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GRIEVANCE COORDINATOR

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In the Matter of Arbitration	*	Case Number:
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Between	*	31-03-06-16-99-15-01-07
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OCSEA/AFSCME Local 11	*	Before: Harry Graham
	*	
and	*	
	*	
The State of Ohio, Department	*	
of Transportation	*	
	*	

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**APPEARANCES:** For OCSEA/AFSCME Local 11:

Butch Wylie  
 Staff Representative  
 OCSEA/AFSCME Local 11  
 390 Worthington Rd.  
 Westerville, OH. 43082-8331

For Ohio Department of Transportation:

Edward A. Flynn  
 Assistant Administrator, Labor Relations  
 Ohio Department of Transportation  
 1980 West Broad St.  
 Columbus, OH. 43223

**INTRODUCTION:** Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham in Ashland, OH. on December 10, 2002. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

**ISSUE:** At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did Management perform Safety Inspector bargaining unit

work in violation of the Contract by conducting Adopt-A-Highway safety training? If so, what shall the remedy be?

**BACKGROUND:** There is substantial agreement between the parties over the events that prompt this proceeding. In 1985 Texas began an Adopt-A-Highway program. It was the first state in the nation to have such a program. Prompted by Ohio residents who had seen the Texas Adopt-A-Highway signs Ohio initiated a pilot Adopt-A-Highway program in 1989. That program was judged a success and was implemented statewide. Operation of the program is administered from the various Ohio Department of Transportation District Offices in the State. This dispute arises in ODOT District 3, headquartered in Ashland, OH.

The Adopt-A-Highway program involves various civic groups assuming some responsibility for litter control on State Routes, United States Routes or Interstate Highways. When an organization indicates its interest in participating in the Adopt-A-Highway program its volunteers receive a training course. Included in the training are such topics as bag construction and use, how to pick up litter, water supply to volunteers and safety. In ODOT District 3 training came to be conducted by Kim Reed and Mark Mayer. When this grievance arose both were classified as Safety and Health Inspectors. On June 8, 1999 Inspectors Reed and Mayer were not offered overtime. A supervisor rather than Ms. Reed and Mr. Mayer

made a safety presentation to a group entering the Adopt-A-Highway program. Subsequently supervisors made other presentations regarding safety to volunteers in the Adopt-A-Highway program within District 3's jurisdiction. A grievance protesting this action was filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

**POSITION OF THE UNION:** The Union points out that historically in District 3 training has been done by the Safety and Health Inspectors. They trained Adopt-A-Highway volunteers from inception of the program in 1989. That changed in 1999. Prior to the change Inspectors had many overtime opportunities. The Agreement at Section 1.05 deals with Bargaining Unit Work. It provides that "... the Employer shall make every reasonable effort to decrease the amount of bargaining unit work done by supervisors." It also indicates that Supervisors shall do bargaining unit work only to the extent they have done so in the past and that the amount of bargaining unit work done by supervisors shall not increase. In this case the Safety and Health Inspectors performed training of Adopt-A-Highway volunteers. They came to be supplanted by supervisory, non-bargaining unit, personnel. That represents a violation of Section 1.05 of the Agreement the Union asserts.

Supervisors who have trained Adopt-A-Highway volunteers are classified as Transportation Managers. Their classification series (Jt. Ex. 18) does not indicate that they are eligible to perform the sort of training done by the Safety and Health Inspectors. To the contrary, in District 3 safety training of Adopt-A-Highway volunteers was done by the Grievants. By assigning supervisors the Employer has reduced their opportunity for overtime and is engaging in performance of bargaining unit work. The Union urges the grievance be sustained and backpay made to the Grievants.

**POSITION OF THE EMPLOYER:** The State points out that while the Safety and Health Inspectors in District 3 performed safety training of Adopt-A-Highway volunteers that practice was not general throughout the State. In the various ODOT Districts people in a variety of classifications performed the safety training. There is no State-wide practice of having the Safety and Health Inspectors train Adopt-A-Highway volunteers.

The Classification Specification for Safety and Health Inspectors (Jt. Ex. 19) sets forth with precision the tasks they perform. Nowhere does it indicate they train Adopt-A-Highway volunteers. For instance, the Safety and Health Inspector 1 "conducts safety training meetings for satellite facility employees...." The Safety and Health Inspector 2

"provides safety training and counseling to lower-level safety & health inspectors...." It is not within the duties of the Safety and Health Inspector to conduct safety training of the sort urged is guaranteed to them by the Union. The State acknowledges that the Grievants historically conducted the safety training of Adopt-A-Highway volunteers in ODOT District 3. This was a matter of administrative convenience for the State. At times people in other classifications conducted the training as well. Safety and Health Inspectors have no right to perform the training at issue in this dispute the State contends. Consequently, it asserts the grievance must be denied.

**DISCUSSION:** Before Section 1.05 "Bargaining Unit Work" becomes applicable the Union must show the work is within the jurisdiction of the bargaining unit. In this situation it cannot do that. The Classification Specification for the Safety and Health Inspectors does not extend to providing safety training to Adopt-A-Highway volunteers. No mention of such a duty is found in the Classification Specification. The Safety and Health Inspectors do safety training of co-workers, not the public. It cannot be said that duties claimed by the Union in this situation are exclusively those belonging to the bargaining unit.

Joint Exhibit 18 is the Classification Specification for


the Transportation Manager series. It provides that "At the higher level, employees develop, implement & enforce policies, procedures & safety practices relating to all or a combination of programs &/or operational activities having statewide or district-wide impact." It also indicates that the Transportation Manager 1 has as part of the "Major Worker Characteristics" "Routemarking and Associated Safety Practices." It suggests that Transportation Managers have direct responsibility for implementing safety practices for the general public, eg. Adopt-A-Highway volunteers.

In practice for many years the State has utilized employees in various classifications to perform safety training of Adopt-A-Highway volunteers. No grievance other than this is on record suggesting the Union has regarded the practice as improper. Bargaining unit and non-bargaining unit members alike have trained Adopt-A-Highway participants. Among bargaining unit members, people in different classifications have performed the safety training in various ODOT Districts. In ODOT District 3 the practice developed of having the Safety and Health Inspectors perform the training. This does not guarantee that work to them in perpetuity when it is not included in their classification specification. Absent an indication in the Classification Specification that training of Adopt-A-Highway volunteers is reserved to Safety

and Health Inspectors the Union cannot prevail in this dispute. Only if such training were part of their duties would the provisions of Section 1.05 of the Agreement be germane to this situation.

**AWARD:** The grievance is denied.

Signed and dated this 2<sup>nd</sup> day of January, 2003 at Solon, OH.

  
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Harry Graham  
Arbitrator