

ARBITRATION

BETWEEN

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

DEC 13 36 - CB

AND

GRIEVANCE NO. 21

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

OPINION AND AWARD OF THE ARBITRATOR

FRANK A. KEENAN
PANEL ARBITRATOR

Appearances:

For the Patrol:

John R. Alexander, Esq.
Assistant Attorney General
Office of Collective Bargaining
Columbus, Ohio

For the F.O.P.:

Paul L. Cox, Esq.
Executive Director
Fraternal Order of Police
Ohio Labor Council, Inc.
Columbus, Ohio

I. Background:

Pursuant to the provisions of Article 20, Grievance Procedure, paragraph 20.07 Arbitration, this case, well presented by the parties representatives, was heard in Columbus, Ohio, on October 8, 1986. Both parties examined and cross-examined witnesses and presented documentary evidence. Following the presentation of evidence, the parties representatives ably argued their respective positions. Throughout the decision the Ohio State Highway Patrol shall be referred to as the Patrol; the Fraternal Order of Police, Ohio Labor Council, Inc., shall be referred to as the F.O.P.

II. The Grievance:

The greivance in the case was filed by Trooper [Grievant], a pilot working out of Toledo, Ohio on May 22, 1986. The parties have regarded it as a "class grievance" filed on behalf of all trooper pilots. The grievance provides in relevant part as follows:

" . . .

5. Article. . . Grievd: Article 23

6. Statement of Grievance. . . Be Specific:
May 15, 1986 10:00 a.m. Lt. Hedlesten advised that the 10 percent pay supplement would be based on flight hours per day.

7. Remedy Requested: All back pay for both regular and overtime hours from April 28, 1986 to present date,

based on total number of hours worked and not flight hours."

III. The Contract:

Article 20, paragraph 20.07 Arbitration is of course relevant, as indeed is Article 20 in its entirety. (See Attachment "A".) Especially relevant is Article 23 - Pilots. Article 23 provides as follows:

"Pilots in the State Highway Patrol shall receive an additional ten percent (10%) of the minimum rate of their classification base rate pay as a professional achievement pay supplement."

Facts:

The facts in the case are essentially undisputed.

The case involves the professional achievement pay supplement accorded to the Patrol's pilots. The Patrol's trooper pilots, five (5) in number, work out of the Aviation Section under Section Commander James R. Hedleston. Four of the pilots are stationed at the Don Scott Airfield at Ohio State University, Columbus, Ohio, and the fifth, the Grievant, is stationed in Toledo, Ohio. When the weather permits flying (approximately 75% of the time) all pilots are expected to operate the Patrol's aircraft and engage in such illustrative flying duties as traffic enforcement, search and rescue, photographic flights, and manhunts.

In addition trooper pilots are expected to maintain flight records. They are also expected to enforce State laws pertaining to aircraft. Prerequisites for the position

of trooper pilot consist of possession of a valid Federal Aviation Agency Pilots License; specialized knowledge of aviation laws; ability to read and interpret weather reports; familiarity with topography and weather conditions indigenous to Ohio; and knowledge of the operational limitations of all of the Patrol's aircraft. None of the foregoing prerequisites are required of non-pilot troopers. It is noted that the Patrol does not train its employees to be pilots. Individuals who hope to become trooper pilots must come to the Patrol possessed of the aforesaid prerequisites. When not flying (approximately 25% of their work time) trooper pilots are engaged in routine non-pilot trooper duties such as road patrol.

Following the certification of the F.O.P. as the exclusive collective bargaining representative of a bargaining unit comprised of all of the Highway Patrol's troopers and dispatchers, the parties commenced negotiations for a collective bargaining agreement in July 1985. By late August the parties were meeting regularly in negotiation sessions. Throughout their negotiations the Patrol's chief spokesperson was Edward H. Seidler, Deputy Director, Ohio Department of Administrative Services, Office of Collective Bargaining, and the F.O.P's. chief spokesperson was Paul L. Cox, Executive Director, F.O.P. Ohio Labor Council, Inc. By early winter 1985 the parties were at impasse over approximately seventy five items. The statutory (Ohio

Revised Code 4117) impasse procedure was invoked by the parties, and the fact finder selected, Harry Graham, engaged in extensive mediation efforts. Graham met with considerable success. Thus when formal fact finding hearings were conducted in February, 1986 the issues at impasse stood at but twenty-six (26), including the issue of pilot pay, along with several other economic issues. According to Cox, up until the fact finding hearings, except for the F.O.P.'s demand for pilot pay and the Patrol's rejection of same, there had been no discussion by the parties of the F.O.P.'s pilot pay proposal.

Lieutenant D.L. Anderson served on managements' negotiating team as its note taker. Anderson's notes essentially corroborate Cox's testimony that there was no discussion between the parties concerning the F.O.P.'s proposal for pilot's pay. Thus Anderson's negotiation session notes reflect that the F.O.P. first proposed the language of Article 23 on September 4, 1985. Anderson characterized the proposal as follows: "Pilots. . . . shall receive an additional ten percent (10%) of their total rate of pay as a professional achievement pay supplement". Anderson's notes further reflect that on October 22, 1985, the Patrol submitted its cost estimate of establishing pilot's pay, namely, \$51,400.00. It was Anderson's testimony that he arrived at this figure by multiplying the number of pilots (five) by 2080 hours (40 hours per week for

52 weeks) and then multiplying that figure by the base rate for pilots as improved by the 10%-12% then being requested as an across-the-board wage increase by the F.O.P.

