

ARBITRATION DECISION NO.:

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UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Transportation

DATE OF ARBITRATION:

August 23, 1988

DATE OF DECISION:

September 6, 1988

GRIEVANT:

Raymond Dailey

OCB GRIEVANCE NO.:

G-86-1059

ARBITRATOR:

Harry Graham

FOR THE UNION:

Daniel Smith

FOR THE EMPLOYER:

Tim Wagner

KEY WORDS:

Contract Interpretation

ARTICLES:

Article 3 - Union Rights

§3.01-Access

§3.02-Stewards

Article 24 - Discipline

§24.04-Pre-Discipline

Article 25 – Grievance Procedure

§25.06-Time Off, Meeting Space and Telephone Use

FACTS:

Grievant is a Union Steward for an ODOT county garage. On October 14, 1986, there occurred a pre-disciplinary hearing at ODOT's headquarters in Newark. As the Union Steward involved, Grievant requested paid State time and transportation to go to Newark for the meeting. That request was denied though he was permitted to utilize personal leave time, such as vacation, in order to attend the meeting. Managerial personnel were permitted to travel to Newark on State time in state provided transportation to participate in the pre-disciplinary hearing. It was the State's denial of paid time and transportation to the Grievant that precipitated this grievance.

EMPLOYER'S POSITION:

Section 3.02 of the Collective Bargaining Agreement specifies that "stewards and local officers shall be allowed a reasonable amount of time away from their regular duties to administer the Agreement at the facility where they work . . ." This language restricts the activity of stewards to the "facility where they work". Thus the denial of State time and transportation to the Grievant to attend a pre-disciplinary meeting at a site other than where he worked was proper.

Furthermore, Section 24.04 of the Agreement specifies that an employee is entitled to "a" steward in the pre-disciplinary meeting. It does not indicate that an employer may have his or her steward. The State made available at the meeting in Newark the Union steward at that facility. He was "a" steward as required by the Agreement, hence no violation of its terms occurred.

UNION'S POSITION:

Section 3.02 of the Agreement indicates that Stewards "shall be allowed a reasonable amount of time away from their regular duties to administer the Agreement". Denial of State time and transportation to the Grievant represents a breach of Section 3.02 of the Agreement.

Furthermore, Section 3.02 indicates that "in occasional or unusual circumstances" limited travel time for stewards may be necessary. The need to attend meetings away from the work site is an unusual occurrence. It does not happen regularly. Travel to the meeting in Newark was unusual. Thus, denial of State time and transportation for Grievant was unreasonable.

The Steward at the facility where the situation giving rise to the discipline occurred is most knowledgeable about the events, the Grievant, and the witnesses. Any other steward, such as a steward at Newark is unfamiliar with the events and the people involved in the pre-disciplinary conference. Grievant's steward was most knowledgeable about the events and should have been permitted to attend the meeting on state time in state transportation.

ARBITRATOR'S OPINION:

The record of negotiations concerning Section 3.02 is clear. The State continuously opposed payment for Stewards except if they were at their job site administering the Agreement. Attendance at pre-disciplinary conferences is not unusual. Such meetings are held throughout the State each day. The conclusion is inescapable that travel to such meetings would not be unusual or occasional within the meaning contemplated by the Agreement.

Finally, Section 24.04 requires that presence of "a" Union steward at pre-disciplinary meetings. There is no doubt that the person from Muskingum County received the attention of "a" Union Steward and therefore, the State did not violate the Agreement.

AWARD:

Grievance Denied.

