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Dr. David M. Pincus
Arbitrator
4026 Ellendale Road
Moreland Hills, Ohio 44022

February 4, 1999

Mr. Mike Duco
Chief of Arbitration Services
Office of Collective Bargaining
106 North High Street
Columbus, Ohio 43215-3019

-and-

Mr. Herschel Sigall
Ohio State Troopers Association
6161 Busch Blvd., Suite 220
Columbus, Ohio 43229-2553

Re: The State of Ohio, Ohio Department of Public Safety, Division of the State Highway Patrol and Ohio State Troopers Association, Unit 15
Grievant: William T. Gruszecki
Grievance No.: 15-03-970327-0046-07-15

Dear Gentlemen:

Enclosed please find the Opinion and Award dealing with the above captioned matter. I have also enclosed an Arbitrator's Invoice for services rendered.

Sincerely,

Dr. David M. Pincus
Arbitrator

THE STATE OF OHIO, OHIO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF THE STATE HIGHWAY PATROL AND OHIO STATE TROOPERS ASSOCIATION UNIT 15 VOLUNTARY LABOR ARBITRATION PROCEEDING

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE STATE OF OHIO, OHIO DEPARTMENT OF PUBLIC SAFETY DIVISION OF THE STATE HIGHWAY PATROL

-and-

OHIO STATE TROOPERS ASSOCIATION, UNIT 15

GRIEVANCE: WILLIAM T. GRUSZECKI
GRIEVANCE NO.: 15-03-970327-0046-07-15

ARBITRATOR'S OPINION AND AWARD
ARBITRATOR: David M. Pincus
Date: February 3, 1999

APPEARANCES

For the Employer

Dan Swigert	Witness
Heather Reese	Second Chair
Susan M. Rance	Observer
Robert J. Young	Advocate

For the Union

William T. Gruszecki	Grievant
Bob Stitt	Chairman
Herschel M. Sigall	Advocate

INTRODUCTION

This is a proceeding under Article 20 – Grievance Procedure, Section 20.08, Arbitration, of the Agreement between the State of Ohio, Ohio Department of Public Safety, Division of the State Highway Patrol (the "Employer") and the Ohio State Troopers Association, Inc. Unit 15, (the "Union"), for the period July 1, 1997 to June 30, 2000. The Arbitration hearing was held on November 3, 1998, at the office of Collective

Bargaining, Columbus, Ohio. The parties had selected Dr. David M. Pincus as the Arbitrator.

At the hearing, the parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and to cross-examine witnesses. Issues of timeliness or other procedural and substantive technicalities affecting the merits of the grievance were not raised by either party.

At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit post-hearing briefs. The parties decided not to submit briefs, and rested with closing arguments.

STIPULATED ISSUE

Did the Employer violate Article 65 of the Labor Agreement when it failed to reimburse the grievant meal expenses for March 6 and 7, 1997? If so, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS

ARTICLE 65 – TRAVEL PAY

The Employer will provide a standard and uniform procedure in accordance with the Office of Budget and Management and the Auditor of State under which authorized employees may secure reimbursement of personal funds expended in connection with the performance of assigned duties.

For employees assigned to work away from their regular work location, in addition to the commutation time provided in Article 26, the Patrol will pay up to sixty ($60.00) dollars plus tax per day for meals, with the exception of training assignments at the Highway Patrol Academy. A state car may be provided for state business.

Sergeants have the option of driving their personal cars to training programs.

Improvement in reimbursement rates by OBM shall be incorporated herein.

(Joint Exhibit 1, Pg. 109)

CASE HISTORY

William T. Gruszecki, the Grievant, has worked for the Employer since August 28, 1978. At the time of the disputed incident, the Grievant was assigned to the Lisbon Post as a Sergeant.

The facts, for the most part, are not in dispute. During the early portion of 1997, the Employer initiated a computer-training program to acclimate employees to a new computer system. This circumstance caused the Employer to engage a statewide training effort by using privately operated computer stores as training centers.

On March 6 and March 7 of 1997, the Grievant was instructed to attend a computer training class in Mayfield Heights, Ohio. He voluntarily complied with this directive, and per the Agreement, he elected to take his personal vehicle. The Grievant, moreover, acknowledged that he was advised that lunch was "on his own."

It should be noted that on the stipulated dates, the Grievant commuted back home rather than staying overnight. On both occasions, he left his home between 6:34 a.m. and 6:45 a.m., and returned between 6:26 p.m. and 6:36 p.m.

Upon his return from the conference, the Grievant submitted lunch receipts totaling $15.51 (Joint Exhibit 2). He was not reimbursed in accordance with the Office of Budget and Management procedure and Highway Patrol policy.

As a consequence of this denial, the Grievant filed a grievance. It contained the following pertinent provisions:[1]

[1] The Union stipulated that this was not a class action grievance.

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> On March 6, 1997 and March 7, 1997, I was assigned to work at Mayfield Heights for computer school. On March 8, I submitted an expense report for meals since the assignment was not at the training academy. On March 19, I received correspondence from Captain Costas saying he was not forwarding my expense voucher for payment . . .

