

OPINION AND AWARD

IN THE MATTER OF ARBITRATION

BETWEEN

THE OHIO STATE TROOPERS ASSOCIATION

AND

THE OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF OHIO STATE HIGHWAY PATROL

Grievance #: DPS-2016-00385-1

Grievant: Trooper Bion Shaw

Date of Hearing: December 5, 2017

Place of Hearing: Gahanna, Ohio

Arbitrator: Sherrie Passmore

Date of Award: February 19, 2018

APPEARANCES

Advocate for the State: Michael D. Wood, Lieutenant Jacob Piles, and Matt Telfer,

Advocates for OSTA: Elaine N. Silveira, Esq., Jeremy Mendenhall,
Larry Phillips, & Robert Cooper

INTRODUCTION

This arbitration arises pursuant to the collective bargaining agreement ("Agreement") between the parties, The Ohio Department of Public Safety, Division of State Highway Patrol ("Employer") and The Ohio State Troopers Association ("Union"). Sherrie Passmore was appointed as the Arbitrator under the authority of the Agreement.

A hearing was held on December 5, 2017. Both Parties were represented by advocates who had a full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make arguments. Post-hearing briefs were electronically filed on January 5, 2018.

JOINT STATEMENT OF ISSUE

Did the Employer violate Article 21 when it denied the Grievant's request to work partial shifts of posted overtime and granted other similar requests? If so, what shall the remedy be?

RELEVANT PROVISIONS OF THE AGREEMENT

Section 21.03 – Work Rules - Application

All work rules and directives must be applied and interpreted uniformly as to all members. Work rules and directives cannot violate this contract. In the event that a conflict exists or arises between a work rule and the provisions of this Agreement, the provisions of this Agreement shall prevail.

Section 27.03 – Overtime Assignments

It is understood and agreed that determining the need for overtime, scheduling overtime, and requiring overtime are solely the rights of the Employer.

BACKGROUND

The Grievant, Bion Shaw, is an Ohio State Highway Patrol Trooper assigned to the Hiram Patrol Post on the Ohio Turnpike.

In January 2016, the Employer posted overtime opportunities at the Hiram Post for Troopers on nine dates for the hours of 10:00 p.m. to 6:00 a.m. to cover anticipated shortfalls in shift coverage due to Troopers' absences. The comments section of each posting indicated that it was to provide 'A' shift (midnight shift) coverage from 2200 hours until 0600 hours on the respective days and that "working the entire shift has priority over working partial shift."

The Grievant signed up for overtime opportunities for all nine dates, volunteering to work partial shifts of three to four hours from 2 or 3 a.m. to 6 a.m. He was granted three of those opportunities and denied the other six. On the dates he was denied the overtime, other troopers were approved to work overtime from 10 p.m. to 2 a.m. or 11 p.m. to 3 a.m. The Grievant then filed the instant grievance citing violation of Article 21, Work Rules for the shifts he was denied on 1/22/16, 1/23/16, 1/28/16, 1/29/16, and 1/30/16. Although denied a partial shift on 1/31/16, he did not grieve that denial because a more senior trooper was granted the overtime.

POSITIONS OF THE PARTIES

Position of the Union

The Union's position is that Trooper Shaw was denied five partial shifts of overtime at four hours each in violation of the requirement under Article 21 that all work rules be applied and interpreted uniformly as to all members. In each of those instances, the Employer granted other troopers the opportunity to work the other half of the overtime shifts. The Union argues that the Employer arbitrarily picked and chose who could work partial shifts.

The Union does not dispute the Employer has the management right to determine when overtime is required. It argues that management made that determination herein. The Employer chose to post entire 8-hour shifts and to state on the postings that whole shifts would have priority over partial shifts. The Union states this posting language is the basis of the grievance.

The Union points out that the Employer could have pulled the overtime sheet if it later determined it only needed overtime for half a shift. It questions why the entire shift was posted if only half shift coverage was needed. It also questions why if the whole shift would have been approved if someone had signed up for it, Grievant was not approved to work the second half of the shift.

Position of the Employer

The Employer's position is that it was not obligated to grant overtime just because the Grievant requested overtime. It asserts that Articles 4 and 27.03 of the

Agreement give the Employer the right to manage its workforce and determine when overtime opportunities are needed. The Employer alleges Grievant was denied the voluntary overtime when post supervision determined those particular hours did not warrant the need for an additional trooper.

DISCUSSION

This grievance alleges a violation of the Article 21 requirement that work rules be applied uniformly. Because this case is a matter of contract interpretation, the burden of proving that violation is on the Union.

The essence of this grievance is that the Employer posted overtime opportunities for the entire midnight shift on dates in January 2016 and then only approved overtime for the first half of those shifts. The Grievant signed up for and was denied the opportunity to work the second half of those shifts but overtime was approved for troopers who signed up to work the first half of the shifts. It was not proven that these actions violated any work rule or were arbitrary.

The Union does not point to a work rule that was violated. A statement in a posting as to the hours of shift coverage is not a work rule. The posting comment that preference would be given to “working the entire shift” versus “a partial shift” never came into play here. No one signed up to work a full overtime shift on the posted dates that are at issue.

Even if the Union had related the Employer’s approval and denial of overtime opportunities to a work rule, it did not prove the Employer acted in an arbitrary or capricious manner. Although overtime opportunities were posted for full shifts, it

was the Employer's Article 27.03 right to schedule only partial overtime shifts.

Lt. Huggins explained that he posted for full shifts and stated that preference would be given to those who volunteered to work a full shift in the hopes that it would incent more troopers to sign up and thereby ensure coverage. Whether that was a good strategy is not relevant to determining if there was a contract violation here. When the only volunteers were for partial shifts, the Employer scheduled only partial shifts based on operational needs in the interest of being fiscally responsible.

On the dates where Grievant was denied his overtime requests, the Employer determined that coverage was not critical for the second half of the shift, which is a frequently a slow time based on known traffic trends and the typical number of calls during those hours. Troopers who were granted overtime on those dates, signed up for the first half of the shift where it was determined there was a need for coverage. The difference in the need for coverage on the first versus the second half of the midnight shift was not refuted by the Union. In short, Grievant was not similarly situated to the troopers whose requests for a partial shift were granted.

AWARD

For the reasons stated above, the grievance is denied.



Sherrie J. Passmore
Arbitrator

February 19, 2018