TEXT OF THE OPINION:

* * *

In the Matter of Arbitration

Between

**Ohio Civil Service Employees
Association, AFSCME Local 11**

and

**State of Ohio, Department
of Transportation**

Grievance No.:

G-86-1059

Appearances:

**For Ohio Civil Service
Employees Association:**

Daniel Smith
General Counsel
Ohio Civil Service
Employees Association
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Columbus, OH. 43212

For State of Ohio:

Tim Wagner
Office of Collective Bargaining
65 East State St., 16th Floor
Columbus, OH. 43215

Introduction:

Pursuant to the procedures of the parties a hearing was held in this matter on August 23, 1988 before Harry Graham of Chagrin Falls, OH. At that hearing both parties were provided complete opportunity to present testimony and evidence. Several supplementary exhibits were submitted by

the Union after close of the oral hearing with the acquiescence of the State. Receipt of those exhibits was acknowledged by the Arbitrator on August 29, 1988 and the record was declared closed as of that date.

Issue:

At the hearing the parties were able to agree upon the

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issue in dispute between them. That issue is:

Did management violate the contract, Articles 3.01, 3.02 and 25.06 when it failed to permit the grievant paid time, travel and transportation to represent an employee in a pre-disciplinary conference at the District Headquarters in Newark, OH.

Facts:

The parties are in complete agreement over the facts that give rise to this dispute. On October 14, 1986 there occurred a pre-disciplinary conference at the Ohio Department of Transportation District 5 Headquarters in Newark, OH. (That Headquarters has subsequently been relocated to Jackson Township, OH.). At that date and to this time Ray Dailey was the union steward at the ODOT facility in Muskingum County, the facility that gave rise to the incident that occasioned the pre-disciplinary conference in Newark. The Muskingum County garage is approximately 22-25 miles from Newark. As the Union steward involved, Mr. Dailey requested paid state time and transportation to go to Newark for the pre-disciplinary meeting. That request was denied though he was permitted to utilize personal leave time, such as vacation, in order to attend the meeting. Managerial personnel were permitted to travel to Newark on State time, in State provided transportation to participate in the pre-disciplinary meeting. It was the denial of State time and State transportation which precipitated this grievance.

The parties agree that the grievance is properly before the Arbitrator for determination on its merits.

Position of the Union:

As the Union reads the Collective

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Bargaining Agreement it requires that Stewards be permitted to attend pre-disciplinary meetings on State time and travel to them in State-owned vehicles. At Section 3.02 of the Agreement the parties indicated that Stewards "shall be allowed a reasonable amount of time away from their regular duties to administer the Agreement." That is what the Union seeks in this situation. In its view, denial of State time and transport to Mr. Dailey represented denial of the "reasonable amount

of time away from their regular duties" which is provided by the Agreement.

In fact, the need to attend meetings away from the work site is an unusual occurrence. It does not happen regularly. That circumstance was anticipated by the parties elsewhere in Section 3.02. In that Section the parties agreed that "in occasional or unusual circumstances limited travel time for stewards may be necessary." Travel to the meeting in Newark was unusual. Given that situation, paid travel time is required by the Agreement in the Union's opinion.

Similarly, at Section 25.06 of the Contract the parties agreed that both grievants and stewards would be permitted "reasonable time off without loss of pay" during work hours to process grievances. That is all the Union seeks in this situation, a reasonable amount of time to process grievances. A pre-disciplinary meeting was called. The Union steward's attendance was necessary. It is a violation of the Agreement to require the appropriate steward to use his or her own time

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to travel to the meeting in order to fulfill the representation function. The steward at the facility where the situation giving rise to the discipline occurred is most knowledgeable about the events, the grievant and the witnesses. Any other steward, such as the person at Newark in this instance, is unfamiliar with the event and the people involved in the pre-disciplinary conference. Article 25.01 F indicates it is the goal of the parties to resolve grievances at the earliest possible time and at the lowest step in the grievance procedure. This objective of the parties is frustrated if the most knowledgeable union representative, the steward at the job site, is precluded from attending the pre-disciplinary meeting. As this is the case, the Union urges that the grievance be granted and that stewards be permitted to attend pre-disciplinary meetings on State time and journey to them in State vehicles.

