

**Decision and Award in the Matter of Arbitration between:**

**Ohio Department of Public Safety,  
Division of the State Highway Patrol**

**And**

**Ohio State Troopers Association**

**Grievance #: 15-03-20120510-0047-04-01**

**Grievant: Joseph Glascox**

**Arbitrator: Jack Buettner**

**Date of Hearing:** September 9, 2014

**Date Briefs Received:** October 6, 2014

**Date Decision Issued:** October 27, 2014

**Representing the Union:**

Hershel M. Sigall

Ohio State Troopers Association

6161 Busch Blvd.

Suite 130

Columbus, OH 43229

**Representing the Employer:**

Lt. Jacob Pyles

Ohio State Highway Patrol

1970 W. Broad St.

Columbus, OH 43223

By Mutual agreement the Hearing was convened on September 9, 2014 at 9:00 AM. The hearing was held at the office of the Ohio State Troopers Association in Columbus, Ohio. Jack Buettner was selected by the parties to arbitrate this matter as a member of the panel of permanent umpires pursuant to Article 20, Section 20.8, of the Collective Bargaining Agreement which is effective from 2012-2015.

The parties each stipulated to the statement of the issue, a series of background facts, and the admission of joint exhibits. The parties have also agreed to the arbitration of this matter. No issues of either procedural or jurisdictional arbitrability have been raised, and the matter is now properly before the arbitrator for a determination of the merits.

**In attendance for the Employer:**

Lt. Jacob Pyles	1 <sup>st</sup> Chair, OSHP
Aimee Szczerbacki	2 <sup>nd</sup> Chair, OCB
Lt. Cassie Brewster	OSHP
Lt. M.D. Combs	Witness, OSHP
Capt. Charles J. Linek III	Witness

**In attendance for the Union:**

Joseph R. Glascox	Grievant
Mr. Herschel Sigall	Advocate
Ms. Elaine Silveira	Assistant General Counsel
Jeremy Mendenhall	OSTA President
Bob Cooper	OSTA Staff Representative

The parties were asked to submit exhibits into the record.

**The following were submitted as Joint Exhibits:**

Joint Exhibit #1	Contract between the State of Ohio and the Ohio State Troopers Association, Unit 1, 2009-2012
Joint Exhibit #2	Grievance Trail
Joint Exhibit #3	2/28/2012 Trooper K-9 Handler Job Posting

Joint Exhibit #4	3/29/12 Lt. Combs IOC
Joint Exhibit #5	Criminal Patrol Team Canine Applicant Questionnaire
Joint Exhibit #6	Canine Handler Interview Questions

**The following were submitted as Union Exhibits:**

Union Exhibit #1	Joseph Glascox: Employee Information, Honors and Awards
Union Exhibit #2	Post Commander Input Form
Union Exhibit #3	Joseph Glascox: Performance Document, Annual Review, Manager Evaluation

**The following were submitted as Management Exhibits:**

Management Exhibit #1	Personnel Activity from 12/23/2008 to 12/28/2008 and Job Posting-OSTA Unit 1 Members, Posting Date 12/31/08
Management Exhibit #2	Trooper K-9 Handler Bargaining Unit 1, Key Criteria in effect for Job Posting in Exhibit #1
Management Exhibit #3	Job Posting-OSTA Unit 1 & 15 Members, Posting Date 3/25/09
Management Exhibit #4	Trooper K-9 Handler Bargaining Unit 1, Key Criteria in effect for Job Posting in Exhibit #3
Management Exhibit #5	Trooper K-9 Handler Bargaining Unit 1, Description of Position and Requirements
Management Exhibit #6	Job Posting-OSTA Unit 1 Members, Posting Date 6/4/13

**Background:**

On February 8, 2012, the Employer posted a canine position for the Massillon District Headquarters. The Grievant, Trp. Joseph Glascox, applied for the position and was granted an interview on March 29, 2012. He was not selected for the position.

**Issue:**

Did the Employer violate Article 30-Transfers of the Collective Bargaining Agreement when it did not award the posted K-9 position to the Grievant? If so, what shall the remedy be?

**Employer Position:**

The Employer's position is that the Collective Bargaining Agreement, Article 30-Transfers, was not violated when it selected another employee other than the Grievant to fill the posted canine position. The Employer contends that Trp. Glascox was not awarded the job because he did not meet the "key criteria" listed in the job posting.

