
In the Matter of Arbitration

Between

Fraternal Order of Police-
Ohio Labor Council

and

The State of Ohio, Department of
Mental Retardation and Developmental
Disabilities

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Appearances: For Fraternal Order of Police-Ohio Labor Council

Gwen Callender
Fraternal Order of Police-Ohio Labor Council
222 East Town St.
Columbus, OH. 43215

For Department of Mental Retardation and
Developmental Disabilities

Edward Ostrowski, Chief
Office of Labor Relations
Department of Mental Retardation and
Developmental Disabilities
30 East Broad St.
Columbus, OH. 43266-0415

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on November 29, 1993 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this case was closed at the conclusion of oral argument.

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

Did the State of Ohio violate Article 29, Section 29.01 of the Collective Bargaining Agreement when it failed to pay Stephen Rosati \$175.00 during the pay period which included July 1, 1993? If so, what shall the remedy be?

Background: There is no disagreement over the events that prompt this proceeding. The Grievant, Stephen Rosati, is a Police Officer at the Youngstown Developmental Center. As such, he patrols the grounds and provides general security services on the site. Unlike police officers seen in cities or villages or deputy sheriff's working for counties, the Grievant and his colleagues do not wear uniforms. They work in casual clothes that are their personal property.

Article 29 of the Agreement is concerned with "Uniforms, Equipment and Vehicles." The final paragraph of Section 29.01 provides that:

All employees in the bargaining unit who are required to normally work in plain clothes, shall receive a uniform allowance for maintenance and repair of one hundred and seventy-five dollars (\$175.00) each year. This uniform allowance shall be paid in the pay check for the pay period including July first of each year.

The Grievant and his colleagues did not receive the \$175.00 referenced above. Inquiry of the Employer indicated the State's view that it had no obligation to pay that sum. A grievance protesting the failure of the State to pay the \$175.00 was filed. It was processed through the procedure of the parties and they agree it is now properly before the Arbitrator for determination on its merits.

Position of the Union: According to the Union the Agreement

is clear. It provides that "all employees" who are "required to normally work in plain clothes shall receive" the \$175.00 maintenance allowance. The Grievant and his colleagues did not receive the \$175.00. The Agreement was violated. There is no need to inquire into the bargaining history of the language. The Agreement specifies in terminology that a first grade student can understand that "all employees" receive the payment. Further inquiry is unnecessary.

Should attention be directed to the bargaining history, the Union should prevail as well. When the parties negotiated the Agreement the Union was made aware that there were three Watercraft Investigators who would be eligible to receive the \$175.00 payment. It did not know if any other bargaining unit members were or would become eligible. Hence, the Union insisted on the words "all employees" found in the Agreement. During the course of negotiations the State proposed that three Watercraft Investigators that had been identified as being potentially eligible for the \$175.00 payment be specified in the Agreement. The Union response to that proposal was "no." (Employer Exhibit 3). The Union declined to specify the numbers and classifications of potentially eligible employees because it did not know all those who might be considered eligible. Together with the plain language of the Agreement, the bargaining history indicates that the Union must prevail in this situation it insists.

Position of the Employer: According to the State when the parties negotiated the \$175.00 payment it was concerned about this precise scenario. In order to deal with a potential unknown obligation the State proposed inserting the words "required" and "normally" in the text. This was done with the clear understanding of both parties that it would limit the exposure of the State with respect to the \$175.00 payment.

In this situation the Grievant and his colleagues are not "required" to "normally" work in plain clothes. As the term "plain clothes" is used in law enforcement it refers to police officers engaged in undercover operations. That is not the case in this situation. The police at Youngstown Development Center perform the security tasks associated with their profession. They are not undercover officers. Hence, no payment is warranted according to the State.

When the parties bargained in 1992 the Union identified three people in the Watercraft Investigator classification as being eligible for the \$175.00 payment. The parties agreed that it was possible that there might be some Wildlife Investigators who would be eligible for the payment as well. At no time did the Union mention that police officers would be eligible. As that is the case, the State urges the Grievance be denied.

Discussion: In this situation there is no guide for interpreting the Agreement other than the plain text of the

Agreement itself. There is no factfinding report that was adopted by the parties that dealt with this issue. No interest arbitrator provided guidance concerning the terms of the Agreement. The phraseology of Section 29.01 was negotiated across the table by the parties themselves. That phraseology is clear. It specifies that "all employees" who are "required to normally work" in plain clothes receive the \$175.00 payment at issue in this proceeding.

When the Grievant reports to work he does so in his own clothes. He does so at the explicit direction of the Employer. He is "required" to work in plain clothes. That he is not performing covert investigations in the classic covert manner beloved of mystery writers is immaterial. When he arrives to work each day he wears his own clothes. He does so at the direction of the Employer. That is, he is "normally" in plain clothes. It is the Employer that requires this to be so. His daily routine satisfies the conditions outlined in the Agreement for receipt of the \$175.00 payment set forth in Section 29.01.

The Employer does not provide a uniform for the Grievant and his colleagues. It does not suggest that he should report for work unclothed. Each and every day at work he is attired in his own "plain clothes." All contractual conditions specified in Section 29.01 have been satisfied. Hence, the \$175.00 at issue in this proceeding must be paid in the pay

period including July first of each year.

Award: The grievance is SUSTAINED. The grievant is to be paid the \$175.00 clothing maintenance allowance provided in Section 29.01 of the Agreement.

Signed and dated this 10th day of December, 1993 at South Russell, OH.



Harry Graham
Arbitrator