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OFFICE OF THE ATTORNEY GENERAL
LABOR & PERSONNEL DIVISION

IN THE MATTER OF THE)
ARBITRATION BETWEEN)
)
THE STATE OF WASHINGTON AND)
THE WASHINGTON STATE PATROL)
)
and)
)
WASHINGTON STATE PATROL)
TROOPERS ASSOCIATION)
_____)

OPINION AND AWARD

**Grievance: Geographic
Assignment Pay**

Date: March 31, 2009

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

The Arbitrator, Michael H. Beck, was selected by the parties pursuant to Article 21 of their 2007-09 Collective Bargaining Agreement (WSPTA 1), hereinafter referred to as the Agreement. The Employer, the State of Washington and the Washington State Patrol, was represented by Morgan Damerow, Assistant Attorney General. The Union, Washington State Patrol Troopers Association, also referred to as WSPTA, was represented by Jeffrey Julius of the law firm of Aitchison & Vick, Inc.

A hearing in this matter was held in Seattle, Washington on January 22, 2009. At the hearing the testimony of witnesses was taken under oath and the parties presented documentary evidence. The parties provided for a court reporter and a verbatim

transcript of the proceedings was made available to your Arbitrator for his use in reaching a decision in this case.

The parties agreed upon the filing of simultaneous posthearing briefs which were timely filed, with the last such brief being received in the office of the Arbitrator on March 12, 2009.

ISSUE

The parties did not agree to a statement of the issue. After carefully reviewing the record in this matter, I find that the following constitutes an appropriate statement of the issue to be determined in this matter:

Did the Employer violate Section 28.9 of the Agreement by failing to pay the Grievants, Scott C. Witman and Craig W. Cardinal, Geographic Assignment Pay and if so, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Section 28.9 Geographic Assignment Pay provides as follows:

- A. The Employer will pay employees assigned to the following positions an additional seven percent (7%) of their base rate of pay:

District	Detachment	Location	Position #
8	Port Angeles	Forks	6629
8	Port Angeles	Forks	6633
7	Burlington	Newhalem	6571
4	Colville	Republic	6911

- B. In recognition of the fact that the higher cost of living impacts the ability to recruit and/or retain employees and impairs the effective operations of the Agency, the Employer will pay employees in positions located in King, Pierce or Snohomish

Counties the following additional percentage applied to the employee's base rate of pay.

County	Percent of base rate
King	Ten percent (10%)
Pierce	Three percent (3%)
Snohomish	Five percent (5%)

Section 28.9.B is new language which first appears in the current Agreement, while Section 28.9.A also appeared in prior collective bargaining agreement, namely the 2004-07 Agreement.

BACKGROUND

During the relevant period in this matter, from on and after July 1, 2007, the Washington State Patrol (WSP) was organized in the following manner. WSP was divided into six bureaus. One of those bureaus is the Field Operations Bureau (FOB). The majority of Uniformed Troopers and Sergeants are employed in the FOB. Their primary mission is to perform traffic law enforcement. The FOB is divided into eight geographic districts. District No. 1 is located in Tacoma, which is in Pierce County. District No. 2 is located in Seattle, which is in King County. District No. 7 is located in Marysville, which is in Snohomish County. Uniformed Troopers and Sergeants located in District 1, 2 and 7 do receive Geographic Assignment Pay pursuant to Section 28.9.B because they are considered to be "in positions located in King, Pierce, or Snohomish Counties."

The bureau of the WSP involved in this case is the Investigative Services Bureau (ISB) which has five divisions. One of those divisions is the Criminal Investigation Division (CID). Each of the five divisions of the ISB is supervised by a Captain. The Captain of the Criminal Investigation Division is Stephen M. Davis, who is located in

Olympia. He also supervises a Lieutenant named Julie Meyer, also located in Olympia. Trooper Detectives, hereinafter Detectives, assigned to the Criminal Investigation Division are located among the eight WSP geographic districts. As I understand it, there is a Sergeant in charge of the Detectives in each of the eight geographic districts.

