

**IN THE MATTER OF
ARBITRATION BETWEEN**

-AND-

DECISION IN:

ODNR CADETS TRAVEL REIMBURSEMENT

GRIEVANCE: The Grievance alleges the Employer violated the Collective Bargaining Agreement when it refused to pay DNR Cadets Time and Travel Expenses to/from Ohio State Highway Patrol Academy.

ARBITRATOR: David W. Stanton, Esq.

Kimberly A. Rutowski, Attorney
Jeffrey D. Gray, Attorney
Connor Zamilski, Attorney
Shaun Lentini,
Union Representative/Grievant

ADMINISTRATION

By Email correspondence dated February 13, 2024, from the State of Ohio, Office of Collective Bargaining, the undersigned was notified of his selection from the Parties' Permanent Panel, to serve as Impartial Arbitrator to hear and decide the "ODNR Cadets Travel Reimbursement Grievance" of Shaun Lentini, *et.al.*, then in dispute between these Parties. On April 30, 2024, at the Department of Natural Resources, Central Office, 2045 Morse Road, Columbus, Ohio, an Arbitration Hearing was conducted wherein each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced; and, where Union Representative/Grievant, Shaun Lentini appeared and testified on behalf of the Bargaining Unit. The Evidentiary Record of this proceeding was subsequently closed upon the Arbitrator's receipt of each Party's Post-Hearing Brief filed in accordance with the arrangements agreed to at the conclusion of the presentation of evidence. Accordingly, this matter is now ready for final disposition herein.

GRIEVANCE AND QUESTION TO BE RESOLVED

The following "Statement of Grievance", as gleaned from Joint Exhibit 2, filed on or about March 14, 2023, contains the subject matter for disposition herein as follows:

GRIEVANCE DNR-2023-00717-02

Statement of Grievance:

ODNR Cadets are required to attend a resident Academy as a work assignment. P&W Cadets are not being provided a vehicle or reimbursed for expenses for travel to and from the Academy. P&W and WL Cadets are not being paid for travel to and from the Academy.

Resolution Requested:

Cadets are provided a vehicle and/or reimbursed for expenses associated with travel to and from the Academy including back pay and benefits; Cadets are paid for travel time

including back pay and benefits; Other resolutions identified through the grievance process; Affected members are made whole from any harm suffered.

Electronic Signature: /s/ Shaun Lentini

Submission Date: 3/14/2023

The issue(s) for disposition by the Arbitrator is/are framed as follows:

Did the Employer violate the Collective Bargaining Agreement, Article 7, “Union Recognition and Security”, Section 7.03, “Bargaining Unit Work”; Article 33, “Reassignments and Required Transfers”; and/or, Article 59, “Travel”, when it refused to pay time and travel expenses to Department of Natural Resources Cadets for travel to and from the Ohio State Highway Patrol Academy?

If so, what is the appropriate remedy?

**CITED PROVISIONS OF THE
COLLECTIVE BARGAINING AGREEMENT**

The following provisions of the Parties’ Collective Bargaining Agreement, Joint Exhibit 1, were cited and/or are deemed relevant herein as follows:

ARTICLE 7 – UNION RECOGNITION AND SECURITY

7.03 Bargaining Unit Work

Management shall not attempt to erode the bargaining unit the rights of bargaining unit employees or adversely affect the safety of employees...

ARTICLE 22 – HOURS OF WORK AND OVERTIME

22.09 Reporting to Work

Employees shall be at their work sites, report-in location or headquarters location by their shift starting time. A Natural Resources Officer’s report-in location shall be one assigned park. Any employee who must begin work at some location other than his/her actual work location or headquarter county or any Natural Resources

Officer who must begin work at some other location other than his/her assigned park shall be compensated according to current Department/Agency practices.

ARTICLE 33 – REASSIGNMENTS AND REQUIRED TRANSFERS

33.01 Reassignments

Work assignments within like classifications series may be made as necessary to maintain operations. In the Department of Public Safety, Enforcement Unit, when management determines to fill a vacancy in the divisions affected by this Agreement, employees and like classifications are eligible to indicate their interest in work reassignment to this vacancy. Such expressed interest will be given first consideration by management on the basis of ability and classification seniority. If Peace Officer training is required as a condition of employment in the division where the vacancy exists, such a reassigned employee shall be given the opportunity to receive the required training within one (1) year at the Employer's expense. Failure to successfully complete the required training will result in a reassignment back to his/her original position.

Each member of the bargaining unit from the Department of Public Safety, Enforcement Unit may submit his/her request for reassignment to another division to the Personnel Division of the Department of Public Safety. All requests shall be given first consideration as vacancies occur.

33.03 Moving

Members who have been required to transfer and who have residency requirements shall be given two (2) paid days off at their regular rate for moving.

Moving expenses will be authorized and paid by the Employer for employees when the transfer has been mandatorily required by the Employer. The Employer may authorize and pay moving expenses in the event of a residency requirement related to transfer or promotion, if such movement would be desirable to the Employer. Moving expenses will not be granted when the transfer is at the request of the individual. When reimbursed, moving expenses will be paid in accordance with the Ohio Revised Code.

33.04 Temporary Living Expenses

An employee shall be entitled to reimbursement for meals and lodging for up to twenty (20) working days, as provided by procedures of the Department of Administrative Services, following a transfer initiated by the Employer.

