ARBITRATION DECISION NO.:
259

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Transportation,
New Albany Garage, District 6

DATE OF ARBITRATION:
February 21, 1990

DATE OF DECISION:
May 16, 1990

GRIEVANT:
Hugh Williams

OCB GRIEVANCE NO.:
G-87-2070

ARBITRATOR:
David M. Pincus

FOR THE UNION:
Linda Fiely
Butch Wylie

FOR THE EMPLOYER:
Rodney Sampson, Advocate
Michael Duco, Associate Advocate

KEY WORDS:
Protective Clothing
Uniforms
Article 11.02
Article 33.01

ARTICLES:
Article 5 - Management Rights
Article 11 - Health and Safety
§11.02-Personal Protective Clothing and Equipment
Article 25 - Grievance Procedure
§25.03-Arbitration Procedures

§25.04-Arbitration Panel
Article 33 - Uniforms and Tools
§33.01-Uniforms
§33.02-Tools

FACT

The grievant is an Equipment Operator I employed by the Ohio Department of Transportation. The grievant wore tennis shoes to work and was told by the employer that he must wear leather shoes. A grievance was filed requesting payment for work shoes or that work shoes be supplied pursuant to Section 11.02, protective clothing, or Section 33.01, uniforms.

UNION'S POSITION:

The employer violated Section 11.02. Employees are required to wear shoes with certain characteristics i.e. they cannot be tennis shoes or sandals. Therefore, work shoes fall into the category of personal protective clothing. The employer, however, refuses to bear the expense in accordance with Articles 11.02 or 33.01 of the contract. Other employees have received discipline for not wearing employer approved footwear. Employer's directive #A-304 is ambiguous concerning protective footwear.

EMPLOYER'S POSITION:

There is no violation of Article 11.02. This provision sets out the employer's right to require protective clothing. Directive A-304 does not specify a particular type of footwear, it only prohibits tennis shoes and sandals. The directive is not ambiguous and it has been consistently enforced over multiple contracts. Examples of employer supplied equipment are goggles, vests and hard hats. Discipline was imposed only when employees wore prohibited footwear. Bargaining history does not support the fact that the employer supplied footwear.

ARBITRATOR'S OPINION:

The employer did not violate contract Section 11.02 and is not required to provide or pay for work shoes for employees. An arbitrator cannot give other meaning to unambiguous contract provisions. Section 11.02 allows the employer to require protective clothing for health and safety. Directive A-304 prohibits certain footwear and recommends, not requires, work shoes. Employees have not been disciplined for wearing leather shoes such as loafers, only for wearing tennis shoes or sandals. A decision requiring employer supplied footwear would result in an outcome unintended by the contract. Such a decision would add to the contract in violation of Section 25.03.

AWARD:

Grievance denied.

TEXT OF THE OPINION:

STATE OF OHIO AND OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION LABOR ARBITRATION PROCEEDING

IN THE MATTER OF THE
ARBITRATION BETWEEN

THE STATE OF OHIO, THE OHIO DEPARTMENT OF TRANSPORTATION, NEW ALBANY GARAGE, DISTRICT 6

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, Local 11, AFSCME, AFL-CIO

GRIEVANCE:
Hugh Williams
(Contract Interpretation - Shoes)

CASE NUMBERS:
G-87-2070

ARBITRATOR'S OPINION AND AWARD

Arbitrator:
David M. Pincus

Date:
May 16, 1990

APPEARANCES

For the Union
Hugh Williams, Grievant
Don C. Williams,
Highway Worker II
Butch Wylie,
Staff Representative
Linda Fiely,
Associate General Counsel

For the Employer
Bill Adams,
Labor Relations Officer
Bob Litzenberg, Superintendent
William H. Buckley,
Safety Supervisor
Nancy Fisher, Administrator
of Health, Safety and Claims
Michael Duco,
Associate Advocate
Rodney Sampson, Advocate

INTRODUCTION

This is a proceeding under Article 25, Sections 25.03 and 25.04 entitled Arbitration Procedures and Arbitration Panel of the Agreement between the State of Ohio, the Ohio Department of Transportation, New Albany Garage, District 6, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, hereinafter referred to as the Union for July 1, 1986 - July 1, 1989 (Joint Exhibit 1).

