**OCB AWARD NUMBER: 2708**

SUBJECT: Arb Summary # 2708

TO: All Advocates

FROM: Marisah Ali

OCB GRIEVANCE NUMBER: DPS-2020-00338-01 and DPS-2020-00337-15
DEPARTMENT: Ohio Department of Public Safety

UNION: The Ohio State Troopers Association, Inc.

ARBITRATOR: Jack Buettner

GRIEVANTS NAMES: Sgt. Paul Mercer, Trp. Bryan Cox, and Trp. Joshua Newman

MANAGEMENT ADVOCATE: Lt. Kaitlin Fuller

UNION ADVOCATE: Elaine Silveira

OCB REPRESENTATIVE: Victor Dandridge

ARBITRATION DATE: October 19, 2022

DECISION DATE: December 16, 2022

DECISION: GRIEVANCE GRANTED

CONTRACT SECTIONS Article 26.07

OCB/BNA RESEARCH CODES:

KEYWORD SEARCH TERMS: Double Back Pay

**HOLDING:** The Employer did violate Article 26.07. The Grievants are entitled to receive double back pay. Grievance granted.

**Facts:** Sergeant Paul Mercer worked from 2:00 p.m. until 10:00 p.m. on January 15, 2020, and reported for his next shift consisting of in-service training at 8:00 a.m. on January 16, 2020, which equaled eighteen (18) hours in between shift starting times. Trooper Bryan Cox worked from 2:00 p.m. until 10:00 p.m. on January 13, 2020, and reported for his next shift consisting of in-service training at 8:00 a.m. on January 14, 2020, which equaled eighteen (18) hours in between shift starting times. Trooper Josh Newman worked from 2:00 p.m. until 10:00 p.m. on January 12, 2020, and reported for his next shift consisting of in-service training at 8:00 a.m. on January 13, 2020, which equaled eighteen (18) hours in between shift starting times. On January 30, 2020, they filed grievances regarding double back pay. The Employer denied the grievances.

**The Union argued:** The Union argues that the Grievants were owed double back pay for their shifts that began within 18 hours of one another due to the 26.07 language requiring that double back pay be paid for shifts starting less than 20 hours apart. The Union argues that the Arbitrator should consider no contract language outside of 26.07 in making this determination, as 26.07 is the only article alleged to have been violated in this grievance.

**The Employer argued:** The Employer contends that the Union’s interpretation of the contract is incorrect and that the Grievants are not entitled to double back pay due to language in Article 37, Education Incentive and Training. The Employer argues that omitting time spent training from situations that may otherwise warrant double back pay is a thirty-five year past practice that was established after a 1987 arbitration award by Arbitrator Dworkin. The Union has not attempted to modify their alleged discrepancies when it comes to the issue of training and double back pay through negotiations at any point since that time. The Employer argues that double back pay is paid in accordance with Article 26 when the employee is not in training and that any discrepancies with this language should be addressed through the bargaining process.

**The Arbitrator found:** While other arbitrators have read the 26.07 language to function with Article 37, this arbitrator fails to see how Article 37 impacts the clear and unambiguous language of Article 26.07. The grievance is **GRANTED.**