33.05 Transfers

Transfers and work location reassignment will not be used as discipline. The parties agree that the Department of Public Safety shall have the authority to

reassign employees from the Governor's Residence and/or the Ohio Statehouse to other work locations in the Columbus, Ohio metropolitan area at its discretion. No employee will experience a reduction of compensation or layoff as a result of such transfer.

ARTICLE 59 – TRAVEL

59.01 Cash Advance

If an employee is required by the Employer to use his/her personal vehicle for state business, he/she shall be reimbursed at the rate by the Director of OBM. The mileage allowance shall not be set less than forty-five (\$.45) cents per mile, but if the Internal Revenue Service's rate is reduced to an amount lower than forty-five (\$.45) cents, the rate will be set at the Internal Revenue Service's rate...

59.02 Expense Reimbursement

The Employer will continue to provide the standard and uniform procedure in accordance with the Office of Budget and Management and the Auditor of the State under which authorized employees may secure reimbursement of personal funds expended in connection with the performance of assigned duties. Improvements in reimbursement rates by OBM shall be incorporated herein. The Agency may require receipts or other proof of expenditures before providing reimbursement.

If the Agency Head, or designee requires an employee to stay overnight, the employee shall be reimbursed up to the rate set by the U.S. General Services Administration, plus tax per day for actual lodging expenses incurred. The employee shall receive a per diem rate for meal expenses and other incidentals incurred at the rate set by the U.S. General Services Administration, prorated in accordance with the regulations of the Office of Budget and Management (OBM). The Agency may require receipts or other proof of expenditures before providing reimbursement, except for meals and incidentals. A State vehicle will be provided for state business.

FACTUAL BACKGROUND

The operative facts which gave rise to the filing of this Grievance, challenging the Employer's refusal to pay DNR Cadets time and travel expenses in violation of Article(s) 7, titled, "Union Recognition and Security", Article 33, titled, "Reassignments and

Required Transfers”, and Article 59, titled, “Travel”, are, except where otherwise indicated, essentially undisputed. The State of Ohio, Department of Natural Resources, hereinafter referred to as the “Employer”, is party to a Collective Bargaining Agreement, Joint Exhibit-1, with the State of Ohio, Unit 2 Association, the sole and exclusive bargaining representative, hereinafter referred to as the “Union”, which sets forth the rights and obligations of these Parties and delineates the terms and conditions of employment including, but not limited to, certain contractual entitlements available to Members of the Bargaining Unit, including when and under what circumstances DNR Cadets are entitled to Travel Expenses.

Bargaining Unit Members are employed across two sub-divisions: Parks and Watercrafts and Wildlife. The Bargaining Unit, as recognized by the State Employment Relations Board, includes all full-time and part-time Employees in the classification of Natural Resource Officers (“NROs”), Natural Resource Officer Cadets (“NROCs”), Wildlife Officers (“WLO”), and Wildlife Officer Cadets (“WLOC”). Both NROCs and WLOCs attend the in-resident Academy in Franklin County, Columbus. Cadets attend the resident training Academy for approximately twenty-three weeks. Cadets are required to stay at the resident training Academy from Monday at 7:00 AM through Friday at 5:00 PM, when they are ordered to leave for the weekend. The Academy consists of an initial two-week orientation at the Ohio State Highway Patrol Academy and an Ohio Peace Officer Training Academy for twenty-one weeks. Cadets also attend an additional Phase 2 training at either the National Resources Officer or Wildlife Academy for ten weeks following the completion of OPOTA. After Academy training, Cadets attend a ceremony

and are sworn in and promoted to the Natural Resource Officer or Wildlife Officer classification.

Prior to attending the OSP Academy, prospective NROs and WLOs apply for a position within P&W or Wildlife. Prior to NRO Academy Class 5, prospective Employees were not advised of their work assignments until they were promoted from NROC or WLOC to NRO or WLO. However, according to the Union, beginning with Class 5, the process began to change and according to the Employer such changes were endeavored to enhance recruitment and retention. The first step in the hiring process is to notify active NROs the transfer canvas period is ending. Such serves as a final reminder for active NROs the transfer canvas period is closing. After the transfer canvas period ends, the State can determine which locations and Districts have vacancies. Once the State has established which locations have vacancies, it sends a notification to active NROs stating the new job posting for Class 5 is “live” and encourages recruitment. For Class 5, the job posting stated the State was accepting applications for NROCs for “multiple locations” within P&W.

Additionally, the job posting stated, “Headquarter County/Work unit will be determined by fall 2022 with an Academy start date in February 2023.” Class 5 began the OSP Academy on January 23, 2023. Multiple Class 5 NROCs discovered their Headquarter County/Work unit on February 24, 2023. After the OSP Academy, Class 5 took their OPOTA test and began a 10-week NRO Academy as part of Phase 2 of the training. Class 5 NROCs were not reimbursed for mileage accrued while attending the OSP Academy in Phase 1 but did receive reimbursement for travel to both the OSP

Academy and the NRO Academy in Phase 2. Some members of Class 5 received State vehicles, which were used to drive to the NRO Academy for training while still a NROC.

The process for WLO Academy Class 31 (“Class 31”) was similar to Class 5, with certain differences. First, Class 31 began its OSP Academy on August 22, 2022, and graduated on March 26, 2023. Class 31 was aware of their assigned locations before attending the Pre-Academy Orientation and Class 31 WLOCs were assigned State vehicles after graduating from the OSP Academy. The State vehicles were used by the Class 31 WLOCs to travel to and from Phase 2 training. Like Class 5, Class 31 was not reimbursed for travel expenses in Phase 1 of training.