The arbitration hearing was held on February 21, 1990 at the office of the Ohio Civil Service Employees Association, Columbus, Ohio. The Parties had selected 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. At the conclusion of the hearing, the Parties were asked by the Arbitrator if they planned to submit post hearing briefs. Both Parties indicated that they would not submit briefs.

ISSUE

Is the Employer required to provide work shoes for employees under Section 11.02 of the Agreement (Joint Exhibit 1)?

PERTINENT CONTRACT PROVISIONS

ARTICLE 5 - MANAGEMENT RIGHTS

Except to the extent expressly abridged only by the specific articles and sections of this Agreement, the Employer reserves, retains and possesses, solely and exclusively, all the inherent rights and authority to manage and operate its facilities and programs. Such rights shall be exercised in a manner which is not inconsistent with this Agreement. The sole and exclusive rights and authority of the Employer include specifically, but are not limited to, the rights listed in ORC Section 4117.08 (A) numbers 1-9.

(Joint Exhibit 1, Pg. 7)

ARTICLE 11 - HEALTH AND SAFETY

. . .

Section 11.02 - Personal Protective Clothing and Equipment

All personal protective clothing and equipment required by the Agency to preserve the health and safety of employees shall be furnished and maintained by the Agency without cost to employees.

. . .

(Joint Exhibit 1, Pg. 11)

ARTICLE 33 - UNIFORMS AND TOOLS

Section 33.01 - Uniforms

When the Employer requires an employee to wear a uniform, the Employer will furnish the uniform. The Employer will keep the uniform in good repair and will replace it when the uniform is ruined through normal wear and tear. If the uniform needs repair or replacement due to the negligence of an employee, the employee will bear the cost of the repair or replacement. In those institutions where cleaning facilities are available, uniforms shall be cleaned by the Employer. In all other agencies the Employer shall provide a reasonable allowance for uniform cleaning.

Section 33.02 - Tools

The Agency shall furnish and maintain in good condition the equipment needed by employees to perform their jobs. However, certain employee classifications, i.e., Auto Mechanic, may be required to furnish their own equipment, including but not limited to hand tools.

If employees are required to furnish their own tools or equipment, the Employer shall replace such tools or equipment when they are lost due to fire, wind or theft by forcible entry when in the care or custody of the Employer. The tools or equipment will be replaced with like tools or equipment.

Each employee shall furnish a complete list of his/her tools or equipment, including an accurate description and replacement cost, to his/her immediate supervisor in writing within thirty (30) days from the effective date of this Agreement. An employee shall keep such list current.

(Joint Exhibit 1, Pg. 53)

CASE HISTORY

Hugh Williams, the Grievant, is employed as an Equipment Operator I by the Ohio Department of Transportation, the Employer. He has served in this capacity for approximately seven years at the New Albany Garage, District 6. As an Equipment Operator, the Grievant engages in a number of activities such as driving backhoes, endloaders, and dump trucks; guardrail repair; snow removal; highway maintenance; drainage cleaning; and litter control.

On June 4, 1987, the Grievant wore tennis shoes to work and was told by Charles Woodson, his supervisor, that tennis shoes could not be worn, and that he had to wear work shoes. Woodson purportedly justified this request by noting that this was a safety requirement. The Grievant validated this assessment by contacting William Buckley, the Safety Supervisor for District 6. Buckley concurred with Woodson's statement and stated that work shoes were the appropriate footwear.

It appears that the Grievant complied with Woodson's request. He did, however, file a contract interpretation grievance on June 8, 1987. The following grievance statement formally articulated the Grievant's complaint:

"**. . .**
What happened? (State the facts that prompted you to write this grievance.) On June 4, 1987 I was told by my supervisor that tennis shoes would not be worn and I had to have a work boot. I then check (sic) with our district safety supervisor he agreed with my supervisor. (Bill Buckley)
. . ."

