

Larry K. Phillips, Grievant,
The Ohio State Troopers Ass'n,
Employee Organization

No. 15-03-201108222-0092-41-01

Ohio Department of Public Safety,
Division of Ohio State Highway Patrol,
Employer

For the Union:

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Before Sarah Rudolph Cole, Arbitrator

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Issue

Did the Employer violate Section 25.03 of the labor agreement by refusing to provide a Union Release Employee with a plain clothes duty allowance, and, if so, what shall the remedy be?

Relevant Language

Section 25.03 . . . Upon presentation of receipts, officers permanently assigned to plain clothes duty will be reimbursed up to nine hundred seventy-five dollars (\$975.00) annually for the purchase of suits, shirts, ties and shoes. At the time of the initial assignment, the trooper/sergeant shall receive one (1) top coat and be reimbursed up to one thousand and fifty dollars (\$1050.00) for the purchase of suits, shirts, ties and shoes. . .

Facts

Trooper Larry K. Phillips, the grievant, is released from his job duties as an Ohio State Trooper so that he may perform union business for the Ohio State Troopers' Association. He is the OSTA president and has been in that position since November 2006. When performing his duties on behalf of the union, the grievant does not wear his trooper uniform. Instead, he wears jackets, suits, pants, shirts and ties. The grievant, based on his belief that he was permanently assigned to plain clothes duty and therefore entitled to reimbursement for clothing purchases, submitted invoice(s) for approval for reimbursement under section 25.03 of the parties' collective bargaining agreement in 2007. He requested reimbursement for an overcoat as well as various items of clothing. Grievant's employer, the State of Ohio, refused to provide reimbursement because it believed grievant was a "release" person, not an officer permanently assigned to plain clothes duty. Grievant filed a grievance. The parties settled the grievance when the State agreed to pay \$1,050 to the grievant for a one-time clothing allowance. The

settlement agreement precluded the grievant from seeking further reimbursement for clothing until July 2009. In July 2009, the grievant again submitted for approval a reimbursement request for the purchase of clothing. The State approved this request. In 2010, the State also approved grievant's request to be reimbursed for clothing purchases. According to Major Teaford, who handled the grievant's request for reimbursement in 2009 and 2010, grievant's request was initially denied in 2009 but ultimately approved because Major Teaford received direction from Colonel Collins, his superior, that the reimbursement should be approved. This same reversal occurred in 2010, although this time directed by Colonel Dickens. In February 2011, grievant's employer asked the grievant if he would reduce his reimbursement requests from \$975 to \$500. The grievant explained that he would not agree to that change because it was a contractual issue subject to negotiation. In August 2011, the grievant submitted a request for reimbursement for \$983. The State denied that request and the grievant responded by filing the grievance that is the subject of this arbitration.

Union's Position:

The Union contends that the grievant is an officer permanently assigned to plain clothes duty and should be entitled to reimbursement for clothing he must purchase to perform his duties as the release person for the OSTA. According to the Union, the State only has one classification for its troopers, whether they wear uniforms or plain clothes. Thus, troopers assigned to conduct investigations wear plain clothes but could, at any time, be returned to the field and wear their uniforms again. As a result, the Union argues, no trooper is "permanently assigned" to any position and, therefore, the grievant's assignment to the Union, as the release person, is as permanent as any assignment in the unit. The Union states that the grievant has worked every day in plain clothes since he became the release person, except for parades and official training. Because grievant is permanently assigned to his position, and he wears plain

clothes in that position, he is entitled to reimbursement for the purchase of his clothing. In addition, the Union contends that if the agreement's language is ambiguous, past practice would mandate reimbursement in this case. The Union emphasizes that the State reimbursed the grievant in 2007, 2009 and 2010, thus creating a past practice that requires continued reimbursement.

Employer's Position:

The State contends that it need not reimburse grievant for his plain clothes purchases because the permanent assignment to plain clothes duty language in the collective bargaining agreement contemplates reimbursement only for those employees who are required, as part of their job, to wear plain clothes. The State contends that it does not mandate that the grievant wear plain clothes when he performs his duties as release person. Also, the State contends that employees permanently assigned to plain clothes positions include only those conducting investigations, internally or externally, or those in the executive protection unit. It does not include troopers who are released from their job responsibilities so that they can work for the Union. Finally, the State contends that if the agreement's language is ambiguous, its reimbursement of the grievant on three occasions does not qualify as a past practice because the first reimbursement was paid out only after the grievant filed a grievance – thus, the State resisted the initial reimbursement request and, on the second and third occasions, the State's reimbursement took place over the objection of the officer responsible for reimbursement. The State's resistance to the reimbursement, together with the small number of reimbursements, does not qualify as a past practice.

Opinion:

This grievance turns on the interpretation of section 25.03 of the parties' collective bargaining agreement, which states, "[u]pon presentation of receipts, officers permanently


assigned to plain clothes duty will be reimbursed . . .” The issue is whether the grievant, who is the Union’s release person, is an officer “permanently assigned to plain clothes duty”. If he is, he is entitled to reimbursement. After a careful review of the evidence and testimony presented at the hearing, I conclude that the term “plain clothes duty” is clear and unambiguous. The parties used the term “plain clothes duty” in the collective bargaining agreement to distinguish troopers and sergeants who are required to wear uniforms to perform their jobs from those troopers (and others) who must wear plain clothes to perform their job. Plain clothes positions include troopers, sergeants, and lieutenant(s) who work in criminal investigation as well as those who work in internal affairs and the executive protection unit. The State mandates that each of these employees wear plain clothes because they are better able to perform their job duties if they are wearing plain clothes. As a result, the employer reimburses them for clothing expenses. By contrast, the grievant’s position does not fit within the meaning of “plain clothes duty” based on the testimony and documentary evidence presented at the arbitration. The State plays no role in selecting which employee is a “release person”. Moreover, the parties did not present evidence that the State plays a role in deciding what kind of clothes the released employees wear to perform their job duties. The uncontroverted testimony was that the grievant chooses to wear plain clothes when performing his duties and that the State does not mandate what clothing he must wear while performing his duties. Because the State does not mandate what clothes the grievant must wear, he must pay for his own clothing.

It is a fundamental principle of contract interpretation that there is no need for interpretation of a provision of an agreement unless it is found to be ambiguous. Because I find that the words of the collective bargaining agreement are plain and convey an unmistakable meaning, there is no need use the parties’ past actions to help with interpretation.

Conclusion

The grievance is denied.

September 23, 2013



Sarah R. Cole, Arbitrator