

IN THE MATTER OF ARBITRATION

BETWEEN

THE STATE OF OHIO

AND

THE FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.
UNIT 1

ARBITRATION AWARD

#539

CASE NUMBER: 15-03-900207-016-04-01 (R Henderson)
ARBITRATOR: John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a hearing on December 3, 1990 in the Office of Collective Bargaining, 65 East State Street, Columbus, Ohio. Appearing for the Union were Ellen Davis, Esq., Ed Baker, and Rick Henderson, the grievant. Appearing for the Employer were Anne Arena (Labor Relations Officer), Meril Price, and Rick Corbin.

The parties were given full opportunity to examine and cross-examine witnesses and to submit written documents and evidence to support their respective positions. No post hearing briefs were filed and the case was closed on 12/3/90. The discussion and award are based solely on the record described above.

II. ISSUES

The parties did not agree on a joint submission. The Employer asked:

Is it "feasible" as defined in Article 40, Sec. 40.06 for troopers at the Granville post, who reside within a 30 mile radius of the Training Academy, to be assigned to use the fitness facility at the training academy?

The FOP put the issue as follows:

Is it feasible for the employee to use the Academy Fitness Facility when another approved facility is considerably nearer to his residence? If not what shall the policy be?

III. STIPULATIONS

The parties jointly submitted exhibits marked Joint Exhibits #1 through #7.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. UNION

1. TESTIMONY AND EVIDENCE

Trooper Rick Henderson testified that he was formerly at Post 45 in Granville and now is at Obetz which is just south of Columbus.

Henderson testified that he wanted to use the fitness center which was close to Granville. He went on to say that currently he is assigned to the Academy Fitness Center in Columbus. He said that if he went from his home on Route 161 west and then picked up Interstate 71 south to Obetz, it would be about 35 miles and if he used 237 south and picked up 70 west to Interstate 71 and then to Obetz, it would be about 38 miles (see Joint Exhibit #5).

Henderson testified that it took somewhere between 50 and 60 minutes each way from his home to his work facility. Currently, he said the fitness facility he would like to utilize is a half mile from his house and that fitness facility is acceptable to the State and five or six troopers have been assigned there.

On re-direct, Henderson said that it took about 25 minutes or 30 minutes to go from his place of work to the Academy Fitness Center and he went on to say that if he left work at 4:00 p.m., it could take a half hour and then it would take another hour to go from the Academy to his house; thus, it would take about an hour and a half to drive from work to his home. Henderson went on to say that if he went directly from Obetz to the fitness center in his home area it would only take 45 to 50 minutes to

get to the other fitness center. From his house to the local center would take about 2 minutes, asserted Henderson.

The cost of the local facility is \$200 plus which is presumably paid for by the Employer.

2. ARGUMENT

The Union argues that Henderson lives a considerable distance from the Academy physical fitness center whereas the local facility is only two blocks from his house. That facility is used by a number of troopers, notes the Union.

Article 40.06 of the Contract, argues the Union, makes it clear that it is not feasible for Henderson to use the facility at Columbus when he could use the facility in Granville.

The Union asserts that there is no 30 mile residency requirement in Article 31 of the Contract. The Union goes on to say that the parties agreed on the 30 mile radius and the language in Article 31 does not refer to Article 40.06 and the converse is also true.

The Union argues that it is not feasible for Henderson to use a facility which is 30 plus miles away from his house when he could use one which is two blocks from his home. The Union claims if Henderson works out at the Academy, his trip home is considerably longer than if he worked out at the local facility. The Union states that it is not sensible for Henderson to spend two plus hours a day in a program which is voluntary.

Given the wording in Article 40.06, asserts the Union it is not feasible for Henderson to use the facility in Columbus; rather he should be allowed to use the Facility next to his home.

B. EMPLOYER

1. TESTIMONY AND EVIDENCE

The Employer cross-examined Rick Henderson, the only Union witness, who testified that his current working location is at Obetz and that he lives in Newark, Ohio and commutes to work.

Henderson testified that he could use a patrol vehicle to go to the Academy Workout Center. He testified that a third route to the place of work would be 31 miles.

2. ARGUMENT

Management argues that Article 40 of the Contract talks about a physical fitness and wellness policy. This Article first appeared in the 1986 agreement and it became the subject of a class action grievance. As a result, the language now mandates participation in a health and physical fitness program for all troopers.

