

OPINION AND AWARD

In the matter of Arbitration

Between

The Ohio State Troopers Association, Inc.

And

The State of Ohio, Department of Public Safety,
Ohio State Highway Patrol

Regarding

Grievance Number OCB# 15-00-000125-0017-04-01
(Douglas A. Hamaan et. al.¹)

APPEARANCES:

FOR THE STATE:

Renee L. Byers, Advocate

FOR THE UNION:

Herschel M. Sigall, General Counsel
Elaine N. Silveira, Assoc. Counsel
Robert K Stitt, President

¹ The parties have agreed that this award will also apply to a grievance on the same issue, filed by Trooper Raymond Joseph.

This matter was presented to the Arbitrator by briefs only, in lieu of a hearing. The briefs were submitted by the mutually agreed deadline of December 21, 2001.

The issue agreed to by the parties was: **"In conformance with Article 20, Section 20.08 (8) of the Collective Bargaining Agreement the parties submit the following statement of issue for resolution by the arbitrator.**

"Did the Employer violate the Collective Bargaining Agreement by paying the Grievant at straight rate for overtime worked in the same week that sick leave was used?"

The relevant sections of the Collective Bargaining Agreement are 27.01 and 27.02

27.01 Overtime and Compensatory Time

Any member who is in active pay status more than forty (40) hours in one week shall be paid one and one-half (1.5) times his/her regular rate of pay including shift differential if ordinarily paid for all time over forty (40) hours in active pay status. The regular rate of pay includes all premium pay routinely received..

27.02 Active-Pay Status

For purposes of the Article, active pay status is defined as the conditions under which an employee is eligible to receive pay, and includes, but is not limited to, vacation leave, personal leave, compensatory time, bereavement leave and administrative leave. Sick leave shall not be considered active pay status for the purposes of this Article.

The parties submitted factual stipulations regarding this matter along with numerous documents.

The stipulations include the statement *"this grievance is properly before the Arbitrator."*

The Arbitrator reviewed and considered all submissions in rendering this decision.

Union Position:

The two grievances in this case were filed when the grievants involved worked federal overtime and in the same week also took sick leave. Management compensated the federal overtime at straight time up to the level of sick leave taken.

The Union notes that the time worked is “voluntary overtime” by title and definition. In the Union’s brief they state: *“The fact that these programs, which provide a tremendous service to the motoring public, are staffed strictly by overtime hours cannot be underscored. It is the cornerstone of the Employer’s grant proposal. It is the reason troopers and sergeants volunteer to work these programs.”*

The second point argued by the union is that the grant based costs on the troopers overtime rate of \$37.80

Also the Union asserts the Patrol selectively applies 27.02 by pointing out that Court overtime as provided for in Article 51 is compensated at the time and one half (1 ½) rate notwithstanding the use of sick leave.

Finally the union argues that Article 48.01 (A) supports their position in the definition of “active pay status.”

Management Position:

Management believes the matter is very clear. Prior to 1997 the Collective Bargaining Agreement included sick leave under the definition of “Active Pay Status.” In 1997 the language was changed to exclude “sick leave.”

The second argument of management is to note that the rate of pay for federally funded overtime is governed by the Labor Agreement. In their brief the employer states: *"Nothing in the federal grant documents directs the rate at which the Employer is to pay its employees for federally funded enforcement hours. However, it is quite clear that the Employer is bound by the terms of the mutually negotiated labor agreement when it reimburses the employees for any hours worked, including those that are federally funded."*

Discussion:

Arbitrator Rhonda Rivera, in a case involving the Ohio Department of Natural Resources makes the observation: *"The task of an Arbitrator is to apply the words of the Contract. If the words are clear and unambiguous on their face, the interpretation consistent with that clarity and unambiguity is accepted"*².

The question in the instant cases is whether the language is clear and unambiguous.

An examination of section 27.02 appears, on the surface to be clear. Previous contracts included sick leave as part of the bank of

² 90 LA 1049

hours to be considered in reaching the forty (40) hour threshold for time and one half (1 ½) computations. The 1997 Contract added the words: *“Sick leave shall not be considered active pay status for the purposes of this Article.”*

One must then turn to the union arguments to see if any of them are persuasive in creating ambiguity surrounding the new language added in this section.

1. Article 48 – Sick Leave, section 48.01 (A) states: “ ‘Active pay status’ means the condition under which an employee is eligible to receive pay, and includes, but is not limited to, vacation leave, sick leave, bereavement leave, administrative leave and personal leave.”

The union would assert that this language flies in the face of the reference to active pay status in Article 27.

This Arbitrator does not read the contract in the same way. Article 48 sets the standards by which members of the bargaining unit will be paid. Absent such reference employees might lack authority for payment while taking legitimate sick leave.

Likewise, the language in 27.02 specifically limits itself to application within that article (Overtime). The wording is specific

2. Article 51.02 (B) provides: *“Employees appearing in a court or other official proceedings based on any action arising out of their employment during their off duty hours shall be guaranteed a minimum of three (3) hours at one and one half (1 ½) times their regular rate or their actual hours worked, whichever is greater.....”*

The Union argues that the employer does not apply the provisions of Section 27.02 in this case (Court leave) and thus they should not apply it in the case of federal overtime.

The contract will not permit the employer to pay court overtime at straight time because of the clear provisions of Article 51.

This specific reference governs over the general provision of Article 27.02

“Arbitrator Sembower effectively stated a primary rule of contract interpretation in ARB 77-2, p. 8368 by writing that there exists, “...a canon of contract interpretation which is followed by the courts and arbitrators. This provides that when there are two contract clauses which bear somewhat upon the

same subject, that clause which is addressed directly to the subject matter involved prevails."⁴

Finally the Union argues that the purpose of the grant is to provide overtime coverage of Ohio's highways and the amount of money requested is at the Trooper's overtime rate.

The methodology utilized by the state in requesting this Federal Grant is not controlling on exactly how much each participant gets paid.

The Union's argument, if carried to its conclusion, could result in a situation wherein the state requested an hourly amount less than that specified in the contract. No one would contend that bargaining unit members ought to be compensated at less than their negotiated rate just because a grant was based on a lower amount.

Likewise, it is conceivable that the state could apply for a grant based on a straight time rate. If bargaining unit members work in excess of forty (40) hours consistent with the Collective Bargaining Agreement, those members would still be compensated at their time and one half rate (1 ½) even though

⁴ ARB 77-2, p. 8368

the funding source might not provide adequate money to pay all the costs to those members.

The point raised by the Union that is most compelling to this Arbitrator is that the Bargaining Unit Members worked the overtime with the expectation that they would receive time and one half compensation (1 ½). This Arbitrator can understand that expectation but the job of an arbitrator is to read and apply the language of the Contract entered into by the parties, not to invoke the Arbitrators view of what the agreement should be.

The language of Article 27.02 is clear and unambiguous. Sick leave is not to be included in the determination of forty hours worked for the purposes of computation of overtime. The Employer did not violate the Collective Bargaining Agreement by paying the Grievant at straight rate for overtime worked in the same week that sick leave was used

Decision and Award:

The Grievances are denied.

It is so ordered at London, Ohio this 14th. Day of January, 2002


N. Eugene Brundige, Arbitrator