

ARBITRATION DECISION NO.:

160

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Taxation

DATE OF ARBITRATION:

September 13, 1988

DATE OF DECISION:

December 10, 1988

GRIEVANT:

Jayne Romes

OCB GRIEVANCE NO.:

G-86-0554

ARBITRATOR:

John E. Drotning

FOR THE UNION:

Daniel S. Smith, Esq.

FOR THE EMPLOYER:

Timothy D. Stauffer, Esq.

KEY WORDS:

Report-In Location
Management Rights

ARTICLES:

Article 5 - Management
Rights
Article 13 - Workweek,
Schedules And Overtime
§13.06-Report-In
Locations

FACTS:

Grievant was employed by the Department of Taxation and works for the Division of Tax Equalization. Grievant's work is to carry out a sales analysis of real property which is designed to establish market values of real estate for purposes of school income. Counties are appraised

every three years, and grievant conducts such appraisals.

All communications are received by the Grievant at her home. Additionally, Grievant has all her files and supplies at her home. The grievant stated that prior to December of 1986 her home was considered as her report-in location. She then received a letter changing her report-in location to the County Courthouse. This was done because the Employer was having problems with employees abusing the current system and wanted a fixed report-in location for every employee. Grievant's work habits did not change as a result of the change, but the calculations of mileage and time did. The Employer stated the Grievant did not have to keep her records at home, but could keep them at the County Courthouse.

EMPLOYER'S POSITION:

In August of 1986, the Employer decided the county of residence would be the report-in location for this employee. Only employees who work from their home have their home as the report-in location. Grievant works in various county offices and not at her home.

The Employer may establish the employee's home as a report-in location, but the Collective Bargaining Agreement allows the Employer to make this decision. Management has the right to change a report-in location if needed.

UNION'S POSITION:

Grievant has no normal report-in location and works out of her home. Prior to the grievance, Grievant was paid mileage from her home. Grievant does not spend a majority of her time at the County Courthouse, and Management pays the Grievant for more than her hours of work at the Courthouse.

The State must compensate Grievant for all hours of travel time that she has not already been paid and she should be made whole in terms of mileage lost by virtue of the Employer's change of its reimbursement policy.

"Working from one's home" means that the home is a starting point or a base and doesn't mean that all work is performed at one's home. Thus, accordingly to the Contract, Grievant's report-in location is her home because she works from her home.

The Employer has not altered the circumstances which caused the Grievant to work from her home. Unless the employer can do this, Grievant is entitled to mileage and travel time from her home.

ARBITRATOR'S OPINION:

The grievant had never been formally assigned a "normal report-in location." However, insofar as reimbursement for travel expenses, both the State and the Grievant used her home as some kind of starting point or "report-in location."

This arbitrator believes that Article 5 of the Contract gives the Employer the right to decide the employee report-in location. Nothing in the Contract gives the employee the right to decide the report-in location. Article 5 gives the employer the right to manage the facilities as they see fit, and the employees have no right to a say in these managerial decisions. Allowing the employees the right to make key managerial decisions like report-in locations would create too much havoc.

For the home to be the report-in location, the employee must work at or in her home. The common concept of report-in location is a place where an employee goes in order to report in, ready to commence to perform his/her job. That a person's job is performed at more than one location and is composed of "field" type work does not automatically mean that employee works from his/her home. Just because a field employee has no set designated office does not mean the home is automatically the report-in location. One must examine whether a substantial amount of

the person's job description is done at home to justify the home as the report-in location.

The question of travel expenses is not detailed in Section 13.05. This issue needs to be addressed under Section 32.02, and was not discussed in the hearing or the briefs. This issue can thus not be addressed here.

AWARD:

Grievance is denied as to the report-in location issue. The question of Grievant's travel reimbursement cannot be addressed here.