The process for hiring NROCs changed with NRO Academy Class 6 (“Class 6”). Class 6 began its training on July 17, 2023, and graduated on March 10, 2024. The Class 6 job posting listed sixteen (16) locations (seventeen (17) positions available) where the NROC could be headquartered - Franklin County was not listed. Another difference between the Class 5 and Class 6 hiring process was the Transfer Canvas Period occurred approximately two (2) months earlier. Natural Resources Officer Investigator (“NROI”) Shaun Lentini testified the earlier Transfer Canvas Period was due to the State attempting to accommodate Class 6, resulting in the NROCs knowing which headquarter location they would be headquartered at before the OSP Academy. This statement is supported by “placement letters” sent to several of the NROCs in Class 6. According to the placement letters, Class 6 was notified of their headquarters location on July 10, 2023. As such, Class 6 NROCs were aware of their headquarters location a week before they started the two-week orientation at the OSP Academy. While engaged with Phase 1 of their training, Class 6 did not receive travel reimbursements. However, during Phase 2 of their training,

Class 6 either received a State issued vehicle or were reimbursed for travel expenses to the OSP Academy, as well as, the NRO Academy.

The hiring process for WLO Academy Class 32 was similar to the process for WLOCs in Class 31. The job posting for Class 32 included fifteen (15) positions throughout the State. Applicants for Class 31 were scheduled to attend their orientation on August 14, 2023, and graduate on March 24, 2024. Several members of Class 32 received notice of their headquarters/work location during the hiring process in July 2023; several weeks before they entered the OSP Academy. Class 32 did not receive travel reimbursement during the OSP Academy but were provided State issued vehicles they were permitted to use for travel to and from the OSP Academy and the WLO Academy.

The hiring process for NRO Academy Class 7 changed slightly compared to Class 6. Class 7 was notified of their headquarter/work location the date they arrived at the OSP Academy for orientation. Class 6 learned of their headquarter/work location roughly a week before arriving at the OSP Academy for orientation. At the time of the Arbitration Hearing, Class 7 had not completed their training. Thus, an Expense Report has not yet been completed. However, NROI Lentini testified none of the NROCs in Class 7 have obtained a State issued vehicle or received travel reimbursement.

Job postings for NRO Class 8 hiring process allowed applicants to apply directly for commissioned and non-commissioned positions. Applicants for Class 8 could apply directly to commissioned and non-commissioned locations within the Central, Northeastern, Northwestern, Southeastern, and Southwestern Districts. For example, a commissioned applicant, desiring a headquarters location in the Central District, can view

the commissioned application online and see there were vacancies in Alum Creek State Park, Delaware State Park, and Indian Lake State Park. Effectively, applicants applying for Class 8 will know their headquarters location at the time they apply for the position.

The issue concerning travel reimbursement and payment to and from the OSP Academy arose with the 2023 Cadet Classes. NROI Lentini testified he was made aware of the issue by several members of the Cadet classes and upon investigation by the Union, believed the State was in violation of the CBA. NROI Lentini made an inquiry with the State, which was ultimately denied. In response, NROI Lentini filed the instant Grievance on behalf of the affected Members in each Cadet class. The Grievance proceeded through the negotiated Grievance Procedure without resolution.

When the Party's efforts to resolve this matter through the course thereof proved unsuccessful, the DNR Cadets Time and Travel Expenses Grievance was appealed to Arbitration hereunder.

CONTENTIONS OF THE PARTIES

UNION CONTENTIONS

The Union contends, when interpreting disputed contract language, Arbitrators typically adopt either an objective or subjective approach. When applying an objective approach to contract interpretation, Arbitrators give the disputed language the “meaning that would be attached to the integration by a reasonably intelligent person acquainted with all the operative usages and knowing all the circumstances prior to and contemporaneous with the making of the integration, other than oral statements by the parties of what they intended to mean”. Under the objective approach, the “meaning the Parties may themselves have attached to their language is nondeterminative”. Similarly,

where contract language is clear and unambiguous, Arbitrators will also apply a related theory known as the “plain meaning rule.” The plain meaning rule requires “that if the words are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used”.

Additionally, the subjective approach to contract interpretation defines “interpretation” as “the ascertainment of the meaning of an agreement or a term thereof as intended by at least one party”. The intention of a Party is “the intention manifested by rather than any different undisclosed intention”. When the Parties have attached different meanings to an agreement, or a term within, it is interpreted “in accordance with the meaning attached by one of them if at the time the agreement was made that Party did not know, or had no reason to know, of any different meaning attached by the other, and the other knew, or had reason to know the meaning attached by the first party”. Regardless which approach is applied, the State has violated the CBA, wherein the plain meaning of Article 59, Section 59.01 requires the Employer reimburse Employees required to use their personal vehicles for “State business”.

The term “required” is unambiguous and there is no doubt that NROCs and WLOCs were required to use their personal vehicles for travel to and from the OSP Academy. NROI Lentini testified Cadets at the OSP Academy are *required* to be at the OSP Academy at 7:00 AM on Monday mornings for breakfast and are *required* to stay in-residence until Friday at 5:00 PM, when the Cadets are *required* to vacate the OSP Academy for the weekend. In order to comply with the Employer’s orders, the Cadets

were required to drive from the Cadet's home to the OSP Academy on Mondays and were required to drive from the OSP Academy to the Cadet's home on Fridays.