The Employer goes on to say that Article 31 of the Contract requires members to live within a 30 mile radius of their assigned post and the 30 air miles or radius language was written by the fact finder in the initial round of bargaining. The

Employer points out that the Union wanted troopers to be able to live anywhere in the State of Ohio but that was neither reasonable or feasible and therefore, the residency requirement was clarified by Arbitrator Samuel Perry.

The Employer points out that troopers may drive 30 miles to work everyday and therefore, the 30 mile radius is feasible and is also the basis for requiring an employee to use the work out facility located within that 30 mile radius.

The Employer goes on to say that the issue today deals with the meaning of the word "feasible" in paragraph 40.06. It asserts that "feasible" means being capable of being done or carried out. Trooper Henderson is working in the commercial drivers licensing Facility in Obetz, Ohio and resides in Newark and his residence and assigned workplace are within a 30 mile radius of the Patrol Academy. Troopers are allowed to use the academy facility to work out but the issue in this case is which troopers may "feasibly" use the academy.

The Employer asserts that there is no need to interpret a Contract unless the language is ambiguous. If the Contract language is clear, it need not be interpreted; rather the clear language must be implemented.

Management argues that the grievant has failed to prove that it is not feasible for him to use the Academy facility

The Employer points out that it is feasible for Henderson to work out at the facility in Columbus. While Henderson argues it is more convenient to work out at the facility in Granville, that

is not the basis to determine the decision because the fundamental question is whether it is feasible, not whether it is convenient. Henderson does not live outside the 30 mile radius and therefore, he must use the facility in Columbus.

V. DISCUSSION AND AWARD

The parties disagreed on the specific question but the testimony indicates that the issue is whether Article 40.06 makes it feasible for Rick Henderson to work out at the training center in Columbus as opposed to using the facility at Granville.

Article 40.06 is as follows:

In order to assist troopers in maintaining overall health and wellness, the Employer shall make every reasonable effort to secure facilities for troopers to work out. All employees covered by this policy shall have access to the fitness facilities located at the Patrol Academy when they are in a location that allows that usage. When employees are located in areas where use of the Academy facilities are not feasible then the Employer will attempt to enter into agreements with police departments of other governmental entities to make available similar facilities.

In geographic areas when no such facilities exist then the Employer will enter into agreements with such entities as the YMCA, YWCA, or other public, private or non-profit organizations to provide access to fitness equipment for troopers. Contracts with commercial enterprises or reimbursement for health club memberships will only be authorized after the options listed above have been exhausted. The troopers shall share a responsibility for the identification off such facilities.

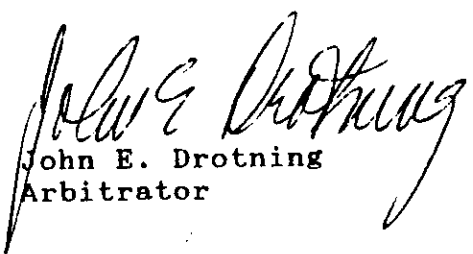
It is simpler and probably more efficient for Henderson to use the facility near his home, but the parties agreed that bargaining unit members must live within a 30 mile radius of their post. Officer Henderson lives within the 30 mile Columbus radius. If employees do not live in areas which have Ohio State Police facilities, they can use facilities identified by the Employer (see Joint Exhibit #7). There is, as noted in the testimony, an athletic facility in Granville which is used by troopers who live outside the 30 mile Columbus radius. There are numerous fitness facilities agreed to by the State in various 30 radii areas (see Joint Exhibit #7).

Is it feasible for Henderson to use the facility in Columbus? The answer is Yes. He leaves Obetz and drives up I-71 to the facility in Columbus, and works out and then drives on either 161 to Newark. Or he could leave the fitness facility and go south on I-71 and pick up 70 east and then either take 37 north to 40 and then 79 to Newark. In any event, there are a host of ways to use the fitness facility in Columbus after work and then drive home. The Columbus facility is clearly a feasible alternative, even if less convenient than using the Granville-Newark facility.

The Union argues that the total length of time from Obetz to the local Granville facility is 50 to 60 minutes and if he works out at the Columbus facility, it would take 90 minutes to get home. But the "additional 30 minute drive" as result of a workout in Columbus is not the basis to conclude it is not feasible for Henderson to use the Columbus facility.

Contract Article 40.06 mandates the use of the Academy Facility when feasible. Only when it is not feasible, will the Employer enter into a agreements with other entities in order to make similar facilities available to troopers. There is no persuasive reason to conclude that is not feasible for Henderson to use the Columbus facility. The Granville facility is convenient, but "convenience" is not the same as "feasible".

Therefore, the grievance must be denied.



John E. Drotning
Arbitrator

December 13, 1990