TEXT OF THE OPINION:

IN THE MATTER OF ARBITRATION

BETWEEN

**DEPARTMENT OF TAXATION
STATE OF OHIO**

AND

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION LOCAL 11**

ARBITRATION AWARD

CASE NUMBER:

#G86-0554 (Jayne Romes)

HEARING:

September 13, 1988

ARBITRATOR:

John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on September 12, 1988 in the Office of Collective Bargaining, 65 E. State Street, Columbus, Ohio. Appearing for the Union were: Daniel S. Smith, Esq. and the grievant, Jayne Romes. Appearing for the Employer were: Timothy D. Stauffer, Esq., Mr. David Stone, Ms. Meryl Price, and Mr. Michael Kinneer.

The parties were given full opportunity to examine and to cross examine witnesses and to submit written documents and evidence supporting their respective positions. Post hearing briefs were filed on or about October 31, 1988 and a reply brief filed by the Union on November 16, 1988.

The discussion and award are based solely on the record as described above.

II. ISSUE(S)

The parties did not agree on a mutual submission. The Union asked:

Did the Employer violate Article 13.06 of the Collective Bargaining Agreement when it failed to consider the grievant's home as her report-in location? If so, what shall be the remedy?

The Employer phrased the issues as follows:

1. Does the employee work from her home?
2. What were the Department's policies with respect to report-in location?
3. If the grievant could consider home as the report-in location prior to August of 1986, does the Collective Bargaining Agreement or Civil Service Law prohibit the change?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 through #5.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. UNION

1. TESTIMONY AND EVIDENCE

Ms. Jayne Romes testified that she was employed by the Department of Taxation and that she works for the Division of Tax Equalization and that her task is to carry out a sales analysis of real property. Romes went on to say that she covered the northwest quadrant of Ohio which includes fourteen counties. She noted that Ohio has a total of nine examiners.

Romes said that the sales analysis is designed to establish market values of real estate for purposes of school income. She stated that she would go to the auditor's office in each county and try to find a place to work in that county seat.

Romes said that her immediate supervisor is Chuck Goeller who works in Columbus and she communicates with him by phone. Romes went on to say that she does see a field representative every two or three weeks in Dayton, Ohio for help and advice.

Romes said that counties are appraised every three years and that her task is to conduct such appraisals. She went on to say that every two weeks, she writes up a schedule which she discusses with Goeller and he would then write up the schedule and mail it back to her. Romes stated that her superior, Chuck Goeller, could make changes in the schedule. She stated that for the two weeks following this hearing, she would be in a different county each day, but prior to this hearing, Romes noted that she spent four weeks in Seneca County Courthouse.

Romes noted that the county she visits is not notified beforehand of her presence; rather, she walks in, introduces herself, and then asks for a place to work. Romes noted that she has been on the job for a considerable amount of time and, therefore, the county auditors know her.

Romes testified that she receives all communications from the Department of Taxation at her house and that includes pay stubs, expenses, schedules, insurance fees, office communications, work rules and updated changes in the tax law. Romes said that she has a file at her house which contains office communications and her expense reports and that she stores conveyance forms at her home. In addition, Romes testified that she has supplies and special studies at her home, such as pens, papers, notebooks, etc.

Romes testified that in Lucas County, she works in the Government Center and that is a different address than the courthouse in Lucas County. She stated that she works in the auditor's office in Lucas County perhaps three months out of the year and, in short, it averages about twenty percent of her total time. She stated she does not work at the auditor's office on a regular basis. Romes said she has no desk in the Lucas County auditor's office and she receives no mail at that location.

Romes testified that when the Collective Bargaining Agreement went into effect, she received mileage from her house to the work site and back, but that changed in December of 1986. She said that since the beginning of the Collective Bargaining Agreement, she was assigned to Lucas County Courthouse as a report-in location and later on in April of 1987, she was told to be at each county courthouse when the doors opened and then Management made up a schedule of leaving times and that was subsequently altered.

Romes explained the situation by saying that she would have to leave her house at 6:00 a.m. in order to be at Port Clinton at 8:00 a.m. and she would leave Port Clinton at 4:00 p.m. in order to arrive home at 5:30 p.m.. She testified that she receives eight hours pay and one hour lunch period and that her mileage is only paid from Toledo to Port Clinton and back to Toledo.