One of the "key criteria" for the posted position states, "Must live within 50 miles of the report-in location." Through a series of exhibits, the Employer showed that this requirement was consistent before and after the Grievant applied for the K-9 position. Additionally, the job posting stated that, "Applicants who do not comply with all requirements of the posting will not be considered." On the Criminal Patrol Team Applicant Questionnaire, the Grievant answered that he lived "at the 50 mile radius." Therefore, he was granted an interview. During the interview, however, he stated that he lived 50.3 miles from the report-in location. The Collective Bargaining Agreement, Article 31, Residency, 31.01-Requirements, states that the distance will be determined by software used by the Employer. Using that software, Capt. Charles Linek testified that the distance was 51.16 miles. This factor, being outside of the 50 mile limit, eliminated Trp. Glascox for consideration for the K-9 position since he did not meet one of the key criteria for the job.

**Union Position:**

The Union's position is that Trp. Glascox was wrongfully denied the position of Canine Trooper for District 3 based on Article 30-Transfers of the CBA. Since the move from

the current position to the canine position would be considered a lateral move, the determination should be based on ability and seniority. Trp. Glascox's ability to perform the job was not in dispute. Additionally, the Union presented in evidence a list of the numerous honors and awards he had received. He was the most senior applicant after the elimination of Trp. Ausse, and, according to the provisions of Article 30, the job should have been awarded to him.

The Union argued that the distance from the report-in location should not disqualify Trp. Glascox for the position. The OHSP form used by the Grievant's Post Commander for applicants requesting a transfer asks if the applicant lives within 50 miles of the report-in location but also asks, "Would the applicant be willing to move to meet the 50 mile requirement?" Trp. Glascox not only stated his willingness to move closer, but the sale of his house was pending and his new home was substantially closer to the report-in location. The inclusion of a question relating to the applicant's willingness to move indicates that the answer should bear some significance. Therefore, Trp. Glascox should not have been disqualified based on the 50 mile distance requirement.

## **DISCUSSION AND DECISION:**

In reviewing the case of Trp. Joseph Glascox, I have analyzed the testimony and evidence put forth by both sides. Since the Grievant failed to meet the stipulated residential requirement, the Employer had just cause to deny the K-9 position to the Grievant.

The Union and the Employer addressed this grievance from two different perspectives. The Union believed that Article 30-Transfers of the Collective Bargaining Agreement had been violated. Article 30 uses ability and seniority as the determiners for transferring positions. The Employer believed that Article 30 did not apply since Trp. Glascox did not meet the key criteria of the job from the onset.

While the Union argues that Trp. Glascox was granted an interview, the Employer contends that he was granted the interview only because he stated on the Criminal Patrol Team Applicant Questionnaire that he lived "at the 50 mile radius." Had the certified distance of 51.16 miles, as measured by software determined by the Employer and the provisions of Article 31.01, been reported, Trp. Glascox would not have been granted an interview. The job posting itself contained, in bold print, the following line: "Applicants who do not comply with all requirements of the posting will not be considered."

The Employer has been consistent in applying the criteria of the 50 mile radius for residency as evidenced by the chain of exhibits submitted. The 50 mile radius is not an

arbitrary distance. A Criminal Patrol team member can only drive a state owned vehicle to and from their residence if they live within that 50 mile radius. Since Division canine cannot be transported in any vehicle other than the Canine Handler's issued vehicle, it would be counterproductive to not enforce that 50 mile radius criteria.

The Union made a case for the removal of the 50 mile residence criteria by citing the Post Commander's Input Form, Union Exhibit #2, Question 8, which asks, "Is the candidate willing to move?" Trp. Glascox was indeed willing to do that and had taken steps toward selling his home and relocating. At the time he applied for the position, however, he was outside the 50 mile limit. The inclusion of that question does not negate the key criteria that were in place and explicitly stated on all other forms.

The Grievant applied for this position three times prior to this instance. Trp. Glascox should have been aware of the 50 mile residential requirement that is one of the key criteria for selection for this position. Criminal Patrol Team Canine Application Questionnaire, # 5 of Joint Exhibits, Question 6 asks, "Do you currently reside within a 50 mile radius of the CP post location to which you desire to transfer?" Additionally, in the Canine Handler Interview Questions, # 6 of Joint Exhibits, Question 8 states, "Do you currently reside within a 50 mile radius of the CP posted location?" The expectation of residency within a 50 mile parameter was explicitly stated throughout the job posting, application, and interview process.

**AWARD:**

For the reasons stated above, I find in favor of the Employer. The Union failed to prove that the Collective Bargaining Agreement was violated. Therefore, the grievance does not have merit. Because it does not have merit, the grievance is denied.

Respectfully submitted this 27th day of October, 2014,

John F. Buettner, Arbitrator