The dispute in this case involves District 7, located in Marysville. The Marysville District with respect to the Criminal Investigation Division employs a Sergeant, Michael Marken, who supervises three Detectives and a Secretary. These five employees are all located at the Marysville District Office. Two Detectives are located at a WSP office in Burlington, Washington, which is in Skagit County. These two Detectives are the Grievants in this case. Although the two Grievants are assigned to work out of the Burlington office, they are also supervised by Sergeant Marken who, as indicated above, is located in Marysville.

NATURE OF DISPUTE

Sergeant Marken and the three Detectives located in Marysville receive the 5% Geographic Assignment Pay described in Section 28.9.B of the Agreement, since they are considered by the Employer to be, in the words of that Section of the Agreement, "employees in positions located in . . . Snohomish Count[y]". The Employer does not provide Geographic Assignment Pay to the Grievants pursuant to Section 28.9.B because the Employer takes the position that since these two Detectives work out of the Burlington office, which is located in Skagit County, they are not "employees in positions located in King, Pierce, or Snohomish Counties. . ."

The Union contends that the two Grievants are employees in positions located in Snohomish County because they are "in detective positions in the Marysville Criminal Investigation Unit." (Union brief, pgs. 14-15.) In support of its position, the Union points to a number of factors including; common supervision, the fact that the CID Secretary located in Marysville serves as support staff to the two Grievants as well as to the Detectives in the Marysville District Office. Among other factors the Union points to is the similarity of the work performed by the Grievants and the Detectives located in the Marysville District Office.

Both groups of Detectives are primarily engaged in felony collision investigations over a five county area, namely Whatcom, Skagit, Island, San Juan and Snohomish Counties. Both groups of Detectives may also become involved in investigating other crimes such as rape, homicide, assault or robbery. Both groups of Detectives are also involved in the preparation of cases for trial. Of particular significance to the Union is the undisputed testimony of Grievant Witman that both the Detectives assigned to Marysville and those assigned to Burlington spend approximately the same amount of time working in Snohomish County, about 35% to 40% of their time. Based on the foregoing and other similarities regarding the duties of the two groups of Detectives, the Union contends that the clear language of Section 28.9.B requires a finding that the Grievants are "in positions located in Snohomish County." (Employer brief, pg. 19.)

DISCUSSION

After carefully reviewing the record in this case, I find that the Employer did not violate Section 28.9 of the Agreement by failing to pay Geographic Assignment Pay to

Grievants Witman and Cardinal. I agree with the Employer that the positions held by the two Grievants are not positions located in either King, Pierce, or Snohomish Counties, but rather they are in positions located in Burlington, which is located in Skagit County.

It is true, as the Union points out, that the Detectives working out of the Burlington office have a good deal in common with the Detectives working out of the Marysville District Office. Thus, in addition to common supervision, common support staff and similar duties, I note the following. Grievant Witman testified that the Burlington based Detectives are required to come to the Marysville District Office as frequently as once or twice a week in order to accomplish various tasks. These tasks include getting taped transcriptions of witness and suspect interviews transcribed, copying case files to prepare for prosecution, and ordering supplies.

Additionally when one of the Grievants is in the Marysville District Office he will pick up any mail addressed to either of the Grievants and bring that mail to the Burlington office. However, the Grievants do have mail boxes at their office in Burlington and mail addressed to the Burlington office is delivered to that office. In this regard, I note that the WSP provides two separate business cards to the Grievants, one containing their contact information with respect to Marysville and one containing their contact information with respect to Burlington. The Grievants will provide an individual with the card containing the most convenient contact information for the recipient.

Interoffice communications are generally delivered to the Marysville office. With respect to subpoenas, Grievant Witman testified that the Grievants are generally served at the Marysville office, although on occasion they are served at the Burlington office. Captain Davis explained that the subpoenas addressed to the Grievants are to be served at

the Marysville office because Sergeant Marken is required to perform several tasks with respect to the subpoenas. For example, it is Sergeant Marken's duty to assure that the subpoenaed Detective is available on the day in question, that is, not on vacation or on a day off. Additionally, Sergeants are required to observe Detectives when they testify in court.