(Joint Exhibit 2)

As a remedy, the Grievant requested that the Employer provide work boots or safety shoes if it requires that such personal protective clothing be worn.

The Parties were unable to settle the above-mentioned matter in the various stages of the grievance procedure. Since neither Party raised any objections regarding procedural nor substantive arbitrability, the grievance is properly before the Arbitrator.

THE MERITS OF THE CASE

The Position of the Union

It is the position of the Union that the Employer violated Section 11.02. The Employer required employees to wear personal protective clothing in the form of work shoes to preserve health and safety. Yet, the Employer refused to bear the cost of this restriction in violation of the provision.

The requirement was supported by evidence and testimony concerning the existing policy and practice. The Employer's reliance on Directive No. A-304 - Employee Safety Requirements (Joint Exhibit 3) seemed muddied and uncertain. Specific emphasis was placed on the varying interpretations provided for Item 7, Paragraph 3 which establishes:

"**. . .**
In all areas where there is danger from falling objects or tools, light-wear footwear such as, but not limited to, tennis shoes, sandals, etc., WILL NOT be worn - safety or heavy work shoes are recommended.
. . ."

(Joint Exhibit 3, Pg. 2)

A number of Employer witnesses provided conflicting evaluations concerning the appropriateness of certain footwear in the work environment.

The prohibitions specified in Item 7, Paragraph 3 were thought to further bolster the Union's interpretation. Since certain prohibitions exist, employees cannot wear any type of work shoe but are required to wear shoes with certain characteristics. As such, this variety of personal protective clothing, required to preserve the health and safety of employees, must be furnished and paid for by the Employer.

Testimony provided by the Grievant and Don Williams, a Highway Worker II, supported the practice

requiring work boots at the work site. They maintained that the Employer prohibits the wearing of shoes it has considered to be unsafe. Both individuals noted that they have been specifically advised that employees must wear heavy work boots. On some occasions, employees have been required to return to the garage or their homes to change into the appropriate foot wear. These work interruptions, moreover, have been compensated for by the Employer. The Grievant also asserted that a number of employees have been disciplined because they have failed to abide by the Employer's requirement (Joint Exhibit 4).

The Position of the Employer

It is the position of the Employer that it did not violate Section 11.02. This position was based upon a number of contract interpretation arguments, interpretation of an existing policy directive, and the Employer's present footwear requirements.

The Employer asserted that Section 11.02 is clear and unambiguous because it affirmed its right to establish requirements dealing with protective wear. In accordance with this provision and Article 5 - Management Rights, the Employer promulgated Directive A-304 (Joint Exhibit 3) which prohibits certain footwear. The Employer only requires that the footwear have hard soles and hard leather uppers; shoes normally worn in the workplace. The Directive only prohibits the wearing of light footwear such as tennis shoes and sandals.

The Employer maintained that the Union failed to introduce any evidence or testimony in support of its proposed interpretation. Bargaining history and proposed positions were not produced even though the contested provision has been in the Agreement (Joint Exhibit 1) for a number of contract periods. As such, the Union's intent interpretation was totally unsubstantiated and lacked merit.

Buckley and Fisher testified that the particulars contained in Directive A-304 (Joint Exhibit 3) have basically remained unaltered over a considerable period of time. Several prior directives (Employer Exhibit 2(A), (B) and (C)), all dealing with employee safety requirements, personal protective clothing, and proper footwear, were introduced to establish the consistency of the requirements.

