**OCB AWARD NUMBER: 2222**

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| **SUBJECT:** | **ARB SUMMARY # 2222** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110822-0092-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Sarah Rudolph Cole** |
| **GRIEVANT NAME:** | **Larry K. Phillips** |
| **MANAGEMENT ADVOCATE:** | **Edward M. Crispen** |
| **UNION ADVOCATE:** | **Herschel Sigall**  |
| **ARBITRATION DATE:** | **8-8-2013** |
| **DECISION DATE:** | **9-23-2013** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Articles: 25.03** |
| **OCB RESEARCH CODES:** | **114.154 Uniforms and Tools** |

**HOLDING: Grievance DENIED. The Grievant was not entitled to reimbursement for clothing purchases made for his “release person” duties with the union. The State did not mandate what clothing the Grievant was required to wear during his union duties. The contract language was unambiguous. Therefore, past practice is irrelevant.**

Grievant is an Ohio State Trooper. He is also the OSTA president. When performing duties on behalf of the union, the Grievant does not wear his trooper uniform. Instead he wears suits or jackets. In the past, Grievant has requested reimbursement from the State for his union president clothing purchases. Some of these requests were initially rejected but eventually all of these reimbursement requests were approved. In February of 2011, the Employer asked that the Grievant reduce his reimbursement request from $975 to $500. The Grievant submitted a request for $983. The State denied that request.

The Employer contended that it does not have to reimburse the Grievant. The CBA contemplates reimbursement only for those employees who are required as part of their job to wear plain clothes. The State never mandated that the Grievant wear plain clothes when he performed his duty as a “release person”. If the agreement’s language is ambiguous, its reimbursement of the Grievant on three occasions does not qualify as a past practice. Therefore, the grievance should be denied.

The Union argued that the Grievant is permanently assigned to plain clothes duty. The Grievant should be entitled to reimbursement for clothing he must purchase to perform his duties as the “release person” for OSTA. The State recompensed the Grievant for these types of purchases in 2007, 2009, and 2010. This created a past practice for reimbursement. The rule is if the contract language is ambiguous, past practice determines how to interpret the language. The grievance should be granted.

The Arbitrator found that the issue was whether the grievant is an officer “permanently assigned to plain clothes duty”. The term plain clothes duty is clear and unambiguous. Plain clothes positions include those who work in criminal investigations as well as those who work in internal affairs and the executive protection unit. In these positions, the State mandates that the employee wear plain clothes. The State, however, plays no role in selecting the “release person”. Nor does the State play a role in deciding what that “release person” wears. The grievance was denied.