineer with at least a bachelor's degree plus credentialing.

The Employer contends that while the duties in the revised classification specification are now presented in greater detail, the duties for the position did not increase. The Employer contends that the Ohio Department of Administrative Services applied the standard review to the position at issue and the application of the Jacobs Point/Factor evaluation system in this case was consistent, fair, and proper.

The arbitrator is urged to deny the grievance in its entirety.

## DISCUSSION

Article 36, section 36.05(A)(1) of the parties' collective bargaining agreement now in effect reads as follows:

### **36.05 – Classifications and Pay Range Assignments**

#### **A. Classifications and Pay Range Changes**

##### **1. Employer Changes**

The Employer, through the Office of Collective Bargaining, may create classifications, change the pay range of classifications, authorize advance step hiring if needed for recruitment or other legitimate reasons, and issue or modify specifications for each classification as needed. Before proposing changes to the Department of Administrative Services, an Agency must discuss them with the Union pursuant to Section 8.02. Additionally, the Office of Collective Bargaining shall notify the Union forty-five (45) days in advance of any change of pay range or specifications. The Union may place classification issues on the Labor/Management agenda for discussion and possible resolution of outstanding issues. Should the Union dispute the proposed action of the Employer and the parties are unable to resolve their differences, they shall resolve the issue through arbitration pursuant to Section 25.03 of this Agreement. The Union shall appeal

the matter to arbitration by providing written notice to the Employer. The matter shall be submitted to a mutually agreed upon arbitrator knowledgeable in classification and compensation matters.

(Bold in original)

The parties have agreed in stipulation two that no procedural issue under Article 36, section 36.05(A)(1) is before the arbitrator. What remains is the Union's claim that the action by the Employer in determining the pay range for the Fire & Explosion Investigation Bureau Investigator classification, classification number 26531, was not based upon a proper application of the Jacobs Point/Factor evaluation system, a dispute that has not been resolved by the parties and is now, as stipulated by the parties, properly before the arbitrator for review and resolution.

The agreed issue statement in this matter specifies that the arbitrator is to determine whether the Ohio Department of Administrative Services properly applied the point/factor evaluation system to determine the pay range of the position under review. The appropriateness of using the Jacobs Point/Factor evaluation system in determining an appropriate pay range is not disputed and there is no dispute as to the job duties assigned to the position in question as expressed within the revised classification specification for Fire & Explosion Investigation Bureau Investigator, classification number 26531, that became effective July 28, 2013.

The grievance alleges an improper application of the Jacobs Point/Factor evaluation system upon the FEIB Investigator classification by the Ohio Department of Administrative Services in three categories – Worker Characteristics, Safety of Others, and Mental Skills.

The dispute between the parties as to Worker Characteristics under the Jacobs Point/Factor evaluation system encompasses two degrees - degree nine, the degree selected by the Ohio Department of Administrative Services in its most recent review, and degree ten, the

degree proposed by the Union and the degree selected by the Ohio Department of Administrative Services in its review conducted in 2005.

The Jacobs Point/Factor evaluation system states that the determinates of the degree to be assigned under Worker Characteristics are based upon the extent and complexity of the concepts interpreted, the field of knowledge applied, the problem being solved, or the equipment operated. Degrees nine and ten within the Jacobs Point/Factor evaluation system for Worker Characteristics read as follows:

Degree 9: General knowledge of an undergraduate core program of a field of study; basic knowledge of trigonometry, calculus, or statistical analysis; able to define problems, collect data, establish facts and draw valid scientific or technical conclusions; able to write and/or edit a variety of scientific or technical materials.

Degree 10: Able to define unusual problems, collect data, establish facts and draw complex conclusions; able to comprehend a wide variety of technical material; able to write and/or edit complex materials for technical audiences; general understanding of the field of law.

Ms. Sutherland testified at the hearing that the category Worker Characteristics is tied to minimum qualifications and major worker characteristics but is not tied to job duties. With this in mind it is noted that major worker characteristics had added to it in the revised FEIB Investigator classification specification knowledge of police science, criminal justice, criminal investigation, operating a personal computer, operating projection equipment, controlling combative suspects, and investigating explosions and related crimes.

The minimum qualifications for FEIB Investigator had added to it the requirement of current Ohio Peace Officer Training Academy Peace Officer certification and additional requirements relating to experience.

The Union has argued that major worker characteristics and minimum qualifications have been added to the classification specification for FEIB Investigator; the Jacobs Point/Factor evaluation system category Worker Characteristics has not changed since it was last applied to the position under review in 2005; in 2013, the Ohio Department of Administrative Services nonetheless downgraded the degree assigned to the position in question from degree ten to degree nine.