Romes went on to say that prior to the letter from Joanne Limbach, the Tax Commissioner, her home was considered as her report-in location. Subsequently, said Romes, she received a letter in 1987 from Carol Mahaffey (see Union Exhibit #1) which changed her report-in location "from your residence to the county courthouse".

Romes said that her work habits did not change as the result of the change of the report-in location but what changed was the calculations of mileage and time.

On redirect, Romes testified that she grieved because the third paragraph of Section 13.06 of the Contract says that one's home is the report-in location. Romes said that she feels that her home is her report-in location because she does work out of it. She noted that she carries in her vehicle all forms, transmittals, supplies, county maps, a calculator, and other materials.

Romes went on to say that she is not required to report to Lucas County after work and when she finishes work in a county early, she calls her office and reports to the next closest county. Romes went on to say that she keeps records at home and she noted that she just received a set from Seneca County.

The Union cross examined Mr. David Stone, Assistant Administrator of the Division of Taxation. Mr. Stone testified that Examiners are paid eight hours per day, forty hours per week. Stone testified he established a fixed report-in location and he wanted each employee to have a set report-in location.

Stone said that if Romes was assigned to Van Wert County, for example, and finished her work by 10:00 a.m., she could either call another county or return to Lucas County.

Stone said that Romes would not have to store her records at home, but she could keep them in Lucas County Courthouse. He also noted that one of her functions was to maintain good relations with various county auditors.

Stone said that prior to Union Exhibit #1, the letter from Mahaffey to Romes, he was under the assumption that one's residence was not one's report-in location.

Ms. Meryl Price testified the Ohio Civil Service Law does not define a report-in location. Price noted that ODOT workers report to a garage as a place to leave and return to after finishing a day's work.

Price did not respond to the question as to whether a report-in location is where one's work begins, but she stated that a report-in location is where an individual needs to report in order to obtain or to begin a work assignment. It is where the employee receives his/her assignment.

2. ARGUMENT

The Union asserts that the paragraphs of 13.06 support its claim. Specifically, it notes that paragraph three of Section 13.06 addresses field employees and it notes that such employees are like meat inspectors or hazardous materials investigation specialists.

The Union notes that Management asserts that Romes work hours are covered by paragraph two of 13.06 whereas the Union claims that paragraph three covers Jayne Romes. It goes on to say that Romes has no normal report-in location and works out of her house.

The Union asserts that Romes travels from county to county and has no office but relies on the various county facilities for a place to carry out her functions.

The Union asserts that Romes stores supplies at home and that all the correspondence goes to her house.

The Union also claims that prior to the grievance, Romes was paid mileage from home. In addition, the Union goes on to point out that Romes does not spend a majority of her time in the Lucas County Courthouse. Moreover, claims the Union, the Employer pays Romes for more than her hours of work at Lucas County Courthouse.

The Union asserts that for all these reasons the grievant's report-in location is her home and, therefore, the State must compensate her for all hours of travel time that she has not already been paid and she must be made whole in terms of mileage lost by virtue of the Employer's change of its reimbursement policy.

The Union in its response brief noted that the critical question is whether Jayne Romes works from her home? The Union points out that the Employer argues that "working from one's home" is the same as "working at one's home", but, continues the Union, the word "from" means a starting point or a base and it does not mean that all work is performed at one's home.

The Union goes on to say that Romes has no office and she keeps her work and her supplies at home or in her car.

The Union also points out that the grievant was paid mileage from her home and after requesting travel time, the Employer switched its position and relied on a 1975 policy which flies in the face of a ten year past practice.

The Union also argues that the Employer's decision to reassign the grievant to a different report-in location must be based on substantive reasons. The Employer, argues the Union, must alter the circumstances which caused the grievant to cause the grievant to work from her home and, if the Employer cannot do that, Romes is then entitled to mileage and travel time from her home.

B. EMPLOYER

1. TESTIMONY AND EVIDENCE

Mr. David Stone, Assistant Administrator of the Division of Tax, testified that in November of 1986, he was assigned to work in internal audits to review a new Division of Taxation. In short, the Internal Audit Division was assigned to look at the Division of Tax Examiners because some employees were misbehaving and not coming to work. Stone went on to say that Carol Mahaffey came on the job in August of 1986 and she discussed some ambiguities in the field as to working hours and report-in locations.

