ARBITRATION SUMMARY AND AWARD LOG
OCB AWARD NUMBER: 1025

OCB GRIEVANT NUMBER:	15-03-931116-0120-01-07
GRIEVANT NAME:	Lois Darlene Holdcroft
UNION:	OCSEA
DEPARTMENT:	Highway Patrol
ARBITRATOR:	Anna DuVal Smith
MANAGEMENT ADVOCATE:	Michael Duco
2ND CHAIR:	Kim Browne
UNION ADVOCATE:	Pat Schmitz
ARBITRATION DATE:	December 20, 1994
DECISION DATE:	January 23, 1995
DECISION:	Modified
CONTRACT SECTIONS AND/OR ISSUES:	Article 32.02 - Personal Vehicle. The Grievant is seeking reimbursement for mileage she believes she is entitled to for travel to other than her normal report-in location.
HOLDING:	The Arbitrator found that the Grievant is not required to use her personal vehicle to get to her normal report-in location, but is entitled to reimbursement for additional miles driven at the behest of her Employer. Her normal report-in location was re-established once the CDL program was moved to the new facility. Grievant is entitled to 25 cents a mile for travel on May 3, and September 20, 1994.
ARB COST:	$871.83

#1025

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration	*	
Between	*	
	*	OPINION AND AWARD
OHIO CIVIL SERVICE	*	
EMPLOYEES ASSOCIATION	*	
LOCAL 11, AFSCME, AFL/CIO	*	Anna DuVal Smith, Arbitrator
	*	
and	*	Case No. 15-03-931116-120-01-07
	*	January 23, 1995
OHIO DEPARTMENT OF	*	
PUBLIC SAFETY,	*	Lois Darlene Holdcroft, Grievant
DIVISION OF HIGHWAY PATROL	*	Mileage Reimbursement

Appearances

For the Ohio Civil Service Employees Association:

Pat Schmitz, Advocate
Associate General Counsel
OCSEA/AFSCME
Columbus, Ohio

R. Randall Tract, Second Chair
OCSEA/AFSCME
Columbus, Ohio

For the Ohio Highway Patrol:

Michael Duco, Advocate
Assistant Legal Counsel
Ohio Office of Collective Bargaining
Columbus, Ohio

Kim A. Browne, Second Chair
Labor Relations Specialist
Ohio Office of Collective Bargaining
Columbus, Ohio

Hearing

A hearing on this matter was held at 9:05 a.m. on December 20, 1994, at the offices of the Ohio Office of Collective Bargaining, Columbus, Ohio before Anna DuVal Smith, Arbitrator, who was mutually selected by the parties, pursuant to the procedures of their collective bargaining agreement. The parties stipulated the matter was properly before the arbitrator and submitted one issue set forth below. They were given a full opportunity to present written evidence and documentation on this issue, to examine and cross-examine witnesses, who were sworn or affirmed and excluded, and to argue their respective positions. Testifying for the Union were Lois Darlene Holdcroft, Grievant and Michael Holdcroft. Testifying for the Highway Patrol were Staff Lt. Richard G. Corbin and Sgt. Elbert W. Kelly. Also present were Capt. Forrest Freeman, Jr. and Sgt. Robert J. Young. A number of documents were admitted into evidence (Joint Ex. 1-6, Union Ex. 1-4 and Employer Ex. 1-2). The oral hearing concluded at 11:30 a.m. on December 20, whereupon the record was closed. This opinion and award is based solely on the record as described herein.

Statement of the Case

The Grievant has been a traveling commercial Drivers License (CDL) Examiner II (DX II) for the State Highway Patrol in Jackson, Ohio since 1989. At the time she took this position (by means of a voluntary demotion from dispatcher), she was told she would have, and later was given, the use of a take-home State vehicle by her employer. Rarely reporting to the District Headquarters to which she was assigned, she used the car to travel to various transportation companies and drivers' examination stations where she performed her assigned duties. In March 1991 her work site became the Jackson Commercial Drivers

License (CDL) facility (three or four miles from the Jackson District Headquarters), with occasional travel to other places. She continued to use the State vehicle until November 1993, when she lost it pursuant to an Agency directive that is not in dispute. Since that time she has used her personal vehicle to travel to the Jackson CDL station from her home in Athens, 43 miles away, from the CDL station to the skills testing lot (a distance of one-quarter to one-half mile), and for trips taken outside of Jackson.

In December 1993, she sought reimbursement for mileage she believed she was entitled to, but this request was denied and she was informed, "Employees who must report to work at some site other than their normal report-in location, which is farther from home than their normal report-in location, shall be reimbursed for the additional mileage" (Union Ex. 3). Staff Lt. Corbin testified that it was not the Patrol's practice to reimburse when the location was closer to home, and gave examples of both reimbursed and nonreimbursed miles.