It was alleged that Directive A-304 (Joint Exhibit 3) requirements have been consistently applied. Several Employer witnesses emphasized that safety shoes, safety boots, work boots, and other footwear with certain specifications have never been required by the Employer. Although certain types of footwear are prohibited, all other varieties are deemed to be appropriate, and none of these have ever been provided by the Employer. It was alleged that the Union failed to establish the existence of a practice requiring the wearing of work boots or safety shoes. Fisher and Buckley distinguished the Union's interpretation from the protective clothing and gear presently provided by the Employer. They noted that goggles, vests, hard hats, gloves, and rain suits are some of the items issued by the safety office in accordance with Section 11.02. The safety office has never issued work shoes, nor has it compensated bargaining unit for these purchases. Inter-office communications (Joint Exhibit 4) dealing with disciplinary actions implemented because individuals wore inappropriate footwear were referred to in support of the practice. All of these individuals wore prohibited footwear, tennis shoes, while working. As such, other forms of non-light-weight footwear can be worn without any prohibition.

THE ARBITRATOR'S OPINION AND AWARD

In the opinion of this Arbitrator, the Employer is not required to provide work shoes or safety shoes for employees, nor compensate them for any purchase of these items. As such, the Employer did not violate Section 11.02. This conclusion is based upon contract interpretation principles, and evidence and testimony presented at the hearing regarding the application of Directive A-304 (Joint Exhibit 3).

It is axiomatic in contract construction that if the language of an agreement is clear and unequivocal, an arbitrator generally will not give it a meaning other than that expressed by the parties. In my judgment, Section 11.02 is clear and unambiguous. It allows the Employer to independently determine the type of personal protective clothing and equipment that it requires for health and safety purposes. In this instance, the requirement promulgated by the Employer is a prohibitive one. That is, Directive A-304 (Joint Exhibit 3) specifies a category of prohibitive footwear, all lightweight footwear such as tennis shoes and sandals. The

Directive, however, only recommends, but does not require, safety or heavy work shoes. The Union failed to provide any bargaining history which disputes the above interpretation.

Testimony and evidence introduced at the hearing also indicate that safety or heavy work shoes have not been required by the Employer. The Grievant's testimony regarding this matter was quite enlightening. He alleged that the Employer was "requiring us to wear a work boot." Yet, the Grievant admitted that the Directive does not specify work boots, work shoes, or safety shoes. The Grievant also provided inconsistent testimony regarding the type of footwear allowed by the Employer. Under direct examination he stated that there was a prohibition against wearing leather loafers by those employees in the Highway Worker job classification. He subsequently modified his testimony and said that Highway Worker IV have not been disciplined when they wore leather loafers. Under cross-examination, however, the Grievant partially recanted his testimony. He stated that bargaining unit members, in his job classification, have worn hard-soled leather loafers and have not been disciplined. A review of prior reprimands (Joint Exhibit 4) further supports the Employer's interpretation. All of them dealt with employees who had worn tennis shoes while working or refused to comply with a request to change footwear, resulting in some form of insubordination. If the Employer's requirements were as rigidly applied as professed by the Union, a number of non-tennis shoe reprimands should have been issued.

The Employer's practice was also consistently adhered to over a considerable period of time. Item No. 7 in the most recent policy (Joint Exhibit 3) has remained intact, with minor modifications, since September 30, 1983 (Employer Exhibit 2). As such, the Union has, to a certain degree, acquiesced and concurred with the Employer's interpretation. It appears that the present matter represents the first and only challenge to the interpretation proposed by the Employer.

The Union would have this Arbitrator equate a work shoe requirement with other protective items presently furnished and maintained by the Employer. Such an interpretation would lead to absurd or nonsensical results; an outcome unintended by the Parties. The Employer would be required to subsidize or supply safety shoes or safety boots. A benefit that was not specifically negotiated by the Parties, nor plausibly inferred from the existing contract language. Sections 33.01 and 33.02 reference specific requirements negotiated by the Parties dealing with furnishing and maintaining uniforms and tools/equipment. If the Union had intended to clothe footwear with similar status, it should have attempted to negotiate a similar clause into the Agreement (Joint Exhibit 1) rather than attempt to garner the same benefit via the arbitration process. An interpretation in favor of the Union, moreover, would add to the terms of the Agreement (Joint Exhibit 1), a specific violation of Section 25.03.

AWARD

For the above-mentioned reasons, the grievance is denied.

Dr. David M. Pincus
Arbitrator

May 16, 1990