While the Parties have attached different meanings to the term "State business", the Union interprets "State business" to include all travel to and from any Academy for training purposes. The State's interpretation is less clear. Initially, the State provided a copy of Rule 126-1-02 of the Ohio Administrative Code to define "Reimbursable Travel Expenses." Under the Administrative Code, Reimbursable Travel Expenses include "expenses that are actually incurred as a necessary part of approved travel". However, the Rule does not define "State business." The State's interpretation seemingly evolved throughout the hearing to include travel to and from a report location other than the Employees' report headquarters, including the NRO or WLO Academies, but not travel to the OSP Academy, characterizing travel to the OSP Academy as a "commute", relying on documentation indicating Cadets were headquartered in Franklin County. Thus, under the State's approach, driving to an Academy can be State business, in certain scenarios. This position is not supported by the facts, and is direct conflict with three crucial facts, which include: (1) the use of State vehicles, (2) Cadet expense reports, and (3) NROCs are not headquartered in Franklin County.

First, the State's interpretation is not supported by the use of State vehicles for travel to and from the OSP Academy for training. It is undisputed all WLOCs, and several NROCs, received State issued vehicles after completing Phase 1. Training Coordinator Jeremy Davis testified State issued vehicles may only be used for State business. Furthermore, Mr. Davis stated NROCs issued vehicles may use them for travel to the NRO Academy. All NROCs not issued vehicles were reimbursed for all travel to

locations other than their headquartered county, including travel to and from the OSP Academy in Franklin County. NROI Lentini testified NROCs issued vehicles used them to travel to the OSP Academy for follow-up training. This is significant because it demonstrates travel to the OSP Academy for follow-up training is State business. In fact, several Cadets received travel reimbursement during Phase 2, for travel to the OSP Academy.

Second, Travel Expense Reports for Class 5 and Class 6 indicate travel to and from the NRO Academy and the OSP Academy was reimbursed during Phase 2. For Class 5, NROCs Colvin, McConnell, Pollock, and Todd all received personal mileage for travel to the Central Office in Columbus. Importantly, these Members were still Cadets in Phase 2 of training. Similarly, for Class 6, NROC Bedard received personal travel reimbursement for travel to and from the OSP Academy three (3) times. NROC Bedard was still a Cadet in Phase 2 of training at the time of the reimbursement. Based thereon, it is clear travel to any Academy for training as a Cadet is considered “State business” and has historically been reimbursed. The key issue becomes, why are Phase 1 Cadets treated differently than Phase 2 Cadets? The State has not provided any valid reason for treating Phase 1 Cadets differently.

Third, the evidence of record does not indicate the Cadets are headquartered in Franklin County. Assuming, *arguendo*, this Arbitrator is not convinced that NROCs should receive travel reimbursement for travel to the OSP Academy because they are traveling to their headquarters location, there is substantial evidence Franklin County is not the NROCs’ headquarters location. Beginning with Class 5, NROCs began being informed of their headquarters location much earlier than previous classes. Class 5

discovered their headquarters location roughly two (2) to three (3) weeks into the OSP Academy. Class 6 discovered their headquarters location a week before orientation. Class 7 discovered their headquarters location the day of orientation. Class 8 is able to apply directly to a specific District and is aware which headquarters have vacancies. On a similar note, WLOCs in Class 31 and Class 32 discovered their headquarters locations before arriving at the Academy. The State argues travel to the OSP Academy is essentially a commute, which is not defined in the CBA. However, the Internal Revenue Service defines a “commute” as “the costs of taking a bus, taxi, or driving a car between your home and your main place of work”. This definition seems to support the State’s argument it will not pay for commuting to the headquarter location. However, that is not the case given the State’s payment of personal mileage to Class 5 and Class 6 for travel to and from the OSP Academy and the NRO Academy in Phase 2. This is because neither of those locations are the Cadets’ headquarters locations.

Significantly, Franklin County is not listed as a headquarters location in any of the job postings for NROCs or WLOCs. This is because Franklin County is not a headquarters location. Rather it serves as a temporary duty assignment for Cadets until they graduate. The NRO Roster provided by the Union illustrates this point. Even while in the OSP Academy, the NROCs’ headquarters location is not Franklin County. Specifically, the Cadets’ headquarter location matches the location provided to the Cadets before orientation. For example, NROC Hines received her appointment letter on July 10, 2023, with a headquarters location of Deer Creek State Park. According to the NRO Roster, NROC Hines headquarters location is Deer Creek State Park, *not* Franklin County. The same is true for all NROCs. The State relies on personnel documents

presented at the Hearing that show the NROCs work location as Franklin County. While the work location is listed as Franklin County on these documents, the State failed to mention the purpose of this is rooted in taxes. Because the OSP Academy is in Franklin County, the State must list Franklin County as the work location to ensure proper taxes are paid. However, this does not mean Franklin County is the headquarters location.

The State's interpretation is nonsensical. If taken to its logical conclusion, the State's interpretation would give it the power to assign Employees to temporary duty assignments in order to circumvent the contractual right to travel reimbursement. For example, under the State's interpretation it could temporarily assign an Employee who is normally headquartered in Hamilton County to Lucas County and require that Employee "commute" to Lucas County while refusing to reimburse for travel expenses. This result would not be in accordance with the intent of the Parties when they mutually agreed to the language concerning travel reimbursement. It is clear the Union's interpretation is the most reasonable interpretation. Under that interpretation, the State has violated Article 59, Section 59.01 of the CBA. Because the State has failed to pay travel reimbursement under Article 59, Section 59.01, it has failed to provide "standard and uniform" procedures for the payment of travel expenses under Article 59, Section 59.02.