The loss of the State vehicle was grieved in November 1993, citing alleged violation of Articles 2.01 (Non-Discrimination), 2.02 (Agreement Rights), 44.02 (Preservation of Benefits) and 44.03 (Work Rules) (Joint Ex. 3). Being unresolved at lower steps, the case was appealed to arbitration where it presently resides for final and binding decision. However, the Union no longer seeks restoration of the State car, but reimbursement for mileage the Grievant believes she is due under Article 32.02, and the parties stipulated a mileage reimbursement question.

Issue

Was the Grievant entitled to mileage reimbursement for the use of a personal vehicle under the Collective Bargaining Agreement? If so, to what is the Grievant entitled?

Pertinent Contract Provisions

ARTICLE 13 -- WORK WEEK, SCHEDULES AND OVERTIME

13.06 - Report-In Locations

All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.

Employees who must report to work at some site other than their normal report-in location, which is farther from home than their normal report-in location, shall have any additional travel time counted as hours worked.

Employees who work from their homes, shall have their homes as a report-in location. The report-in location(s) for PUCO field employees shall be the particular project to which they are assigned or 20 miles, whichever is less.

For all other employees, the report-in location shall be the facility to which they are assigned. (Joint Ex. 1 & 2)

ARTICLE 32 -- TRAVEL

32.02 - Personal Vehicle

If the Agency requires an employee to use his/her personal vehicle, the Agency shall reimburse the employee with a mileage allowance of no less than twenty-two and one-half cents $.225 per mile Effective July 1, 1992, the mileage allowance will be increased to $.24. Effective July 1, 1993, the mileage allowance will be increased to $.25. If an employee uses a motorcycle, he/she will be reimbursed no less than eight and one-half cents ($0.085) per mile. (Joint Ex. 1)

32.02 - Personal Vehicle

If the Agency requires an employee to use his/her personal vehicle, the Agency shall reimburse the employee with a mileage allowance of no less than twenty-five ($.25) cents per mile. If an employee uses a motorcycle, he/she will be reimbursed no less than eight and one-half cents ($0.085) per mile. (Joint Ex. 2)

Arguments of the Parties

Argument of the Union

The Union contends it has established that the Grievant did not receive compensation for three kinds of distances traveled in her personal vehicle on State business.

First, she was not reimbursed for the distance between her official report-in site (which remained the Jackson District Headquarters) and her work site (the CDL station), which was four miles further from her home than her report-in site.

Second, she was not paid for the distance between the CDL station and the skills lot. The Union says she was required to drive to the skills lot when she had a State vehicle and this was never contradicted when the car was taken away. Others, including her former supervisor, drove it, and the memo she had led her to understand she was to drive it as well. Additionally, it is logical that the distance be covered by car because of the time it takes to travel by foot and the consequent loss of efficiency.

Third, she was not reimbursed for some travel outside of Jackson. Acknowledging the Patrol's evidence that it is not its practice to pay for distances less than between an employee's residence and work site, the Union nevertheless argues that the Contract places no such limitation. Section 32.02 says flatly that when an employee uses a personal vehicle for State business, mileage shall be paid. The Union claims the State is trying to juxtapose another section of the Contract on this case. Section 13.06, which speaks to a different concept, travel time, is inapposite.

The Union asks that the grievance be granted in its entirety and that the Grievant be paid the $650 she estimates is due and/or any other relief deemed appropriate by the Arbitrator for the approximate 2500 miles driven on State business.

Argument of the Employer

Regarding the first category of miles, the State argues the Union's case is based on the lack of a piece of paper informing the Grievant of her new report-in location. Whether

she was told in writing is irrelevant. She was told to report there and, in fact, went to the CDL station every day, so she knew it was her report-in location. There is no requirement that she be informed in writing, but even if there were, the State would only be guilty of sloppy paperwork. The Administrative Code is clear. No mileage is paid for commuting from an employee's residence to his/her headquarters. The Grievant's headquarters is Jackson County. If she goes there from her home, no mileage is paid. The Employer also says that Section 32.02 does not say what the Union wants it to say. A condition precedent for mileage reimbursement is that she be required to use her car. The State does not require this, only that she come to work.

Regarding the two daily trips to the skills lot, she was not required to drive there either. The memo the Union says created the understanding that she was to drive was written when State vehicle usage was being evaluated. These trips were listed as possible justification for use of the car. The State did not suffer her to drive these trips as in an FLSA scenario.

About the travel out of Jackson, several were when she was told to report to Athens, her resident city, because of snow. Paying her mileage to report to a location closer than her normal report-in site would create an absurdity such that she would never again be instructed to report there. The past practice is clear, pervasive, consistent and accepted: only greater distances are reimbursed. Section 32.02 is silent on whether greater distances are reimbursable, therefore the past practice may be used to resolve the ambiguity. Additionally, the Contract should be read in its entirety, and therefore Section 13.06 is relevant although it speaks to a different concept.