The Union also pointed to the WSP's intranet site phone book which lists both the Marysville and Burlington based employees as "CID-Marysville." (WSPTA Exhibit No. 20.) However, I note that this telephone directory provides the Marysville District Office telephone number for the five employees located in Marysville and the Burlington Office telephone number for the two Grievants. Additionally, the telephone directory used by

Captain Davis lists the Burlington office phone number for the two Grievants and the Marysville office phone number for the Detectives working in the Marysville District Office.

I also note that the Grievants attend quarterly meetings in Marysville to discuss case load with Sergeant Marken and they also review their semi-annual evaluations at the Marysville office with Sergeant Marken. Furthermore, the Grievants meet on an annual basis at the Marysville office with Lieutenant Meyer. Additionally, awards ceremonies, which occur once or twice a year for District 7, are held in Marysville and the two Grievants attend these meetings. Grievant Witman also testified that the annual clothing allowance of \$600 provided to each Detective is not sent to the Burlington office with respect to Grievant Cardinal and himself, but instead is sent to Marysville.

From all of the foregoing, it is fair to conclude that the Grievants working in the Burlington office are for administrative purposes "assigned" to District 7. However,

Section 28.9.B provides the geographic benefit based on location. Location relates to place and it is clear that the place where the Grievants are located is in Burlington, which is located in Skagit County.

As the Employer points out in its brief, it is a "well recognized rule of construction that a word used by the parties in one sense is to be interpreted, in the absence of countervailing reasons, as employed in the same sense throughout the writing." (Employer brief, pg. 9, citing Elkouri and Elkouri, *How Arbitration Works*, Sixth Edition, (2003) at page 452.) As the Employer also points out in its brief, geographic assignment pay, pursuant to Section 28.9.A, which was contained in the prior agreement, also based geographic assignment pay on the location of the position. For example, with respect to the Burlington Detachment in District 7, those in Position #6571 located in Newhalem received the additional 7% of their base rate as described in Section 28.9.A.

As discussed above, the language of Section 28.9 provides clear and unambiguous guidance with respect to the issue in dispute here. Pursuant to the parole evidence rule, the introduction of extrinsic evidence to contradict or supplement clear and unambiguous contract language is prohibited. The purpose of this rule is to protect the integrity of contracts and to recognize the intent of the parties as indicated by the language they chose to reflect that intent. The Union in its brief does not dispute this basic principle of law. However, the Union states that if the Arbitrator were to find that the relevant language is ambiguous, then he should examine the bargaining history which would support the Union's position. I find, however, that even when the bargaining history is

considered, it does not support the Union's view, but rather supports the intent reflected by the language of Section 28.9 of the Agreement.

The Union points out that the language eventually adopted in Section 28.9.B was language proposed by the Employer and that the Employer's lead negotiator Diane Lutz, during the negotiations, explained to the Union that the language meant that an employee was in a position located in King or Pierce or Snohomish County if the employee spent time working in one of those counties. Before specifically addressing this contention, some additional background regarding the negotiations for the current Agreement must be considered.

The initial proposal came from the Union and it provided that employees "residing in King, Pierce, and Snohomish County shall receive a cost of living premium. . ." (WSPTA Exhibit No. 23.) Union President Tommie Pillow, who was present during the negotiations, testified that the Union negotiators explained to the Employer negotiators that the Union's proposal was being made because of the high cost of living in the three county area, which was resulting in the loss of Troopers to other agencies. In this regard, Pillow testified that the Employer was not losing Detectives and thus the discussions during negotiations focused on FOB Line Troopers and Sergeants because it was from that group that the Employer was experiencing recruitment and retention problems.