During the Arbitration Hearing, the State floated an alternative theory suggesting Cadets transferred from one headquarters location to another in an effort to show reimbursement was not appropriate. Law Enforcement Program Administrator for Wildlife, Jim Quinlivan, stated WLOCs were permanently assigned to Franklin County and were ultimately transferred to another headquarters location. If true, Cadets should have received moving expenses for a required transfer under Article 33, Section 33.03 of

the CBA. Based upon Mr. Quinlivan's testimony, Cadets were transferred to another headquarters location upon promotion. However, none of the Cadets received moving expenses under Article 33, Section 33.03. The plain language of the CBA requires the State pay moving expenses when Employees are required to transfer. While the Union maintains the appropriate Article for this issue is Article 59, if this Arbitrator finds the Cadets were transferred to another headquarters location, the State has violated the CBA by not providing moving expenses to the Cadets.

Article 7, Section 7.03, is a catch-all Article that protects the rights of Union Members. Specifically, the relevant portions of Article 7, Section 7.03, state, "Management shall not attempt to erode the bargaining unit, *the rights of bargaining unit employees*, or adversely affect the safety of employees". Here, there is sufficient evidence to establish the State has failed to reimburse Cadets for travel to and from the OSP Academy. In addition, there has been an effort from the State to suppress the Cadets from exercising their rights within the CBA. Class 31 WLOCs were "scolded" when they dared to ask Mr. Quinlivan why they were not receiving mileage reimbursement or drive time pay. This effort has a negative impact on the Cadets and creates a fear of exercising their contractually guaranteed rights. This includes the right to grieve, which was impacted in this case. This resulted in NROI Lentini grieving the contractual violations on behalf of the Cadets. Therefore, under the objective approach to contract interpretation, the Employer violated Article 7, Section 7.03 when it suppressed the Cadets' contractual rights.

For these reasons, the Union requests the Grievance be Sustained.

EMPLOYER CONTENTIONS

As an issue case, the Union has the burden of proof to demonstrate the cited Contract Articles were violated. The Union offered no mention of Article 7 throughout the Hearing. The brief mention of Article 33 was in their opening statement as an alternate violation if you did not find a violation of Article 59. The focus of the Union's evidence and testimony was on a change of practice, but not a change to Article 59. The change was to job postings and notice regarding reporting locations upon completion of Academy training. Neither change described by the Union altered Contract language, and neither change entitled Cadets to reimbursement for their commute to the Ohio State Highway Patrol Academy (Franklin County).

Management witnesses Davis and Quinlivan stated in their testimony there has been no change to how Cadets have been paid in the many years they have been responsible for the Cadet training. Davis had also been a member of previous Bargaining Teams when he was in the Union. He stated there has been no change since then either. If Management was misinterpreting the travel reimbursement language, Davis would have known based on his prior association with the Union. Further, if Management had been misinterpreting this language, Unit 2 has been representing Cadets since 2018, and there have been Classes prior to the instant Grievance when they could have raised this issue. The only way the Union can claim a Grievance now is to allege a change in practice because there has been no change to the Contract language. There was no testimony from the Union the Travel Article - Article 59 - has changed to include commute time. Instead, the Union is attempting to backdoor this issue by alleging the job posting changed the reporting location. This too is false. Testimony from Management

witness Christine Smith detailed jobs are posted with the primary location of Franklin County because they report to the Academy and the headquarter county does not change until they are promoted to Officer upon completion of their training. The travel reimbursement Article and rules have remained the same, as has Management's application thereof.

The Employer asserts, "reimbursement" by definition is repayment. Article 59 is the Contract section which provides for repayment of travel expenses. Specifically, Article 59.01, states, "[I]f an employee is required by the Employer to use his/her personal vehicle for state business, he/she shall be reimbursed at the rate by the Director of OBM". Other repayments may be made according to rules established by Article 59.02, "The Employer will continue to provide the standard and uniform procedures in accordance with the Office of Budget and Management and the Auditor of State under which authorized employees may secure reimbursement of personal funds expended in connection with the performance of assigned duties". There are three (3) criteria for reimbursement 1) OBM procedures, 2) personal funds expended, and 3) performance of assigned duties/state business.

With respect to OBM procedures, the Contract incorporates the OBM travel rules by reference. On cross examination, the Union witness was asked if he was aware of the OBM rules (*See*, Management Exhibit 1). He was referred to Section (C)(2), paragraph 2, "A state agent shall not be reimbursed for mileage commuting from his/her residence to his/her headquarters nor from his/her headquarters to his/her residence". This is where analysis of the alleged violation should end, and the Grievance should be denied.

In the Union's opening statement, they made clear they were seeking travel time and mileage to and from the Academy.

Evidence and testimony by the Union witness discussed other travel expenses when traveling to training during what he called Phase 2 (post Academy or Division training). His testimony indicated this training required travel to locations other than the Employee's headquarters. This is also covered by OBM rules (*See*, Management Exhibit 1, p. 5, paragraph 2), "[I]f a state agent is required to report to a location other than his/her headquarters, the state agent will only be reimbursed for the distance from his/her residence to the alternate location, less the state agent's normal commute distance". Joint Exhibits 3 & 4 document travel expenses paid by the Employer. The Expense Description column notes when travel is to a location other than the Academy. Testimony from Management witnesses Davis and Quinlivan confirmed the Agency did reimburse Cadets for travel expenses when reporting to locations other than the Academy because the Academy was the Cadet's report location/headquarters.

