**OCB AWARD NUMBER: 2722**

SUBJECT: Arb Summary # 2722

TO: All Advocates

FROM: Thomas Dunn

OCB GRIEVANCE NUMBER: OST-2020-00930-0

DEPARTMENT: Ohio Department of Public Safety

UNION: Ohio State Troopers Association, Inc. (OSTA)

ARBITRATOR: Felicia Bernardini

GRIEVANT NAME: Elaine Silveira

MANAGEMENT ADVOCATE: Victor Dandridge and Thomas Dunn

UNION ADVOCATE: Ronald Snyder and Robert Sauter

OCB REPRESENTATIVE: Katherine Nicholson

ARBITRATION DATE: May 10, 2023

DECISION DATE: June 27, 2023

DECISION: DENIED

CONTRACT SECTIONS: 66.04

OCB/BNA RESEARCH CODES:

KEYWORD SEARCH TERMS: Emergency, Premium Pay, Stipend, Weather

**HOLDING: Grievance Denied**. The Employer did not violate Article 66.04 of the Agreement. I find no inconsistency in the plain meaning of the disputed contract language and the Employer’s application of the contract language to the specific circumstances of the COVID-19 pandemic emergency.

**Facts:** On March 9, 2020 the first three coronavirus cases were confirmed in Cuyahoga County, Ohio and Governor DeWine declared a state of emergency. As of March 22, 2020 Governor DeWine issued a stay-at-home order allowing only businesses designated as essential to remain open and authorizing county health departments to enforce the specifics of the Order. The State’s stay-at-home order expired on May 1, 2020 and was replaced by Governor DeWine’s Stay-Safe Ohio order. From the start of Ohio’s declared state of emergency on March 9, 2020, employees of the Ohio Department of Public Safety (ODPS) serving in jobs represented by the Ohio State Trooper Association (OSTA) were required to continue to report to work. ODPS implemented a variety of health and safety protocols to limit the spread of the coronavirus through its workforce. Governor DeWine’s Executive Order 2021-08D on June 18, 2021 rescinded the March 9 Executive Order. OSTA filed a class action grievance on March 13, 2020 on behalf of its membership.

**The Employer argued:** There are two pre-requisite elements needed to trigger the provision of Section 66.04(B). First, the ‘other than weather emergency’ must be declared. Second, leave must be granted for employees who are not required to work during the emergency. Both of these elements must exist. The CBA establishes that it is the Governor or the Governor’s designee who declares that an emergency exists. The contract does not define what constitutes an emergency. The definition of an emergency, and thereby the declaration of an emergency, is a right reserved to management. Based on the exclusionary language of item #6 in the Executive Order there was no declaration of emergency that activated the contractual provisions of Section 66.04. Through planning and adherence to health and safety regulations the State was able to continue to remain open for business and provide needed services to the citizens of Ohio. The plain meaning of Section 66.04(B) language is that an emergency is declared and leave (pursuant to this CBA Section on Emergency Leave) is granted. State employees, including all OSTA bargaining unit employees, were required to use available leave balances, or avail themselves of the federally provided Family First Coronavirus Response Act (FFCRA) leave benefit when taking time off during the months Executive Order 2020-01D was in effect. No employees were ever placed on paid administrative leave by the Employer. Finally, it is important to note that the language at the heart of the Union’s claim is pattern contract language which is found in other State of Ohio labor contracts. In three other cases with three other unions representing state bargaining unit employees, and the same fact pattern and contract language, three arbitrators have found in favor of the Employer’s simple reading and application of the emergency pay provision.

**The Union argued:** The Union relies on the plain language of Section 66.04(B) to make its case that OSTA bargaining unit members should be granted an $8.00 per hour stipend for all hours worked between the dates of March 9, 2020 and June 18, 2021. Section 66.04(A) grants an $8.00 per hour stipend for hours worked during an emergency. Aligning the factual circumstances of the COVID-19 state of emergency and the straightforward language of the contract demands that the OSTA bargaining unit members, who were required to continue to work during the entirety of the state of emergency, are due the emergency pay stipend for all hours worked. This mandatory two-pronged pre-requisite is inconsistent with the Employer’s own annotated guidance to the State’s management personnel. In the annotated guidance, the State’s explanation of how the contract language is to be implemented states that the $8.00 per hour stipend is to be paid to those who work, and during a declared emergencies other than weather emergencies Agencies may grant Administrative Leave with pay to employees not required to work. The distinction is clear, the Employer has always considered the payment of Administrative Leave as a permissive aspect.

**The Arbitrator found:** Section 66.04 is included in the contract to explain when the Employer will authorize itself to grant emergency leave, which is a type of administrative leave. Emergency leave/admin leave is granted by the Employer for specific circumstances. The first section is a benefit that is granted by the Employer. In section B, the second sentence speaks to the granting of leave during an other than weather emergency. What leave do we understand to be referenced in this sentence? It is the leave which this entire Section 66.04 is about – emergency leave – an unearned administrative leave granted by the Employer. I find no inconsistency in the plain meaning of the disputed contract language and the Employer’s application of the contract language to the specific circumstances of the COVID-19 pandemic emergency. Furthermore, I do not find an inconsistency between the contract language, the Employer’s actions, and the Employer’s September 2007 annotated version of the contract language (U5). The sentence from Union Exhibit 5 that reads, *“[a]gencies may grant Administrative Leave with Pay to employees not required to work during the declared emergency.”* is consistent with the purpose and wording of contract Section 66.04. It is simply explaining to State managers and administrators that emergency leave is a benefit that may be used in a declared emergency for those employees not required to work. The wording of the Employer’s explanatory document does not change or override the actual language of the contract, which makes the granting of emergency leave one of two preconditions for authorizing the emergency pay stipend. And as has been pointed out, no State employees were told they could stay home on emergency leave and not work. All State employees were required to continue working between March 9, 2020 and June 18, 2021.The grievance is **DENIED**.