Stone identified Management Exhibit #1, a memo dated 11/12/75 in which the supervisor of the real estate equalization section concluded that one's home could not be viewed as a report-in location.

Stone testified that the position description marked Management Exhibit #2 describes the job

of tax examiner. Stone went on to say that the Department of Tax Examiner always work courthouse hours and that is noted on a 1980 memo from the Ohio Department of Tax Equalization (see Management Exhibit #4). This position, continued Stone, is further enforced by the memo dated 6/3/81 (see Management Exhibit #5).

Stone identified Management Exhibit #6 which came from the Employee Manual written in October of 1978 for people in the Department of Tax Equalization and that indicated that employees must work courthouse hours in the base county.

Management Exhibit #8, said Stone, is an exhibit he generated and it lists the counties that Romes is assigned to and the courthouse hours. The column identified as "added driving time", said Stone, is the driving time above and beyond that time from Romes' house to Toledo.

Stone identified Management Exhibits #9 and #10 which represent the conveyance values as a result of sales and he noted that Lucas County averages close to forty-three percent of the total. In short, said Stone, Romes' fundamental work load in each year under re-appraisal is in Lucas County.

Stone said that at the courthouse, it is critical that Romes correctly assesses real property and all property is to be taxed at thirty-five percent of market value. Romes, continued Stone, reviews form 100s to see if the information is filled out accurately. If there is an error or if the information is lacking, Romes' review notes these errors and she attempts to correct such problems at every county courthouse. The only way Romes can correct errors on these forms is to review data which is held at the various courthouses. Stone went on to say that the values are set as of the first day of each year and he noted, for example, that Lucas County values are set as of 1/1/88. He noted that smaller reappraisals occur every three years.

Stone went on to say that Management Exhibits #11 and #12 show the expense accounts of Romes and that #11 is prior to the grievance and #12 is after the grievance.

Prior to the grievance, Stone said that Romes was paid mileage from her home to Toledo, but she was not paid travel time.

Stone said that his audit found confusion over the report-in location and, in fact, two employees were terminated because they decided to work at home.

Following the grievance, Stone said that the Department ceased to pay mileage after fixing the report-in location.

Ms. Meryl Price of the Office of Collective Bargaining testified that she was aware of the State's Civil Service Law. Price said that an agency can change the report-in location to any place within the headquarters county and that is covered by the appropriate sections of the Civil Service Law.

Management also cross examined Jayne Romes who testified that she calls Columbus from whatever courthouse she is working in. She testified that she can meet with field examiners in whatever county she is working in.

Romes noted that she does some work at home and that takes perhaps two to three percent of her total time.

Romes went on to say that she was never told she must work courthouse hours. In the spring of 1987, she said that she learned that she was to work from 7:30 a.m. to 4:30 p.m. or courthouse hours.

Romes testified that she lives in Lucas County and that she never received a copy of Management Exhibit #2 prior to April of 1987.

Romes testified that she was never paid travel time from home to Toledo.

Romes went on to say that she believes that she works from her home because that is where she cleans her briefcase and stores equipment and material.

Romes acknowledged that she has not been in the Toledo office much in 1988 because it is a re-appraisal county and when it is finished, she will be spending a lot of time there.

Romes acknowledged that Union Exhibit #1 was sent to all examiners. She also acknowledged that she had been told in October of 1986 that her report-in office would be the Lucas County Courthouse.

Romes said that her payment for travel time does not vary presently and that she is being paid according to paragraph 2 of section 13.06.

2. ARGUMENT

The Employer notes that in August of 1986, it decided that the report-in location for this employee would be the county of residence. It noted that it made this decision as a result of some abuses which resulted in termination of two employees.

The Employer points out that the Collective Bargaining Agreement states that employees who work from their home have their homes as a report-in location, but Romes does not work from her home; rather, she works at various county offices.

The Employer also points out that original section language indicated that employees may have their homes designated as a report-in location. The editorial changes which are in the present Contract did not change the meaning of that section.