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(Joint Exhibit 2)

The parties were unable to settle the matter through subsequent stages of the grievance procedure. Neither party raised procedural nor substantive arbitrability issues. As such, the grievance is properly before the Arbitrator.

THE MERITS OF THE CASE

The Union's Position

The Union opined that the refusal in question was a clear violation of Article 65. This Article, and the language contained therein, is binding on the parties' actions notwithstanding any existing policy (Joint Exhibit 3) nor procedure promulgated by the Office of Budget and Management (Employer Exhibit 2).

Article 65 contains clear and unambiguous language which reflects the parties' intent. The references in the first paragraph to procedures promulgated by the Office of Budge and Management do not in anyway negate freely negotiated benefits contained in paragraph 2. Nothing in the aforementioned paragraph requires an overnight stay as a prerequisite for meal payments during non-travel status without a stay overnight.

The only exception contained therein deals with training assignments at the Highway Patrol Academy. Under this circumstance, meals are provided during the course of training, which reasonably precludes the necessity for meal payments during

non-travel status. When coupled with the existing contract language, this exception underscores and clarifies the Union's argument. Clearly, the parties envisioned a meal payment benefit during non-travel status circumstances where no overnight stays are involved.

The Employer's Position

The Employer argued that Article 65 was not violated when it failed to reimburse the Grievant for the cost of lunches incurred on March 6, 1997 and March 7, 1997. Existing contract language, references to Office of Budget and Management procedure and past practice were tendered in opposition to the Union's demand.

Article 65, paragraph 1 specifically requires the Employer to promulgate a uniform reimbursement procedure in accordance with the Office of Budget and Management policies. The Employer has complied with this provision as evidenced by Procedure HP-OBM7148 – Travel Expense Report (Joint Exhibit 3). This procedure incorporates existing Office of Budget and Management policies and practices.

Certain reimbursable conditions are contained in a section entitled Living Expenses. Meal expenses are deemed payable when an employee enjoys travel status. Travel status, moreover, is defined as traveling outside the county of the employee's headquarters and over 45 miles from the employee's point of departure (residence or headquarters) and required to stay overnight.

Clearly, the Grievant did not enjoy travel status on the dates in question. He admitted, and the record supports, that he was not required to stay overnight on the dates in question. The Grievant testified he commuted on both days. As such, his meals were properly not deemed to be compensable living expenses.

The Union's interpretation flies in the face of past practice and custom. The language in question has not changed for a considerable period of time; other than periodically negotiated benefit level changes. In terms of application, an overnight stay has always been required to establish travel status, and this condition must exist before meal expenses can become compensable.

THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony introduced at the hearing, a complete impartial review of the record including pertinent contract provisions, it is this Arbitrator's opinion that the Employer did violate Article 65. Contract interpretation and past practice axioms support this conclusion.

This Arbitrator is well aware of the reference to the Office of Budget and Management procedures, and the reference to their inclusion in the form of work rules, standards and procedures. Evidence and testimony support the notion that the Employer has complied with this provision by promulgating HP-OBM7148 (Joint Exhibit 3). Unfortunately, from the Employers perspective, the language in Article 65 does not totally reflect the previously mentioned policy. Article 65 fails to preclude the payment of meal expenses during non-travel status periods where no overnight stay is required. Put another way, payment preconditions dealing with travel status, and its definition, are not contained in paragraph 2. As such, the Employer is obliged to pay lunch expenses when an employee is assigned to work away from their regular work location. The sole specified exception deals with training assignments at the Highway Patrol Academy.

The Employer's attempt to superimpose a policy into a clearly promulgated, mutually agreed to, provision is misplaced. The language in question is clear and unambiguous and represents the best evidence of the parties' intent.

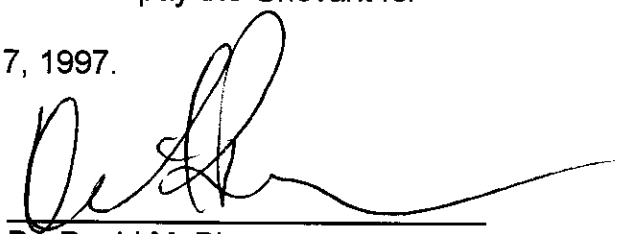
Past practice, regardless of its duration and mutual acquiescence, can never substitute for mutually agreed to contract language, unless some ambiguity in contract language exists. Then, and only then may past practice be used to fill an ambiguous void. This conclusion is axiomatic, since an alternative outcome would cause a modification of existing language, an unanticipated extra-contractual happenstance .

The Employer's reliance on OCSEA's contract (Union Exhibit 2) is peculiar and a bit misplaced. The language in Article 32 more closely mirrors existing Office of Budget and Management policy and practice. It specifies overnight stays as a prerequisite for actual meal expense payments.

The Employer's presentation would have been more persuasive if some bargaining history had been brought into evidence. The record is totally void of any explanation distinguishing Article 65 language versus language contained in HP-OBM7148 (Joint Exhibit 3).

AWARD

The grievance is sustained. The Employer is ordered to pay the Grievant for meal expenses realized on March 6, 1997 and March 7, 1997.



February 3, 1999
Moreland Hills, Ohio

Dr. David M. Pincus
Arbitrator