

# SUPPLEMENTAL OPINION AND AWARD

In the Matter of Arbitration

Between

Fraternal Order of Police, Ohio Labor Council, Inc.

And

The Ohio Department of Natural Resources  
& The Office of Collective Bargaining

Regarding

Grievance Number 25-17(09-21-05)-03-05-02  
(David Dobbins et. al.)

January 5, 2007

## APPEARANCES:

FOR THE STATE:

Brad Nielsen, Labor Relations Officer  
Michael Duco, OCB

FOR THE FOP/OLC:

Joel Barden, Staff Representative

This Arbitrator issued a decision and award in the above referenced case on October 21, 2006. The Decision in that case was:

***“DECISION AND AWARD:***

*The grievances are granted and the remedy requested is ordered. Those Officers who volunteered without restrictions or conditions, who were more senior than other Officers selected shall be compensated for an amount of overtime equal to that earned by the less senior Officers who were selected and deployed.*

*The Arbitrator will retain jurisdiction to resolve any disputes that may arise regarding the implementation of this award.”*

Pursuant to the retention of jurisdiction clause, the parties asked the Arbitrator to consider the question of remedy only as it pertains to the individuals who should receive the funds awarded.

A joint conference call was conducted January 5, 2007 wherein the parties argued their respective positions and asked the Arbitrator to issue a supplemental Award on this limited issue.

In addition the parties jointly submitted a brief outlining their respective views and positions in writing.

The Union believes the persons to be compensated should be *“the more senior Watercraft Officer’s from each of the Field Offices than the less senior Officer’s sent from each respective office from which members were selected.”*

The Employer believes *“the appropriate parties to the action are the more senior Officer’s based upon statewide availability and classification.”*

A review of section 22.08 reveals the controlling language: *“Scheduled events and overtime to be worked at other facilities will follow the selection procedure outlined above with seniority being determined in the defined area (i.e., facility, park, and region, state) from which the member is to be selected. In departments or divisions in which services and/or facilities are regionalized or in which regionalization is proposed or being implemented,”*

The record in the original grievance is unclear regarding exactly which universe was being used to draw employees to work this special assignment. At some point it appears the draw was statewide and others it appears to be by Office.

When forced to choose between the two views espoused by the parties, I must select the one presented by the Union. The evidence presented in the previous hearing notes that the main interest of the Employer was to assure that each office was staffed with a mix of seasoned and newer employees.

This leads me to conclude that the Offices really were the universe to be employed.

Clearly the language of 22.08 reserves to the Employer the right to determine the universe, and then once determined, the application of seniority needs to be made.

As noted in the original award the language also provides a vehicle whereby the Union and the Employer can agree to alternative methods of responding to such circumstances. The Advocates reported during the telephonic hearing that they are making progress in reaching such an agreement.

Without the benefit of a full record in this supplemental matter, and due to the lack of clarity about the universe used by management to make the selections, it is difficult to make the determination alluded to above.

But because the parties were unable to reach an agreement on their own, and because they requested this Arbitrator to make that determination, I will do so with the caveat that this supplemental should not be considered as precedent setting.

While the parties may find some precedential value in the original award, this Remedy Award should not be viewed as precedent setting.

#### **NON PRECEDENT SETTING REMEDY AWARD**

The appropriate parties to this Grievance are the more senior Watercraft Officer's who volunteered without restrictions or conditions from each of the Field Offices in which less senior Officer's were selected.

Issued at London, Ohio this 8<sup>th</sup> day of January, 2007.

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N. Eugene Brundige, Arbitrator