Management notes that it can establish a residence as a report-in location, but in this case, it decided not to establish Romes' residence as a report-in location and the Collective Bargaining Agreement allows the Employer to make this decision.

The Employer noted that Romes does store some material in her bathroom, but she has no specific home office. It goes on to note that Meryl Price talked about the change in the report-in location within a headquarters county and noted that there is no prohibition against such a action by Management.

Moreover, the Employer asserts that Article 5 of the Collective Bargaining Agreement incorporates the language of 4117.08(C)(1-9) and 13.06 does not over-ride or negate the rights given to the Employer under the Ohio Revised Code.

For all these reasons, the Employer asks that the grievance be denied.

V. DISCUSSION AND AWARD

The parties did not agree on the issue but it is essentially whether Management erred in not designating the grievant's home as her report-in location?. The language in question is as follows:

§13.06 - Report-In Locations

All employees covered under the terms of this Agreement shall be at their report-in locations ready to commence work at their starting time. For all employees, extenuating and mitigating circumstances surrounding tardiness shall be taken into consideration by the Employer in dispensing discipline.

Employees who must report to work at some site other than their normal report-in location, which is farther from home than their normal report-in location, shall have any additional travel time counted as hours worked.

Employees who work from their homes, shall have their homes as a report-in location. The report-in location(s) for ODOT field employees shall be the particular project to which they are assigned or 20 miles, whichever is less. In the winter season when an employee is on 1,000 hours assignment, the report-in location will be the county garage in the county in which the employee resides.

For all other employees, the report-in location shall be the facility to which they are assigned.

In addition, the Employer notes Article 5 of the Contract, Management Rights, and Section 4117.08 of the Ohio Revised Code.

Article 5 goes on to say that:

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 Employer made a decision to clarify the report-in location for Jayne Romes and designated it to be the Lucas County Courthouse. Did that decision violate the Collective Bargaining Agreement, specifically 13.06 identified as Report-In Locations?

One question is whether the Employer or the employee decides the report-in location? Up until late 1986, Romes had been reimbursed \$0.22 a mile for all travel from her home to the various courthouses where she performed her job duties. She may or may not have specifically considered her home to be her contractual report-in location. The Employer, perhaps with hindsight, considered her report-in location to vary and to have been the "respective court house" of each assignment (see Joint Exhibit #2, Limbach's 10/21/86 letter). No matter what location either Romes or her employer viewed as her report in location, Romes had not been formally assigned a "normal report-in location". But the testimony and evidence is clear that at least insofar as reimbursement for travel expenses, both the State and Romes used her home as some kind of starting point or "report-in location". After the Department of Taxation experienced problems with some employees taking advantage of performing their jobs in this somewhat independent manner, it tightened up and clarified policies and procedures. One action was to designate the report-in location, presumed not only for Romes but for all employees who perform similar job functions in various locations, as the County Courthouse of the county in which they resided. Is there any thing in the Contract which prohibits the Employer from making this decision?

Article 5 gives the Employer the right to manage the facilities and one of those rights is to decide the employee report-in locations. The testimony and evidence do not support a finding that the employee decides the report-in location. There is nothing in the Contract supporting that position. Moreover, consider the havoc that would be created by ruling that Romes has the right to decide her report-in location. That decision is Management's and it can be grieved. The arbitrator's answer must be based on an alleged Contract violation.

The Union alleges that Section 13.06 is violated. This section provides that the additional time an employee spends traveling to a work site other than his/her normal report-in shall be counted as work time. It also states that "Employees who work from their homes, shall have their homes as a report-in location."

The Union argues that Romes works from her home and thus, her report-in location is determined by the Contract and Management cannot designate the Lucas County Courthouse as her "normal report-in location". Management claimed that Romes did not work from her home and it asserted that its decision to designate a specific report-in location for Romes did not violate the Contract. What is the meaning of the phrase: "Employees who work from their homes..."? Does this language refer to employees who work in their homes or does it refer to employees who leave from their homes to report to various scheduled work sites? If Romes worked at or in her house, presumably that would be her report in location. But that is not the case. Romes does not spend much time - perhaps two to three percent - in her house where she stores materials in a closet or bathroom and, in addition, receives some correspondence. What occurs is that each day, Romes leaves her home for a scheduled work site within a twelve (12) county area (see Employer Exhibits #9 and #10). About 45% of her time she spends in Toledo while the remainder will be or was in

the other eleven counties.