The arbitrator does not find that what has been added to major worker characteristics and minimum qualifications in the classification specification for FEIB Investigator favors either degree nine or degree ten under the category Worker Characteristics. The expansion of major worker characteristics in the classification specification for FEIB Investigator enlarges the fields of knowledge that qualify as major worker characteristics for the position under review but this expansion does not add to an incumbent's responsibilities under major worker characteristics. An incumbent is still required to satisfy only one of the options presented under major worker characteristics in the classification specification for FEIB Investigator, although the options available to satisfy major worker qualifications have increased.

The addition of the requirement of OPOTA Peace Officer certification is grounded in a statutory change that occurred in 2009 and is also an addition that does not differentiate between degree nine and degree ten of the category Worker Characteristics under the Jacobs Point/Factor evaluation system.

While the arbitrator finds that the major worker characteristics and minimum qualifications added to the classification specification for FEIB Investigator do not support an increase from degree nine to degree ten, neither do these changes support a reduction from degree ten to degree nine. Like the Union, the arbitrator finds little substance removed from the

revised classification specification for FEIB Investigator, finds substantial responsibilities involving explosions and related crimes added to the classification specification, and finds very little in the hearing record to support this downgrade other than the opinion expressed by Ms. Sutherland at the hearing that the Ohio Department of Administrative Services in 2005 had been mistaken in selecting degree ten under Worker Characteristics of the Jacobs Point/Factor evaluation system for the (then) Arson Investigator classification, classification number 26531.

The Jacobs Point/Factor evaluation system emphasizes the importance of punctuation in interpreting the language of each category's degrees. A semicolon is to be treated as an "or" and the absence of a semicolon or the word "or" requires that the entire degree be satisfied.

The two clauses set off by semicolons in degrees nine and ten of the category Worker Characteristics that are most comparable to the major worker characteristics and minimum qualifications of the position under review are:

Degree 9: ...able to define problems, collect data, establish facts and draw valid scientific or technical conclusions...

Degree 10: Able to define unusual problems, collect data, establish facts and draw complex conclusions...

A comparison of the above clauses from degrees nine and ten under Worker Characteristics in the Jacobs Point/Factor evaluation system reflects related duties that differ by degree (no pun intended). Degree nine refers to the ability to define problems; degree ten refers to the ability to define unusual problems. Both clauses refer to collecting data and establishing facts. Degree nine refers to drawing valid scientific or technical conclusions; degree ten refers to drawing complex conclusions.



The Ohio Department of Administrative Services staff members who reviewed the FEIB Investigator classification in 2013 presumably found that the complexity called for by degree ten under Worker Characteristics did not exist in 2013 and/or the nature of the problems encountered by FEIB Investigators in carrying out their duties were not sufficiently unusual to qualify for degree ten under Worker Characteristics. This view is contradicted by Ohio Department of Administrative Services reviewers in 2005 who based their conclusions on the same point/factor evaluation system as used in 2013 (the last modification of the Jacobs Point/Factor evaluation system occurred in 1989) and considered job duties that were limited to fire (arson) investigations. The arbitrator is persuaded that there is nothing in the revision of the classification specification for FEIB Investigator that reflects a diminution of the complexity of the conclusions that are drawn by FEIB Investigators in carrying out their duties, and there is nothing in the hearing record that indicates the problems faced by FEIB Investigators today are less unusual than the problems faced in 2005.

It should be remembered that one of the underlying reasons for the request from the Director of the Ohio Department of Commerce for a review of Arson Investigator, classification number 26531, was the Director's belief that the classification specification as written was too limited in its focus, and the July 28, 2013 revised classification specification for FEIB Investigator reflects the addition of the kinds of job duties described by the Director of the Ohio Department of Commerce in his letter of February 2, 2012. The addition of investigations of explosions and related crimes to the arson investigations that were formerly done exclusively presents a position that has been broadened in its scope of responsibilities. A preponderance of evidence in the hearing record does not indicate a reduction in the complexity of the problems

encountered and does not indicate that the nature of the problems to be confronted and solved have become more usual.

The arbitrator finds that the Employer has issued two conclusions that conflict on whether degree nine or degree ten is the more appropriate degree for FEIB Investigator under the category Worker Characteristics.

The arbitrator finds a lack of sufficient evidence to support the downgrade in degree for Worker Characteristics ordered by the Ohio Department of Administrative Services in 2013. More importantly, the arbitrator finds a comparison of the language of degree nine to the language of degree ten under Worker Characteristics does not show the downgrade to be appropriate. To define determining the cause and origin of fires and explosions, events that are inherently destructive of physical evidence that can assist in establishing the cause and origin of the fire or explosion, as unusual does not require a stretch in logic or language. The myriad different methods that can start a fire or cause an explosion imply a caseload that does not require performing repetitive, rote procedures to solve repetitive, usual problems.