Position of the Employer:

In support of its assertion that the Agreement was not violated in this situation the State cites language in Section 3.02 of the Agreement that was not cited by the Union. Quoted above, the language continues to indicate that stewards are to be permitted a reasonable amount of time away from work at "to administer the Agreement at the facility where they work." (Emphasis supplied). It is the phrase "at the facility where they work" which permits the Employer to act as it did in this instance it claims. The language restricts the activity of stewards to the "facility

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where they work." As this is the case, the denial of State time and transport to the Grievant to attend a pre-disciplinary meeting at a site other than where he worked was proper in the State's view.

Furthermore, at Section 24.04 of the Agreement, it is indicated that an employee is entitled to the presence of "a" steward in the pre-disciplinary meeting. It does not indicate that an employee may have his or her steward. No specific steward is provided for in the Agreement. In fact, the State made available at the meeting in Newark the Union steward at that facility. He was "a"

steward as required by the Agreement. Hence, no violation of its terms occurred in the opinion of the State.

The Employer also points to the record of negotiations concerning time to be spent on Union business by stewards. That record, (Employer Exhibits 4 and 5) indicates that the State consistently opposed stewards being on State time while on Union business away from their job site. Specifically, the point was made to the Union during the course of negotiations that the State agreed only to travel on State time while on State business, not to administer the contract. As this position was clearly set forth to the Union and consistently adhered to by the State in negotiations, the State urges that the grievance be denied.

Discussion:

In this controversy it is necessary to examine the governing contract language in its entirety to determine

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the true intent and understanding of the parties. The relevant language indicates that stewards "shall be allowed a reasonable amount of time away from their regular duties to administer the Agreement at the facility where they work...." The phrase "at the facility where they work" may be interpreted two ways: one, as the State would have it, restricting the activities of Stewards to the job site or "facility" or two, to modify "administer the Agreement...." In other words, the steward is entitled to receive a reasonable amount of time away from their job in order to deal with grievances arising at the "facility where they work...." The latter construction is that placed upon the language by the Union. In order to determine the intent of the parties when confronted with two plausible interpretations of contract language recourse may be had to any records of negotiations or recollections of those present at the bargaining table. In this instance, particularly good records are available. Employer Exhibit 5, a precis of the negotiating session of April 16, 1986, records the discussion between the parties over the issue of release time for Union Stewards. Gene Brundige, spokesman for the State on this issue, indicated to the Union that stewards could not be permitted to travel on State time. He reiterated that travel on State time was permissible solely to perform duties associated with the job. No travel was permitted to administer the contract. Somewhat earlier in the

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negotiations, on April 2, 1986, (Employer Exhibit 4) the State in the person of Mr. Brundige indicated its opposition to pay for stewards returning for training or for stewards who returned to work to perform tasks associated with contract administration. The record is clear that the State continuously opposed payment for stewards except as they were at their job site administering the Agreement. Some modification of the State's consistent opposition was secured by the Union. It is found in Section 3.02 when the State agreed to pay for "limited travel time for stewards" in "occasional or unusual circumstances." Attendance at pre-disciplinary conferences is not unusual. The State indicated that many such meetings were held throughout the confines of Ohio each day. Some of them doubtless involve travel from the site giving rise to the discipline to another facility. Testimony from the ODOT Labor Relations Specialist involved in this situation, Dewayne Slack, indicated that all such hearings in ODOT District 5, a 7 county area, are held in Licking County.

The conclusion is inescapable that travel to such meetings would not be unusual or occasional within the meaning contemplated by the Agreement.

Section 24.04 of the Agreement specifies that an employee is entitled to the presence of "a" Union steward at a pre-disciplinary meeting. There is no doubt that the person from the Muskingum County ODOT facility received the attentions of "a" Union Steward. It may well be that the

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Steward from Muskingum County was more conversant with the events leading to discipline than his colleague at the Licking County facility. However, the Agreement is specific and indicates that all that is required is the presence of "a" steward. As that requirement was met, it must be concluded that the State did not violate the Agreement in this situation.

Award:

Based upon the preceding discussion the grievance must be DENIED.
Signed and dated this 6th day of September, 1988 at South Russell, OH.

Harry Graham
Arbitrator