The common and logical concept of a report-in location is a place where an employee goes in order to report in, ready to commence to perform his/her job. What is clear is that Romes has never reported in at her house and been ready to perform any of the tasks on her job description as a tax examiner. That a person's job is performed at more than one location and is composed of "field" type work does not automatically mean that that employee works from his home. That some correspondence is received, supplies stored, and records kept at home is not sufficient to prove that a person works from home. That a field type employee has no set designated office is also not a sufficient basis to conclude that she works from her house and her home should be her report-in location. The clerical, report writing, and office type work involved with field jobs, such as tax examiner, meat inspector or hazardous material inspector, may be of varying amounts and could be conducted from a governmental office location, field site, or may, in some cases, be performed at the employee's home. If a substantial amount of the person's job description is done at home, the home may be designated as his report-in location. However, this is not the situation in this arbitration proceeding as attested to by Romes.

The Employer notes that the last best offer on Section 13.06 stated in part under the second paragraph for the version accepted on May 10, 1986:

Due to the nature of their work, employees may have their homes designated as a report-in location.

Arbitrator Rhonda Rivera noted on page 7 of her brief that:

Both parties agreed that the changes made between the accepted version and the contract version were editorial changes which did not change the meaning of that section.

In short, the Contract language does not differ from the language accepted on May 10, 1986 and the phrase "Employees who work from their homes" constitutes a decision which must be made by the Employer. There is absolutely no language in 13.06 which allows a conclusion that, in fact, an employee who carries out a minor amount of work at his/her home and who leaves from his/her home, then has the right to elect that their home becomes the report-in location. That decision is Management's. The nature of the work is the apparent factor which the Employer considers when determining whether an employee "works from his home" and the nature of the work and how this work is performed is a managerial decision set forth in job descriptions and rules, regulations and policies. The rationale for report-in location decisions must obviously be non-discriminatory; i.e., report-in locations are not set individually according to where a person lives or the view which an employee has of what he does at home but these decisions have rationale based on the nature of the work and on rules equally applicable to all employees.

While Romes did not have one designated report-in location prior to the Employer designating the Lucas County Courthouse as her "normal report-in location", there is nothing in the Contract which prohibits the Employer from making the Courthouse as her report in location. It flows from the nature of the work and is the one county of all the county sites where close to half of all Romes' work is performed. While the Union suggested certain ways that Romes used her home as an office, she carried out no job functions at her home and the Union did not prove its claim that Romes was an employee who is included in the phrase, "Employees who work from their homes,...".

Thus, it is concluded that the grievance as presented in the Union's question must be denied. The Employer's arguments that Article 5 provided Management's rights to determine the nature of

work and the appropriate report-in location for a person performing the work in a particular job far outweigh the Union's claim that Romes works from her home. Therefore, the Employer's decision to change or clarify Romes' report-in location as the Lucas County Courthouse did not violate Article 13.06.

The Arbitrator has answered the single question put forth by the Union as well as Employer questions #1 and #3 as noted in Section II on page one of this Award. However, the Employer's second question which dealt with the "Department's policies with respect to report-in location" was not addressed in testimony or briefs. Article 13.06 discusses report-in locations in terms of starting times, tardiness, and the calculation of travel time. It has been concluded that 13.06 was not violated by the Employer when it designated Lucas County Courthouse as Romes' "normal report-in location". It must be emphasized that while this conclusion has significance on the calculation of travel time, the question of travel expenses is not detailed in Section 13.06. The particular issue of Romes' travel reimbursement is an entirely different issue than travel time and appears to be covered by Section 32.02. There was no testimony on Section 32.02 and it was not discussed in the hearing or briefs. Thus, it would be presumptuous for the Arbitrator to answer the question of travel reimbursement in the absence of probative testimony and evidence on pertinent sections of the Agreement.

John E. Drotning
Arbitrator

December 10, 1988