Additionally, while attending the Academy, Cadets did not expend any personal funds. Lodging was paid for while in residence during the week, meals were provided by the Academy, and there were no travel expenses since they were in residence during the week. Union testimony attempted to show Cadets were not paid while at the Academy, but the same evidence (Joint Exhibits 3 & 4) illustrates Cadets were reimbursed in accordance with OBM rules when traveling to a location other than the Academy or traveling from the Academy to another location. No evidence was presented by the Union Cadets were denied reimbursement for expenses while at the Academy.

Moreover, The Union witness called travel to the Academy state business and defined this as travel status. The witness failed to describe any work performed on behalf of the Employer while Cadets traveled from their residence to the Academy. He also failed to explain how the Cadets were in active pay status (i.e., actively working). The Union witness recalled a time he was paid for travel expenses for transporting equipment for the Employer (i.e., actively working), but he did not provide any similar examples involving Cadets traveling to or from the Academy. Testimony from Management witnesses Davis and Quinlivan was clear there were no law enforcement duties being performed by the Cadets while traveling. The sole purpose of their travel was to commute (i.e., report to work).

The Union testified about emails they solicited from Cadets. The responses sometimes vary within the same Cadet Class, and the Employer objected to not being able to cross examine these witnesses, but two things remained consistent. One, Cadets were not paid to travel to and from home to the Academy. Such represents their commute to their reporting location. Additionally, when reporting elsewhere (e.g., Phase 2 post-Academy training), Cadets were paid for their travel. On redirect from his Counsel, the Union witness acknowledged Cadets were reimbursed for travel when reporting somewhere other than the Academy (Phase 2). The reporting location of the Academy is the Cadet's headquarters. Cadets are not required to relocate to Franklin County to attend the Academy. Management witnesses testified they personally do not get paid to report to their headquarters in Franklin County. This is consistent with the OBM Rules incorporated by reference in the Collective Bargaining Agreement which prohibit payment for commuting to one's headquarters from home.

Addressing the reporting location, the Union called the Franklin County headquarters a paper fiction and was only temporary. However, their witness reluctantly acknowledged the job postings submitted by the Union list Franklin County as the primary work location for each of the Cadet postings (*See*, Union Exhibit 3 p. 7; Exhibit 4 p. 1; Exhibit 5 p. 3; Exhibit 6 p.1; Exhibit 7 p. 1; and, Exhibit 8 p. 4). Both the Union witness and HR Manager Christine Smith testified changes were made to later postings for the purposes of recruitment and retention. The Union witness compared his experience in 2013 when he found out the week before graduation, to the current procedure where Cadets receive notice while in the Academy or before. However, this change did not alter the Cadet's report location while in the Academy. The Union offered letters sent from Division Chief Glenn Cobb as evidence of a change in report location (*See*, Union Exhibit 3, p. 22). Again, no Cadets changed their report location as a result of Cobb's letter. They continued to report to the Academy in Franklin County. Smith testified the report location in Franklin County is established upon hire as a Cadet and remains Franklin County until promotion to Officer in a new headquarters county (*See*, Management Exhibits 2-9). Smith testified Cadets are hired to the same location in each class when assigned to the Academy. This did not change due to changes in posting language or because of Cobb's letter.

The Employer argues, the reporting location is far from a paper fiction; it is Contract language which the Union avoided referencing. Article 22.09 states in part, "Employees shall be at their work site, report-in location or headquarters location by their shift starting time". Further, "Any employee who must begin work at some location other than his/her actual work location other than his/her actual work location or

headquarter county... shall be compensated according to current Department/Agency practices”. These are the same practices already discussed relative to Article 59 and the applicable OBM Rules. Cadets do not have an assigned park, but they are assigned to the Academy. This is in Franklin County based on the job postings and hiring headquarters as testified by Smith. Like any other Employee, Cadets are expected to report to their work location. The travel to get to their report location is a commute. Their commute is not compensable per OBM Rules. If Cadets travel to another location other than the Academy, they are compensated. This was the testimony of the Union witness on redirect, the testimony of Davis, and the testimony of Quinlivan. The only fiction about reporting location is the Union’s argument. Neither changes to the job postings, nor the timing of notice to the Cadets changed where the Cadets report while in the Academy or when Cadets receive travel reimbursement.

With respect to the Union’s assertion regarding an “equity issue” between NRO Cadet Class 5, hired 1/23/2023 (*See*, Union Exhibit 1), and other Police Agencies, it failed to prove the other Agencies were covered by the same CBA or whether Cadets are entitled to the same benefits. Further, this inequity would have been known when Class 5 was hired, but the Grievance (*See*, Joint Exhibit 2) was not filed until March 14, 2023. This was two (2) months after Class 5 was hired, and six (6) months after the Grievants in Wildlife Officer Class 31 were hired on August 22, 2022 (*See*, Union Exhibit 1). The Grievance more likely arose when Management denied the Union’s request for additional travel benefits not previously negotiated (*See*, Union Exhibit 2). The email is dated March 7, 2023; the same date listed on the Grievance Form as the date the Grievance arose (*See*, Joint Exhibit 2).

