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In the Matter of Arbitration

Between

Fraternal Order of Police-Ohio  
Labor Council

and

The State of Ohio, Department  
of Natural Resources

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Case Numbers:

25-18-(1-29-93)-02-05-02

25-18-(2-08-93)-03-05-02

25-18-(2-08-93)-04-05-02

25-18-(2-08-93)-05-05-02

25-18-(2-08-93)-06-05-02

Before: Harry Graham

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Appearances: For Fraternal Order of Police-Ohio Labor Council

Deborah Bukovan  
General Counsel  
Fraternal Order of Police-Ohio Labor Council  
222 East Town St.  
Columbus, OH. 43215

For Ohio Department of Natural Resources

Jon Weiser  
Labor Relations Administrator  
Department of Natural Resources  
1930 Belcher Dr.  
Columbus, OH. 43224

Introduction: Pursuant to the procedures of the parties two days of hearing were held in this dispute before Harry Graham. During those hearings the parties were provided complete opportunity to present testimony and evidence. Post hearing statements were filed in this dispute. They were exchanged by the Arbitrator on August 23, 1993 and the record in this dispute was closed.

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

Did management violate the Labor Agreement by not providing transportation\* or mileage reimbursement to bargaining unit members to attend grievance hearings, specifically a Step 2 hearing on or about 12/16/92 and Step 5 arbitrations on or about 1/8/93 and 1/11/93? If so, what shall the remedy be?

\*It is understood that the concept of "transportation" includes use of a State vehicle or travel as a passenger in a State vehicle.

Background: This proceeding is concerned with five grievances that all involve the same claim advanced by the various Grievants. Without detailed recitation of the facts of each grievance it is the case that all concern the question of whether or not the State must provide to members of the bargaining unit State vehicles to attend meetings held during the various steps of the contractual grievance procedure up to and including arbitration. In lieu of use of a State vehicle to attend such meetings the parties agree that the question encompasses mileage reimbursement to bargaining unit members for use of their personal vehicles to attend grievance meetings or arbitration proceedings. In each of the grievances under review in this proceeding it is the claim of the Union that the Employer violated the Agreement by not providing either a State vehicle or mileage reimbursement to Grievants involved in travel to meetings held as part of the grievance procedure of the parties.

There is no dispute concerning the processing of these grievances and the parties agree that they are properly before the Arbitrator for resolution on their merits.

Position of the Union: The Union differentiates the grievances before the Arbitrator. That of Rich Gura, a Wild Life Officer, involves use of his State provided vehicle to attend a Step 3 grievance hearing. In Mr. Gura's case such hearings are normally conducted in the District Office which is located in Athens, OH. That is far from Mr. Gura's home. He rarely has occasion to visit the Athens office. It is inconvenient for him to go there. While there has been in existence a longstanding policy against use of State vehicles for transport to Step 3 grievance meetings it has been enforced inconsistently. Its enforcement works a hardship on Officer Gura and similarly situated employees. They must utilize their personal vehicles to drive to the District Office. At the conclusion of a Step 3 grievance meeting they must return home and resume their duties in the State vehicle. Not only is this practice inconvenient, it is wasteful. As the Employer conducts Step 3 meetings at inconvenient sites it should provide transport for Grievants in the Union's opinion.

Grievants Chet Shroyer and Larry Ray are concerned with use of State vehicles to attend arbitration proceedings. Other State Departments, specifically the Highway Patrol and the Department of Liquor Control, permit use of State vehicles to attend arbitration proceedings. The same situation should prevail in the Department of Natural

Resources the Union urges. It is not sensible for two Departments whose employees regularly use their cars for State business to permit them to be used for transport to arbitrations and for the Department of Natural Resources to adopt a contrary policy.

Additional grievances filed by Messrs. Shroyer and Ray concern the refusal of the Employer to permit them to ride with supervisors to arbitration proceedings. Such a policy is uneconomical and foolish in the Union's view. It cannot be justified with any claim that grievants or witnesses will influence a supervisor during the drive to the arbitration hearing. No good reason exists to deny to bargaining unit members the ability to travel with supervisors to arbitrations according to the Union.

Position of the Employer: The State insists that denial of use of a State vehicle or payment of mileage to participants in the Grievance procedure does not constitute a violation of the Agreement. In support of this position it points to the history of implementation of the various Collective Bargaining Agreements between the parties. When the initial Agreement came into effect in 1986 extensive training was provided by the Department to those persons responsible for applying the Agreement on a daily basis. Management personnel were informed of the obligation of the State to provide time off duty with pay for employees participating in grievance

meetings and arbitration proceedings. It was and is the position of the State that as the grievance was initiated by either an employee or the Union it is the responsibility of the employee or Union to cover any costs associated with travel by grievants or witnesses to grievance meetings or arbitration proceedings. An explicit policy to this effect was promulgated in 1989. No challenge to that policy was lodged by the Union until the beginning of 1993. No discussion over the policy or its implementation occurred.

The Department is aware of and acknowledges that other State Departments, specifically the Department of Liquor Control and the Department of Highway Safety (Highway Patrol) make the payments sought by the Union in this instance. In essence, the Department says, "so what." In support of this view it points to an arbitration decision of Arbitrator Marvin Feldman involving the State and OCSEA/AFSCME Local 11. In that decision (Case No. G87-0874) Arbitrator Feldman was of the view that the Agreement did not require the work rules of one State department be identical to those of another department. Different tasks and duties are sufficient to generate different rules in Arbitrator Feldman's view. That is the situation in this case as well according to the State.

