

#169

A R B I T R A T I O N
O P I N I O N A N D A W A R D

STATE OF OHIO
OFFICE OF COLLECTIVE BARGAINING
STATE HIGHWAY PATROL

OCB Grievance 87-2556

and

March 24, 1988

FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.

ARBITRATOR: DONALD B. LEACH, appointed by the Office of Collective Bargaining, Department of Administrative Services, State of Ohio

APPEARANCES: FOR THE FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.: James A. Budzik, Esq., Fraternal Order of Police, Ohio Labor Council, Inc., 3360 E. Livingston Avenue, Columbus, Ohio 43227

FOR THE STATE OF OHIO, OHIO HIGHWAY PATROL: Captain John M. Demaree, Personnel/Labor Relations, Ohio Highway Patrol, 660 East Main Street, Columbus, Ohio 43215

I S S U E

Did the Patrol violate the Agreement when it denied Grievant's request for reimbursement of moving expenses from Cambridge to Granville, Ohio, due to transfer from one Post to another following promotion to a higher job classification. (The issue as so stated is formulated by the Arbitrator.)

B A C K G R O U N D

The facts are not in dispute, the issue being a legal one.

Grievant, Patrick E. Wilson, was assigned to the Cambridge, Ohio Post as a Communication Technician I. Pursuant to contractual requirement, a new classification of Radio Dispatcher II was created to be used on an interim experimental basis in some of the Patrol's Posts. One of the new jobs, by general publication within the Patrol Post where the job classification was to be used, was Granville, Ohio. Grievant bid for the job at that Post, took a competitive exam, was considered and then awarded the job, to be effective August 24, 1987, the change of classification being a promotion for him. Grievant thereupon filed appropriate papers requesting permanent transfer from the one location to the other and moved his family and effects to the Granville area. The stated cost of the move was \$724.00. He made application for reimbursement of that amount, which the Patrol denied. Thereupon, he filed his Grievance protesting the denial and requesting reimbursement. It is as follows:

"***after conversation with Sgt. J. P. Myers, learned that Patrol would not pay the moving expenses for my family from Cambridge to Newark upon recent promotion and transfer to Granville. Policy and FOP/OLC Contract make it clear that transfers at the request of an employee will not be paid by the Division. I feel that the transfer was requested only upon the possibility of Promotion and does not fall under the same guidelines as an employee-requested transfer within the Division. Remedy Requested: Would like the Policy and the FOP/OLC contract amended to the end that a promotion to position of Radio Dispatcher 2, if transferred, be paid by the division, and that the division pay for my family's move."

The dispute was processed through the Grievance procedure and denied. The decision at Step III was as follows:

"The Hearing Officer, after careful review of the grievance and information submitted by both parties at the hearing, finds no violation of the contract.

There has been no violation of Article 30.02 of the collective bargaining agreement. The grievant initiated the transfer by responding to a job posting. The Employer is required to pay for moving expenses when the transfer is initiated by the Employer.

As indicated above, the parties are proscribed from modifying the agreement during its continuation, without following the requirements of Article 3.

The grievance is denied."

The essential controversy centers on §30.02 of the Agreement which states that moving expenses will not be paid by the Patrol when the transfer is "at the request of the individual or the initial move of the cadets upon graduation and assignment from the Academy". Other language provides that the Patrol will pay expenses "when the transfer has been initiated by the Employer".

The evidence included the applicable excerpts of the Fact Finder's Report which preceded the Agreement and recommended the terms of paragraph 30.02 which were incorporated in the Agreement. Also included were the contractual provisions proposed by each of the parties during the earlier negotiations; the pertinent documents summarized above; and the Patrol's policy of August 19, 1983, before the Agreement, on moving expenses. The last was as follows:

"Moving expenses will be authorized and paid by the division for uniform and other qualified employees when the transfer has been initiated at the request of General Headquarters.

Moving expenses cannot be granted when: (1) transfer is at the request of the individual, and (2) initial move of Cadets upon graduation and assignment."

The testimony established that the Patrol had paid moving expenses when, in one case, it had required the junior Trooper to move, pursuant to §30.01.