Finally, this Grievance seeks an unspecified amount of reimbursement for undocumented expenses for unreported State business performed by Cadets while commuting from their home to work. This includes Wildlife Officer Cadet Class 31 which were hired in August 2022, six (6) months prior to the filing of the Grievance. Additionally, the Union suggested Moving Expenses under Article 33 would be applicable if a violation of Article 59 is not found. Management requests this argument be rejected mainly because there was no testimony or evidence presented at the Hearing regarding a violation of Article 33. Management also challenges the relevance of this Article as it applies to “work assignments within like classifications” (*See*, Joint Exhibit 1, p. 89). Cadet and Officer are not like classifications, and Cadets do not change report locations until completion of their training when they are promoted to the higher classification of Officer.

The Union has failed to meet their burden of proof and has failed to connect their evidence with a Contractual violation. Cadets are assigned to the Academy and report to that location in Franklin County. Reporting to work is covered by Article 22.09 and incorporates OBM Travel Rules, which prohibit reimbursement for an Employee’s commute, but they do allow for reimbursement when reporting to a location other than their assigned location. Evidence and testimony demonstrate Management did reimburse Cadets for certain expenses when reporting to a location other than the Academy. The Union did not provide evidence of a change in Contract language changing how travel reimbursement has been paid. There is clear Contract language acknowledging the Agency will follow OBM Rules, and those rules prohibit reimbursement for commuting from home to your report location/headquarters.

For these reasons, the Employer requests the Grievance be Denied.

DISCUSSION & FINDINGS

The disposition of this matter hinges upon the determination of whether the Employer's refusal to pay Department of Natural Resources Cadets travel time and expenses to and from the Ohio State Highway Patrol Academy in any way violated the Articles 7, 33 and/or 59 of the Collective Bargaining Agreement.

The Union contends the Employer's practice and actions subject to this Grievance violated the afore-referenced Articles of that contractually mandated therein. In support thereof, the Union's emphasis is Article 59 regarding Employees required to utilize their personal vehicles for "State business". The Union's contention, as it characterizes, is primarily based on the "requirement" of Cadets to attend the OSP Academy - beginning Monday morning and "requiring" them to stay in-residence until Friday when the Cadets are "required" to vacate the Academy premises. In order to comply with the Employer's orders, these Cadets are required to drive from their residence to the Academy, and upon departing the Academy on Friday, to their place of residence. The Union contends such constitutes "State business" in that it includes all travel to and from any Academy for training purposes. Such is required an approved travel – "State business". Consequently, when these Cadets are not provided travel expenses and time to and from the Academy such violates the afore-referenced provisions of the Collective Bargaining Agreement.

The Employer contends it's actions herein are consistent with the manner in which these provisions have been interpreted and applied regarding the travel time and expense entitlement sought by the Union in this matter. The Union emphasized "changes" occurred in how job postings and notices were addressed with respect to Cadets in the

Department of Natural Resources. The actual job postings and notice regarding the reporting location for “Phase 1” Training at the OSP Academy did not change; however, information regarding the actual location for respective positions upon completion of Phase 1 Academy training, was provided. Neither change described by the Union altered the application and interpretation of the relied upon contractual language and neither change entitled these Cadets to any reimbursement for their commute to the Ohio State Highway Patrol Academy located in Franklin County. Such was confirmed by Management witnesses - there have been no changes as to how Cadets are paid with respect to travel and time expenses to and from the OSP Academy.

The Employer emphasizes jobs are posted with the primary location of Franklin County because that is the location to which Cadets are to report for Phase 1 training – the OSP Academy located in Franklin County. The “headquarter county” does not change until these Cadets are promoted to Officer upon completion of training. Consequently, their travel to and from the OSP Academy is nothing more than their “commute” to and from their training location. Such equates to these Cadets’ commute to their assigned headquarter until such time that Phase of training has concluded. Such is consistent with OBM rules set forth in Management Exhibit 1 wherein it states, “a state agent shall not be reimbursed for mileage commuting from his/her residence to his/her headquarters nor from his/her headquarters to his/her residence”. The OSP Academy is the designated headquarter and travel to and from that location during such training is simply not reimbursed. In this regard, there is simply no basis upon which the remedy sought by the Union herein is supported.

The Parties' Collective Bargaining Agreement, under which the Arbitrator's authority is recognized and conferred, sets forth the terms and conditions of employment, including the recognition and acknowledgement of certain travel-related entitlements and under what circumstances such are triggered. While Articles 7 and 33 were also cited as being violated by the Employer's actions, Article 59, titled, "Travel" is at the heart of this Grievance and provides sufficient guidance with respect to the adjudication of this matter.

Indeed, Article 59 addresses those circumstances under which affected Employees may be entitled to travel-related time and expenses. There is no evidence to suggest this language has changed thus suggesting perhaps the manner in which it is therefore applied has also changed. Article 59 addresses the repayment of travel expenses and requires the Employer to make the necessary reimbursements, i.e., repayments as incurred if an Employee is required by the Employer to utilize their personal vehicle for "State business" as argued by the Union. Article 59 also incorporates by reference the Ohio Administrative Code "OAC" Rule 126-1-02; the procedures the Office of Budget and Management "OBM" and the Auditor of State, under which authorized Employees may seek/secure reimbursement of personal funds expended in connection with the performance of assigned duties – "State business".