As the State views these disputes nothing in the Agreement supports the position of the Union. Article 46 of the Agreement deals with Court Leave. It provides that

employees who are summoned or subpoenaed shall receive court leave. Such leave does not include the use of a State vehicle or mileage reimbursement sought by the Union in this instance. Nor does Section 29.03,5 of the Agreement furnish support for the Union in the State's view. It merely provides that off-duty employees on temporary overnight assignment away from home may use a State vehicle for "personal errands of a necessary nature." That phrase cannot be stretched to include the use of a State vehicle to attend grievance meetings or arbitration proceedings. As the State urges the Agreement be read, Article 20, Section 20.08,3 c of the Agreement deals specifically with this dispute. Language found at that Section provides that "All other costs incurred by the parties will be paid by the party incurring the costs." The Union desires the presence of the Grievant and witnesses at grievance meetings and arbitration proceedings. As that is the case, it is the responsibility of the Union to provide for such reimbursement as it may desire. That obligation does not fall upon the State.

At Article 20, Section 20.08, 1 the parties have agreed that insofar as is practical that they will conduct their arbitration proceedings according to the Voluntary Labor Arbitration Rules of the American Arbitration Association. Rule 44 provides that "The Expenses of witnesses for either side shall be paid by the party producing such witnesses."

That explicit language should govern the outcome of this dispute according to the State. It did not bargain for nor has it any present obligation to pay the travel costs associated with grievance meetings and arbitrations. As that is the case, it urges that the grievance be denied.

Discussion: At Article 4 the parties have concerned themselves with questions over the relationship between the terms of the Agreement and past practice. They have agreed that "This Agreement is a final and complete agreement of all negotiated items that are in effect throughout the term of this Agreement." That terminology serves to limit the applicability of any practice concerning the use of a State vehicle or mileage reimbursement such as is sought by the Union in this instance. In fact, it is not at all clear that any practice whatsoever concerning use of a State vehicle or provision of mileage pay to grievants has ever existed. Some employees of the Department received the reimbursement or were permitted to use a State vehicle on occasion. The record does not show that members of the bargaining unit have ever been recipients of the disputed payments on a regular, recurring basis. No practice exists in this situation. That other departments of State government make the pay as is asserted by the Union to be correct is immaterial. Arbitrator Feldman's observation in Case No. G-87-0874 is well taken. In that dispute Arbitrator Feldman was of the view that the

different tasks performed by different State departments enabled them to establish and enforce different work rules to the extent permitted by the Agreement. In the Agreement before him, that between the State and OCSEA/AFSCME Local 11, he found no requirement that various departments utilize the same work rules. That is the case in this situation as well. Nowhere in the Agreement between the State and Bargaining Unit 2 does it provide that work rules must be the same in the various State departments covered by the Agreement. Nor does it provide that the work rules or practices in effect in Bargaining Unit 1, the Highway Patrol, are to have any force or effect in Bargaining Unit 2.

With respect to provision of transport or reimbursement for witnesses at arbitration proceedings specific language governing this issue is found in the Agreement. At Section 20.08 the parties have agreed to conduct arbitration proceedings pursuant to the Rules of the American Arbitration Association. Rule 44 explicitly provides that the expenses of witnesses for either side "shall be paid by the party producing such witnesses." Certainly transport expenses are among those that must be paid by the party producing the witness. In this instance, that is the Union. This view is bolstered by language found at Section 28.08, 3,c of the Agreement. It provides that "All other costs incurred by the parties will be paid by the party incurring the costs." That

language does not contain ambiguity. It is not susceptible of any interpretation other than that indicating that transport of Union witnesses to arbitration hearings is not the responsibility of the State.

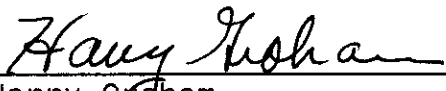
At Article 46 the Agreement calls for the Employer to grant Court Leave. Pay for such leave is to be made at the employee's regular rate. A minimum payment of 2.5 hours pay is established. The Agreement does not indicate that any sort of transportation or mileage is to be provided to employees in connection with Court Pay. The Union sought certain benefits in the Court Leave article. The parties reached agreement upon the pay to be provided to bargaining unit members. They did not agree that the State must make the payments being sought by the Union in these instances. The applicable policy on this matter was distributed in 1989. It was not challenged for several years. The Policy is not inconsistent with the Labor Agreement.

When the parties negotiated their initial Agreement the Union proposed that persons on Union time be provided transportation by the State. That proposal did not find its way into the Agreement in 1986. Nor has it appeared since. Bargaining unit members receive time off with pay to attend grievance and arbitration proceedings. Nowhere in the Agreement is found any requirement that the State make the sort of payment sought by the Union in this instance.

In this dispute the Union cannot cite contractual language in support of its position. None exists. The policy in question concerning transport of Union grievants and witnesses may be uneconomic. Its application may produce inconvenience and impose avoidable costs on employees. Those are not the tests that are to be applied by the Arbitrator. Rather the test is whether or not a violation of the Labor Agreement has occurred. None has in this instance.

Award: The grievance is denied.

Signed and dated this 17<sup>th</sup> day of September, 1993  
at South Russell, OH.

  
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Harry Graham  
Arbitrator