Mileage for the later trips, in May and September of 1994, were not submitted for payment and are therefore not grievable. She cannot rely on advice from the Employer not to submit these miles because the Employer's advice was about the Headquarters-CDL station-skills lot travel, not about out-of-town trips.

In conclusion, the State says there has been no Contract violation and the grievance should therefore be denied. Even if the Arbitrator finds the State failed to inform the Grievant in writing of her new report-in location, it is a *de minimis* violation not warranting a retroactive award.

Opinion of the Arbitrator

Article 32.02 sets forth only one condition for mileage reimbursement: that the Agency require the employee to use his/her personal vehicle. The Union makes no claim that normal commuting between one's residence and headquarters is compensable, nor does it seek to recover the miles between the Grievant's residence and the Jackson County Headquarters. It does, however, seek compensation for the additional miles driven to the Jackson CDL facility, even though the Grievant did not report in at Headquarters en route. Notwithstanding its argument that Article 13.06 does not apply to the Athens trips, the Union does appear to accept that Article 32.02 (as well as 13.06) contemplates tht employees will get to their report-in locations at their own expense (as well as on their own time) unless they are rquired to report to a place more distant from home than their normal report-in location, in which case the additional miles (and time) are compensable.

Applying this to the instant case, the Grievant is not required to use her personal vehicle to get to her normal report-in location, but is entitled to reimbursement for

additional miles driven at the behest of her Employer. This is supported by the Administrative Code 126-1-02(C)(2) ("A state agent shall not be reimbursed for mileage commuting from his residence to his headquarters nor from his headquarters to his residence." (Employer Ex. 1)). It is also supported by Article 13.06 of the Collective Bargaining Agreement, the long-standing practice of the parties as testified to by Staff Lt. Corbin, and the Union's own position in the first scenario (miles driven to the Jackson CDL facility).

Whether any miles in the first scenario are compensable depends on what the Grievant's normal report-in location was. The evidence clearly establishes that although the Jackson County Headquarters was her original base, once the CDL program was moved to the remodeled Jackson DX facility, the latter became her normal report-in location. Her supervisor told her to go there and, as her own records show, she reported there for work nearly every day. Although there was no written instruction, none is required. The fact that the order was given, understood and accepted is clear from the Grievant's conduct. Therefore, the Employer is not obliged to reimburse her for the distance from the Jackson Headquarters to the test facility because these were commuting miles to her normal report-in location.

The second scenario is of daily round trips from the CDL facility to the skills lot to set up and remove the maneuverability cones. These trips were also not required to be driven in the Grievant's personal car. Employees and supervisors who had State cars available to them were accustomed to driving the comparatively short distance, but it is clear that other means were reasonably available including riding with the first and last customer.

It is more likely that it was habit that influenced the Grievant's decision to continue to drive it when she lost the use of the State car rather than any directive from the Employer. The memo brought in evidence was not directed to her, but to Capt. Freeman, to document the Grievant's use of the State vehicle at the time and perhaps to justify her future use at a time when the State was evaluating its allocation of these resources. Although the Grievant is to be commended for her efficiency concern, it is the Employer who has the right to make this decision based on its own analysis. These miles are, like those of the first scenario, not compensable.

Finally, there is the out-of-town travel. Four times in January and February, the Grievant reported to the DX facility in her home town because of poor weather. Although this is not her normal report-in location, these trips do not qualify for mileage reimbursement because of the shorter distance.

The Pike County and Logan trips are another matter entirely. The mileage for the first and last leg of each trip do not qualify because all were commuting legs shorter than between her residence and the Jackson CDL facility. On the other hand, after she reported to work, she was required to use her personal vehicle to make additional journeys in the service of her Employer. Thus, on May 3, she drove fifty miles round trip between the Jackson CDL facility and the Pike County Joint Vocational School; and on September 20, after she got to the Logan AAA office, she continued to the Athens AAA office and on to the Athens DX station before returning home. This travel is compensable though the commuting legs are not.

The State's argument that the Grievant has no standing in these last two instances is misplaced. Once the Grievant received the Employer's response to her inquiry (Union Ex. 3) it was reasonable for her to rely on her grievance under the assumption that filing expense reports would be futile except for clearly compensable travel.

Award

The grievance is sustained in part, denied in part. The Grievant was entitled to mileage reimbursement for the use of a personal vehicle under Article 32.02 of the Collective Bargaining Agreement. She is entitled to 25¢ per mile for the following travel:

May 3, 1994	Jackson CDL to Pike Co. JVS	50 miles
September 20, 1994	Logan AAA to Athens AAA	Mileage unknown
	Athens AAA to Athens DX	Mileage unknown

The Arbitrator remands the case to the parties for determination of the September 20 distance and retains jurisdiction for sixty days to resolve any dispute arising over its determination or the calculation and payment of the remedy.

Anna DuVal Smith

Anna DuVal Smith, Ph.D.
Arbitrator

Cuyahoga County, Ohio
January 23, 1995