That language suggests to the Arbitrator certain reimbursement considerations/requirements are applicable, while not contractually set forth therein, nonetheless exist for State Employees as incorporated by reference in Article 59. Specifically, as set forth, such "travel rules" as contractually incorporated, in Section (C) (2), paragraph 2 indicates, "a state agent shall not be reimbursed for mileage commuting

from his/her residence to his/her headquarters nor from his/her headquarters to his/her residence”. The Arbitrator finds this rule/policy, as incorporated by reference in the Collective Bargaining Agreement as compelling and definitive with respect to what can otherwise be characterized as an Employee’s “commute” to and from his or her assigned headquarters. Travel to the “Phase 1” training conducted at the OSP Academy constitutes one’s “commute” to their headquarter county and is not subject to reimbursement. The “Phase 2” or “Divisional” training to locations other than the OSP Academy, as conceded by the Employer, and in certain situations, has been subject to the assignment of “State” vehicles for such travel, has been reimbursed in accordance with that as sanctioned.

According to the evidentiary record, apparently, job postings/notifications were subject to certain modifications based on the vacancies that existed or would become available to assist interested applicants the opportunity to ascertain the precise location where their work assignment would become upon completion other required training. Such modifications were effectuated to assist with recruitment and retention of Employees in this area of Law Enforcement endeavors. Until such time those Cadets became Officers and subject to placement at the respective vacancies that existed, via the job postings/notifications, the record clearly and unambiguously demonstrates the assigned headquarter was the OSP Training Academy located in Franklin County. Until such time Cadets completed that training - Phase 1 - such location constituted the headquarter county and the travel to and from the headquarter county equated to an Employee’s “commute” for which, according to the Office of Budget and Management rules and regulations, as incorporated by refence into the Collective Bargaining Agreement, was simply not reimbursable.

The evidence or record also addresses what was characterized as “Phase 2” training otherwise known as “Divisional” training that may have required Cadets, post-OSP Academy training in Franklin County, to travel to locations other than what was then designated as that Employee’s headquarter county - the OSP Academy - to locations elsewhere. In that situation, the Employer concedes, and the record corroborates, the same OBM rules with respect to travel, provide, “if a state agent is required to report to a location other than his or her headquarters the state agent will only be reimbursed for the distance from his or her residence to the alternate location less the state agent’s normal commute distance”, which according to that addressed previously, would be to/from their residence to the OSP Academy. The Employer does not dispute the fact it is required to pay these travel-related expenses to a location other than the OSP Academy – post Phase 1 Training at the OSP Academy - which is also corroborated in Joint Exhibits 3 and 4, respectively. Management witness also corroborated the fact the Agency did in fact reimburse Cadets for travel expenses when required to report to a location other than the OSP Academy that was different from the Cadets report to headquarter county.

The record also demonstrates while attending the Academy, Cadets would not be required to expend any personal funds for lodging and or meals since they were in-residence Employees and both lodging and meals were provided. They were in fact reimbursed for such expenditures based on the same OBM rules, incorporated by reference in the CBA, when traveling to a location other than the OSP Academy or travel from the OSP Academy to a different location. The record demonstrates the gist of these circumstances giving rise to the filing of this Grievance challenging the Employer’s refusal to pay travel time and expenses as referenced, constituted job-related training that

is distinguishable from the duties and responsibilities of these Cadets once training was concluded and they engage in Law Enforcement endeavors as “Officers”. The distinction must be drawn from law enforcement related functions post-training and non-law enforcement related functions while in training. Such in the opinion of the Arbitrator provides the sufficient distinction between what is in fact “State business”, as relied upon by the Union, and job-related training preparing an Employee to perform law enforcement related functions post-training. The “State business” language contained in Article 59, and relied upon by the Union, was, in the opinion of the Arbitrator in contemplation of what was required of these Employees post-training, as opposed to during the time in which they were in-residence and receiving training relating to their respective positions as Law Enforcement Officers for the Department of Natural Resources.

The evidence of record compels the distinction between the two (2) different Phases of training wherein, “Phase 1” included Cadets travel to/from their headquarter in Franklin County at the Ohio State Police Academy for which such is determined to be an Employee’s “commute” and is not reimbursable under the OMB rules for travel expenses as incorporated by reference into the Collective Bargaining Agreement. Additionally, the Employer does not dispute Employees required to travel to a location other than the Ohio State Police Academy post-Phase 1 training, i.e., Phase 2 training, has been and will continue to be reimbursed in accordance with the same rules and regulations of the Office of Budget and Management relative to such matters.

As is evident in law enforcement generally, and in all other ancillary aspects thereof specifically, there is a great difficulty in recruiting and retaining individuals

interested in this line of work, which according to the record, prompted the manner in which interested applicants were made aware of where the vacant assignments existed. Cadets were to report for their Phase 1 training to the Ohio State Police Academy in Franklin County. That report location, according to the record, remained in Franklin County at the OSP Academy until these Cadets were promoted to Officer in a new headquarter county. Cadets' travel to/from the OSP Academy in Franklin County is interpreted to be an Employee's "commute", which under the OBM rules, incorporated by reference into the Collective Bargaining Agreement, are not reimbursable. If in fact Cadets travel to another location other than this Academy they are compensated in accordance with the same rules which prohibit reimbursement for "commutes".

Accordingly, the evidence of record compels the determination the Employer's actions herein of refusing to pay travel time and expenses of Cadets traveling to the Ohio State Police Academy in Franklin County is interpreted as a "commute" which is not reimbursable under the travel rules and regulations incorporated by reference into the Collective Bargaining Agreement. Base thereon the Grievance must be, and therefore is, Denied.

AWARD

The Grievance is Denied.

David W. Stanton

David W. Stanton
NAA Arbitrator

July 21, 2024
Cincinnati, Ohio