Degree nine under Worker Characteristics refers to drawing valid scientific or technical conclusions, job duties that are clearly required of FEIB Investigators.

Degree ten under Worker Characteristics refers to drawing complex conclusions. The arbitrator understands degree nine to require an understanding of the science of what happened. Degree ten requires using the valid scientific or technical data collected to reach complex conclusions about what the evidence that has been scientifically gathered and proven means in terms of ascribing criminal culpability. Scientific or technical data collected by an FEIB Investigator may identify the ignition source and location of a fire or an explosion, describe the nature and mass of the combustible or explosive material, or calculate the force of the explosion.

To credibly analyze and explain the data collected and proven through the scientific method in the investigation so as to ascribe criminal culpability to one or more persons requires complex conclusions that transcend the collection and analysis of data from a crime scene. The arbitrator is persuaded that the FEIB Investigators are required to reach complex conclusions among problems that are neither usual, repetitive, nor solvable through the application of rote procedures.

The arbitrator finds that the application of Worker Characteristics by the Employer in 2013 was not proper under the Jacobs Point/Factor evaluation system and orders that degree ten be assigned to the review of FEIB Investigator, classification number 26531, with twenty-two points assigned to degree ten rather than the seventeen points offered by degree nine. This determination adds five points to the total points assigned to FEIB Investigator by the Ohio Department of Administrative Services, raising the total points from ninety-seven points to 102 points, a point total that still indicates pay range 32.

As to the category Safety of Others, the dispute between the parties focuses on degrees two and three of this category that read as follows:

Degree 2: Requires considerable responsibility for safety or health of others and/or for continuous enforcement of the laws and standards of public safety or health.

Degree 3: Requires high level supervisory responsibility or responsibility for inspecting or program monitoring/ compliance for public safety or health and for enforcement of the laws and standards of public safety or health.

The Union is correct in its description of the very real hazards that may be encountered by FEIB Investigators in the performance of their duties. The July 28, 2013 classification

specification for FEIB Investigator refers to exposure to unsafe structures, explosive material, fire, intense heat, toxic gases, and intense smoke. The FEIB Investigator classification specification, under unusual working conditions, refers to being exposed to dangerous persons, criminals, violence, resistance, and physical attack when making arrests or investigating fires.

There is within the Jacobs Point/Factor evaluation system a category titled Hazards that has within it degrees that relate to exposure to hazardous working conditions. Under the most recent review the parties agreed that what had been degree two under the 2005 review should be upgraded to degree three, thereby moving from two points to four points in recognition of the dangerous conditions faced by FEIB Investigators.

The category Safety of Others under the Jacobs Point/Factor evaluation system refers to the level of responsibility for the safety and health of others, with degree two referring to considerable responsibility for the safety or health of others and/or for the continuous enforcement of the laws and standards of public safety or health, and degree three referring to a high level supervisory responsibility or responsibility for inspecting or program monitoring/compliance for public safety or health and for enforcement of the laws and standards of public safety or health.

The responsibilities described in degrees two and three under Safety of Others refer to activities that occur at a location prior to a fire or an explosion occurring there. The position under review in this proceeding is not assigned high level supervisory responsibility or responsibility for inspecting for compliance or monitoring programs for compliance. The hazardous nature of the working conditions of an FEIB Investigator is addressed in a separate category and in a way that was agreeable to both parties. The arbitrator finds no basis upon which to change the degree selected by the Ohio Department of Administrative Services under

Safety of Others from degree two to degree three. The arbitrator finds that the Ohio Department of Administrative Services properly applied the Jacobs Point/Factor evaluation system for the category Safety of Others. The arbitrator orders no change to the assignment of degree two and its three points under the category Safety of Others. The arbitrator's decision in this regard leaves the point total at 102 points, with one category remaining to consider, Mental Skills.

The Jacobs Point/Factor evaluation system describes the category Mental Skills as referring to the necessity for, and the extent of analysis, judgment, initiative, ingenuity, and creativity required in performing the duties of the position under review. The determination of the degree under Mental Skills is based on the scope, variety, and complexity of tasks and skills required; the importance of decisions made; the extent of planning necessary; the frequency of occurrence of problems and the difficulty in achieving their solutions. According to the Jacobs Point/Factor evaluation system, consideration is to be given to the extent to which the requirement for mental skills is limited by the repetitive character of the tasks and the extent of supervision received.

The three degrees mentioned by the parties for Mental Skills read as follows:

- Degree 5: Requires general understanding of operating policies and procedures and ability to apply these to complex problems; or the application of professional – level principles and practices in the use of a wide range of methods in the solution of technical, administrative or legal problems.
- Degree 6: Requires creative ability, resourcefulness and discriminating judgment in the analysis and solution of complex problems; or advanced professional - level methods in the analysis or interpretation of work; and the ability to formulate recommendations on the basis of such work and to make technical decisions on specialized matters.