In a different context, the Patrol was shown to pay also for the moving expenses of a Trooper when one is promoted to the higher rank of Sergeant, and he is required to move from one post to another, which is usually the case. In general situation, it was pointed out, no examination is given; available personnel are evaluated from the records and then the promotion is offered to the individual selected. If one accepts the offer made him, he is then promoted.

CONTRACT PROVISIONS

ARTICLE 22 - HIGHWAY PATROL DISPATCHERS

§22.04 Highway Patrol Radio Dispatcher 2

During the fiscal year 1987 the Highway Patrol will institute an experimental plan to develop the classification of the Highway Patrol Dispatcher 2 or other suitable title with the Personnel Division of the Department of Administrative Services. No more than ten (10) positions will be allocated to the classification by the end of the fiscal year 1987. Further continuation and expansion of the plan will be subject to approval by the State Highway Patrol, Office of Budget and Management and the Personnel Division of the Department of Administrative Services. The employee representative will be consulted by those departments when they conduct their evaluation. Subject to the limitations of the above paragraph, it is the intent of the parties to implement the program on a statewide basis.

ARTICLE 30 - TRANSFERS/PAYMENT FOR MOVING EXPENSES

§30.01 Transfers

Members of the bargaining unit will be transferred as provided below:

Should the Employer desire to fill a position by transfer, the position will be posted at all Highway Patrol facilities for a period of seven (7) calendar days. All personnel in the affected classification shall have the right to bid on the position. Selection of the person to be transferred shall be based upon ability and seniority. If no bid is received, the most junior employee shall be transferred.

§30.02 Moving Expenses

Moving expenses will be authorized and paid by the Employer for employees when the transfer has been initiated by the Employer. Moving expenses will be reimbursed according to procedures established by the Superintendent. Moving expenses will be determined by obtaining three (3) bids from licensed moving companies, who are authorized to operate in this state by the Public Utilities Commission of Ohio.

Moving expenses will not be granted when the transfer is at the request of the individual or the initial move of the cadets upon graduation and assignment from the Academy.

C O N T E N T I O N S O F T H E P A R T I E S

FOP POSITION

The Grievant's promotion and transfer was initiated by the Patrol. It posted ten positions and locations for bid. The Grievant filed a bid setting forth his preference for location. He took the examination and received the promotion. Only the Patrol has control over promotions. The FOP has none.

Grievant knew that if he were promoted, he would be required to move. That understanding is the same as that of a Trooper being promoted to Sergeant and being transferred. In that case, the Patrol pays the moving expenses.

Here, the facts show that the Patrol should reimburse Grievant for his moving costs to the new post to accept the promotion.

PATROL POSITION

§ 30.02 does not obligate the Patrol for moving expenses when the transfer has been initiated by the individual as is the situation here. Merely posting the position for bid does not constitute initiation of the transfer.

The contract contains much of the language of the Patrol's policy as it existed prior to the Agreement and under that policy payment was only made for transfers initiated by the Patrol.

The Grievant asks for moving expenses when he is being promoted pursuant to his bid. The plain language of the Agreement excludes payment under these circumstances.

D I S C U S S I O N

One way of approaching the problem here is to center on the word "initiate". In that sense, the Patrol is said by the FOP to have initiated the change of Grievant's assignment by soliciting bids for the new job.

The logical result of that approach is to push back the initiative almost to "first causes". In this case, certainly, the

initiative could be said to have originated by agreement of the parties to study and create a new job under §22.04 of the Agreement. That Agreement started the process of step by step actions that eventuated in Grievant's transfer, i. e., the agreement, the study, the job creation, the choice of Posts at which to locate the new classification, the solicitation of bids for the various openings, the receipt of bids, their evaluation, the notification to the selected individuals, the filing by them of consent to transfer and their actual transfer. In that view, the Patrol didn't initiate the move any more than the FOP did.

On the other hand, the Patrol would cut off the chain of initiative with the Grievant's bid for the job, confirmed by his consent to transfer. In a sense, that interprets "initiate" in terms of the last cause. It might be argued in those terms, however, that the last action was really that of the Patrol, either in offering the job to Grievant by selecting his bid after evaluation, its approval of his transfer as evidenced by soliciting his written consent thereto or by taking whatever other procedural steps were required to perfect Grievant's reassignment.