The Employer countered with language which eventually was agreed upon by the parties and become Section 28.9.B of the current Agreement.¹ Diane Lutz was the lead

¹ The only difference between the Employer's initial proposal and the final language is that the initial proposal used the words "the WSP" in the third line of the proposal while the third line of the Agreement contains instead the words "the Agency."

negotiator for the Employer. She testified as follows regarding how she explained the Employer's proposal to the Union's negotiators:

[W]hat I recall saying across the table was we thought it was—it made more sense and was consistent with the Employer's goals to tie it to where the position was located, because we were comparing ourselves to the agencies where those positions are located, and that we want to not lose employees who, obviously, are willing to go to—drive to or whatever—to go to positions in King, Snohomish or Pierce County. (Tr. pg. 109.)

The Union takes the position that during negotiations the Employer led the Union to believe that the Employer was proposing that:

[A]n employee was in a position located in King or Pierce or Snohomish Counties if the employee spent time working in one of the named counties. (Union brief, pg. 22.)

It is true that during her testimony Ms. Lutz, in describing her explanation of the Employer's proposal to the Union negotiators, referenced "members of the bargaining unit who worked in those three counties. . . ." (Tr. pg. 107.) However, after carefully considering all of Ms. Lutz's testimony regarding what she told the Union negotiators during negotiations regarding geographic assignment pay, it would not be reasonable to conclude that the Union was misled into believing that the intent of the Employer's proposal was that if an employee spent time working in one of the named counties, that employee would be considered to be in a position located in King, Pierce, or Snohomish Counties. In this regard, I note the following question by Mr. Damerow and answer by Ms. Lutz:

Q. In the course of your explanations, did you ever offer to have this or express that this (geographic pay) would go to any trooper who happened to work in one of these three counties?

- A. No. We chose this language because we knew that—well, in an attempt to be as clear as we could about who exactly would get this. By its nature, as you said before, it can be perceived as inequitable or controversial because some get it, some don't. So we were trying to be as clear as possible that it was employees in positions who were actually located there.

We're very aware that in the patrol a lot of employees work in a lot of different places. And we tried to pin it down by saying it's where your position is located, where you mostly—your base of operations where you drive to. So this was our effort to be as clear as we could. (Tr. pgs. 109-110.)

Mr. Pillow denied that any member of the Employer negotiating team stated geographic pay was based on where an employee drove to. Instead, Mr. Pillow testified that with respect to geographic pay, the Employer negotiators explained that, "if you worked in that county, (one of the three counties) you would get that geographic pay. . ." (Tr. pg. 40.) However, nowhere in his testimony did Mr. Pillow state that Ms. Lutz, or any other member of the Employer negotiating team, say that if an employee spent time working in one of the named counties, no matter what his or her work location, that employee would receive geographic assignment pay.

Additionally, as the Employer points out in its brief, the Union's interpretation of the relevant language here simply lacks sense. Grievant Witman testified that when he is investigating cases that arise in Snohomish County, he will go outside that county to interview witnesses as necessary. In fact, he testified that witnesses can be located anywhere, specifically stating that witnesses "can range from frequently in Canada to Seattle to the east side of the state." (Tr. pg. 96.)

As the Employer notes in its brief, a logical extension of the Union's position is that if an employee located outside King County performs work in King County, he or she would be entitled to receive geographic pay for the portion of time spent in King County. What happens, the Employer rightly asks, if a Detective located in Marysville

goes into King County to interview witnesses, is that Detective now entitled to receive for the portion of time he or she spends in King County the higher geographic pay rate designated to King County. Clearly, this is not the case, nor does the Union suggest such a result.

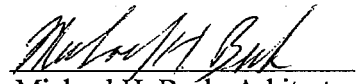
Based on all of the foregoing, I find that the Employer did not violate Section 28.9 of the Agreement by failing to provide geographic assignment pay to the Grievants in this case.

AWARD OF THE ARBITRATOR

It is the Award of the Arbitrator that the Employer, State of Washington and the Washington State Patrol, did not violate Section 28.9 of the Agreement by failing to pay Trooper Detectives Scott Witman and Craig Cardinal geographic assignment pay and, therefore, the instant case must be and hereby is dismissed.

Dated: March 31, 2009

Seattle, Washington


Michael H. Beck, Arbitrator