Degree 7: Requires advanced professional-level methods and principles in the analysis, coordination or interpretation of work of a professional nature and the ability to formulate important recommendations or make technical decisions on the basis of such work.

The arbitrator does not find that the duties assigned to FEIB Investigators require the kind of advanced professional-level methods and principles referenced in degree seven. FEIB Investigators are not called upon to perform work of a professional nature as that term is intended by degree seven. The arbitrator understands degree seven to refer to work that often requires post-graduate study, certification, and credentialing, and often requires a public license as in the case of an attorney at law, physician, or engineer. The work of FEIB Investigators is of the highest importance to public safety and does include complex problems but it is not work that is professional in nature or work that requires advanced professional-level methods and principles in the analysis, coordination, or interpretation of the work. The arbitrator does not find degree seven under Mental Skills to be appropriate to the FEIB Investigator position.

The first clauses in degree five and degree six read as follows:

Degree 5: Requires general understanding of operating policies and procedures and ability to apply these to complex problems[.]

Degree 6: Requires creative ability, resourcefulness and discriminating judgment in the analysis and solution of complex problems[.]

At the hearing, Department of Administrative Services Human Capital Management Senior Analyst Laura Sutherland testified that there is some proportional correlation between the category Worker Characteristics and the category Mental Skills. Ms. Sutherland testified that degree nine under the category Worker Characteristics correlates to degree four or degree five

under the category Mental Skills. The arbitrator has earlier in this decision determined that the more appropriate degree under the category Worker Characteristics is degree ten, a degree that would appear to correlate to a higher degree than degree five under the category Mental Skills.

The arbitrator is not persuaded that the duties required of an FEIB Investigator can be successfully performed with a general understanding of operating policies and procedures so as to apply these policies and procedures to complex problems. The nature of the work required of an FEIB Investigator does, in the opinion of the arbitrator, require creative ability, resourcefulness, and discriminating judgment in analyzing and solving complex problems. These demands upon the position under review indicate degree six under the category Mental Skills and would move the points under this category from sixteen points to twenty-four points, an addition of eight points, bringing the total points for FEIB Investigator to 110 points. 110 points, as indicated in the Jacobs Point/Factor evaluation system under schedule B, indicates pay range 33.

The arbitrator is mindful of the fact that he is not employed to substitute his judgment for that of the Ohio Department of Administrative Services. Article 36, section 36.05(A), however, empowers the Union to dispute the proposed action of the Employer, and if the parties are unable to resolve their differences in this regard, the issue is to be resolved through arbitration. The arbitrator of such a grievance must determine the propriety of the Employer's determination. As directed by the Agreed Issue Statement in the case herein, the arbitrator is to determine whether the Ohio Department of Administrative Services properly applied the point factor system.

Had the arbitrator herein determined that either degree nine or degree ten under Worker Characteristics or either degree five or degree six under Mental Skills would be appropriate for the position under review, the determination of the Ohio Department of Administrative Services would have been left undisturbed.

In the case herein, however, the arbitrator does not find degree nine under Worker Characteristics or degree five under Mental Skills to be a proper degree under their respective categories. The arbitrator therefore orders degree ten under Worker Characteristics and degree five under Mental Skills as the proper degrees for these categories. The resulting 110 points leads the arbitrator to order the assignment of pay range 33 to all Fire & Explosion Bureau Investigation Investigators, classification number 26531, effective July 28, 2013.

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## AWARD

1. The grievance giving rise to this proceeding is arbitrable and properly before the arbitrator for review and resolution.
2. The Department of Administrative Services did not properly apply the point factor system to determine the pay range of the FEIB Investigator (26531) classification in accordance with Article 36.05(A) of the Collective Bargaining Agreement.
3. The proper degree for Worker Characteristics under the Jacobs Point/Factor evaluation system for FEIB Investigator is ten; the proper degree for Safety of Others under the Jacobs Point/Factor evaluation system for FEIB Investigator is two; the proper degree for Mental Skills under the Jacobs Point/Factor evaluation system for FEIB Investigator is six; these degrees when added to the other degrees for the categories of the Jacobs Point/Factor evaluation system produce a point total of 110 points, indicating pay range 33.
4. All Fire & Explosion Bureau Investigation Investigators, classification number 26531, shall have their pay ranges changed to pay range 33 effective July 28, 2013, and shall receive back pay retroactive to July 28, 2013.

Howard D. Silver

Howard D. Silver, Esquire  
Arbitrator  
500 City Park Avenue  
Columbus, Ohio 43215

Columbus, Ohio  
April 14, 2014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO and the State of Ohio, Department of Commerce, Case Number 02-10-20130729-0011-01-03, was served electronically upon the following this 14<sup>th</sup> day of April, 2014:

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