The foregoing reveals that concentration on the word "initiate" can lead to a myriad of problems in causality, approaching the subtleties of the medieval schoolmen.

One analogous example was also cited and discussed by the parties, that of the Sergeants. When one is promoted from Trooper to Sergeant and transferred, the Patrol pays the moving costs. On the face of the matter, as so described, that situation and this are equal. In fact, however, Sergeants are not in the bargaining unit but are employees exempt from the Agreement. That type of exempt employee can be treated differently than one in the unit, without creating a precedent for application to the unit employees. Thus, that approach is as fruitless as the others.

The problem must be analysed in terms of Article 30 from which this issue arises.

§30.01 provides the standards for transfer of employees to fill open positions. Two groups are mentioned in that connection, (1) those who bid on the position and (2) the junior who is forced to transfer when no one bids. That paragraph seems to have reference to lateral transfers.

An example of the forced transfer was cited at the hearing. A Post became seriously understaffed at one time and transfer of a Trooper became necessary to restore its strength. The transferee

was forced to go in that case, and the Patrol paid the moving costs.

That brings §30.02 into consideration. It relates to the payment of moving expenses. Its language is broad and apparently covers all employee transfers (some specifically as cadets' assignments to their first posts, but without any apparent restriction on others.) The parties also agree that it covers this promotional transfer.

It is reasonable to view §30.02, however, as related directly to the preceding paragraph on what are clearly lateral transfers. §30.01 divides such transfers into those that are bid for and those that are forced. If one is coerced into moving, that move is clearly initiated by the Patrol, except cadets which are separately covered as a move contemplated by all concerned when employment begins.

To put the matter differently, the contractual language may be construed in relation to the word "initiative" standing alone or in relation to the divisions set out elsewhere in the Article. The former involves imponderable problems of causation. The latter takes the other divisions set out in the Article as reflecting the parties thinking in drafting §30.02. Aside from cadets, who may well be completely separate because of their unique characteristics, the division is made between bid for or voluntary transfers and involuntary ones. If the word "initiate" is deemed to mean anything of a denotative nature in that case, it must apply to one of those classes. In its broader meaning, therefore, it indicates that voluntary changes, including bids for promotion, would be treated just as bids for lateral transfer.

In a practical sense, there is greater incentive to bid for a promotion with its attendant pay increase than to bid for a lateral transfer whose attractiveness is more related to location than to compensation. It is clear that, in the situation where the incentive is less, the individual must bear the cost of the lateral transfer. Here, where the incentive is greater, it is reasonable that he also bear it.

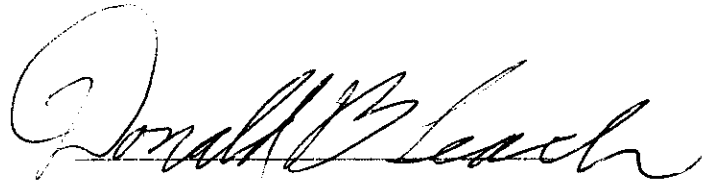
In a still different approach, a view contrary to the above would require almost all conceivable transfers to be paid by the Patrol, except for the cadets, of course. That would follow from the necessarily broad interpretation that would then be given to the word "initiate". As has been shown, it is difficult to conceive of any transfers that can't be argued to be initiated by the Patrol, even the voluntary lateral transfer. It then would follow that, there being no dividing line between degrees of "initiative" and no qualitative dividing line, i. e., one clearly characterizing one type of transfer as reimbursable and another as not, the result inevitably would impose moving costs on the Patrol. In fact, however, the parties concurred in

their view that some should be paid and others not. The dividing line they prescribed in related language has to be the voluntary and involuntary lateral transfer. That division sets a reasonably ascertainable dividing line that obviously extends beyond the lateral transfer situation. That dividing line puts the promotional transfer in the non-reimbursable category.

In light of the foregoing, it must be concluded that the Patrol did not violate the Agreement when it denied reimbursement of Grievant's moving expenses.

A W A R D

1. Grievance, dated October 6, 1987, of Patrick E. Wilson is hereby denied.

A handwritten signature in cursive script that reads "Donald B. Leach". The signature is written in dark ink and is positioned above the printed name.

Donald B. Leach