**OCB AWARD NUMBER: 2254**

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| **SUBJECT:** | **ARB SUMMARY # 2254** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **25-06-20130401-0001-05-02** |
| **DEPARTMENT:** | **Department of Natural Resources** |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Robert Brookins** |
| **GRIEVANT NAME:** | **Andrew Philipot et. al.** |
| **MANAGEMENT ADVOCATE:** | **Kandie L. Carson** |
| **UNION ADVOCATE:** | **Douglas Behringer** |
| **ARBITRATION DATE:** | **3-13-2014** |
| **DECISION DATE:** | **7-07-2014** |
| **DECISION:** | **MODIFIED** |
| **CONTRACT SECTIONS:** | **Article 7.03** |
| **OCB RESEARCH CODES:** | **8.611 – Bargaining Unit** |

**HOLDING: The Employer violated the collective bargaining agreement when they took bargaining unit work away from bargaining unit employees. Wildfire reports and inspections were completed by bargaining unit employees 99% of the time before 2012. After integrating Forest Officers and Park Officers in 2012, the bargaining unit should still have been completing 99% of the reports, but instead 100% of the work was given to Managers.**

*Facts.* On October 24, 2012, through a Memorandum of Understanding, the Department of Natural Resources and the Fraternal Order of Police agreed to integrate the Forest Officer classification into the Division of Parks and Recreation. This agreement was to be temporary until a new classification could be utilized that would combine Forest Officers and Park Officers. The Memorandum stated that Forest Officers and Park Officers may be assigned the duties of each other’s’ classification. Prior to this Memorandum, Forest Officer’s completed approximately 99% of the wildfire reports and FEPP inspections. The rest of the reports were completed by non-bargaining unit employees. After the Memorandum took effect, none of the wildfire reports or FEPP inspections were completed by bargaining unit employees.

On March 9, 2013 a wildfire occurred in Swanton, Ohio. The Swanton County Fire Department extinguished the fire and provided a handwritten report of the incident. The wildfire caused damage across multiple property lines. The Forest Manager decided not to investigate the wildfire because he did not believe it met the criteria for an investigation. An Office Assistant 3 digitized the Swanton County Fire Chief’s report into ODNR’s system.

*The Employer’s Argument.* The Forest Manager properly exercised his contractual discretion to not investigate the wildfire. The wildfire in question did not clearly satisfy investigation criteria and therefore, did not warrant an investigation. The Office Assistant who digitized the report did not prepare the report, nor conduct the investigation. The collective bargaining agreement allows the Employer to implement automated processes and this is what the Office Assistant was doing.

Forest Officers never had the exclusive right to complete fire reports and investigations or FEPP inspections. This work was shared between bargaining unit and non-bargaining unit employees and was not the sole responsibility of the Forest Officers. The job descriptions of the non-bargaining unit employees manifestly include wildfire reports, FEPP inspections, and other bargaining unit work. Therefore, there is no erosion of the bargaining unit.

*The Union’s Argument*. The Forest Manager was duty bound to investigate the wildfire on March 9, 2013 because the damage was across multiple property lines. This duty comes from the “multiple property criterion” which has been used for previous wildfires. ODNR has eroded the bargaining unit by allowing the Swanton County Fire Department to investigate the wildfire and by allowing the Office Assistant to enter the fire report. Both of these duties belonged to bargaining unit employees.

The Department of Natural Resources has violated Section 7.03 of the collective bargaining agreement by not letting bargaining unit employees do the bargaining unit work that they did previous to the 2012 Memorandum of Understanding. It was the intent of the FOP that the duties of the Forest Officers only be shared between the Forest Officers and Park Officers, which are both bargaining unit positions. Since the Memorandum of Understanding the Forest Officers have not been able to complete wildfire reports or FEPP inspections because these duties are being done by Forest Managers.

*Holding.* The decision not to investigate the wildfire did not violate the collective bargaining agreement. There was no past practice of the “multiple property criterion” being a pivotal factor in deciding to investigate a wildfire. The wildfire did not meet any of the criteria set forth in Chapter Five of the fire manual for investigations. The decision not to investigate did not erode the bargaining unit.

ODNR has eroded the bargaining unit and violated Section 7.03 of the collective bargaining agreement by enlisting managers to complete bargaining unit work that was previously done by bargaining unit employees. Wildfire reports and FEPP inspections are bargaining unit work and the bargaining unit did 99% of this work before 2012. Even though the job description of the non-bargaining unit employees includes these duties, this does not trump the Employer’s duty to avoid bargaining unit erosion. The amount of bargaining unit work that bargaining and non-bargaining unit employees were doing after the Memorandum should have been based on the amount that they were doing previous to the Memorandum. Instead, ODNR has essentially barred the bargaining unit employees from completing the wildfire reports and FEPP inspections, which were a substantial part of their previous work. Therefore, the grievance is sustained in part and granted in part.