Anderson's notes further reflect that during the fact finding session on February 1st that: (by Mr. Cox):

"Pilots demand is 10% pay supplement---already get 10% hazard pay. There's currently provision in code¹ to get additional pay and other pilots in the state does. Highway Patrol decided on their own not to pay;"² on February 2nd (by Mr. Alexander³): "Pilots 10% hazardous duty pay⁴ covers this--rejecting professional achievement pay;" on February 9th (by Mr. Cox) "Pilots Pay--nothing to add." On March 13, 1986, the fact finder issued his report and recommendations.

¹The parties are agreed that Cox's reference was to O.R.C. 124.181 (K), which provides in relevant part that "if a certain position. . .is mandated by. . .law or regulation to have special technical certification. . .or licensing to perform the functions which are under the mandate a special professional achievement pay supplement may be granted. . . the professional achievement pay supplement provided herein shall be granted in the amount of five per cent of the employee's classification salary base and shall remain in effect as long as the mandate exists."

²Cox was correct in asserting that in the past the Patrol did not pay its pilots a professional achievement pay supplement of any kind.

³John R. Alexander, Assistant Attorney General, Office of Collective Bargaining, presented the Patrol's case to the Fact Finder.

⁴It is noted that all troopers, pilots and non-pilots alike receive a hazardous duty pay supplement and did so in the past and prior to collective bargaining.

With respect to the issue of pilot pay, designated as issue 24, the factfinder⁵ had the following to say:

"Issue 24, Pilot Pay

Position of the Union: The Union seeks an additional increment of ten percent (10%) for pilot pay. It points out that pilots elsewhere in the State service receive a pay supplement. Pilots in the service of the Highway Patrol do not receive a similar supplement. They receive the ten percent (10%) hazard pay that troopers receive but nothing extra. The Union urges that as other pilots receive a supplement, and that for all intents and purposes, Highway Patrol Pilots do not, they should receive such a supplement.

Position of the Employer: The State urges that no extra increment be paid Highway Patrol Pilots. It asserts that as they receive hazard pay, no additional increment is warranted.

Discussion: On this issue the Union is correct. All other pilots in State service receive above scale compensation for their duties. No reason exists why this should not be true for Highway Patrol Pilots as well. When the State points out those pilots receive hazard pay it is correct, but incomplete in its

⁵ Asked by the Arbitrator, what specific evidence was presented to the fact finder in support of the parties' respective positions, Executive Director Cox could not specifically recall what evidence, if any, was presented.

analysis. Troopers receive hazard pay as well. No distinction exists for pay purposes between troopers and pilots. Such a distinction should exist. The ten percent (10%) pay supplement for pilots is recommended. "

In summarizing his findings and recommendations the fact finder had the following to say with respect to pilot pay: "Issue 24, Pilot Pay: Additional ten percent (10%) pilot pay."

The Ohio State Legislature constitutes the statutory legislative body under O.R.C. 4117 which must vote to accept or reject a fact finder's report concerning the Patrol. In discussing with the Legislature the fact finder's report the Patrol's Chief Spokesman, Deputy Director Seidler, urged rejection. He did so principally due to problems concerning the fact finder's recommendations with respect to life insurance, health insurance, union time, and physical fitness standards. It appears that in his testimony before the Legislature Seidler also indicated that the recommendation concerning pilot pay was "unnecessary and ill-advised". Following Seidler's testimony the Legislature rejected the fact finders report. The F.O.P. voted to accept it. While the parties could have then moved on to conciliation, they elected to continue negotiations.

Following the Legislature's rejection of the fact finders report, two principal negotiation sessions were held. By the second session, held on March 24, 1986,

significant changes to the fact finders' recommendations concerning life insurance, health insurance, union time, and physical fitness standards were agreed to. A caucus with Fact Finder Graham⁶ and Patrol negotiating team members Seidler, Anderson, and Major Thomas W. Rice, Personnel Commander, was conducted. According to Anderson, the management team expressed the concern to Fact Finder Graham that the fact finder's report as then written would give pilots a 10% increment in pay with respect to 100% of their work time, whereas such a supplement ought only to be given for actual flight and flight-related time. At that juncture, according to Anderson's notes, Fact Finder Graham indicated that we "will put language in to keep in air." As testified to by Anderson, at that juncture he "thought" a letter of intent would issue setting forth an understanding that the 10% pilot pay supplement would only apply to flight time and flight-related time. It was Anderson's testimony that he was told by Major Rice⁷ that there would be a letter of intent. According to Anderson, following this caucus, Graham left the room. Anderson assumed Graham went to talk to Cox.

⁶During this period of time following the Legislatures' initial rejection of the Fact Finder's report, both parties characterize Fact Finder Graham's role as that of "shuttle diplomacy", i.e. as mediator.

⁷Rice did not testify.

Also on March 24th a meeting between the Patrol's chief spokesperson, Seidler,⁸ the F.O.P.'s chief spokesperson Cox, and Fact Finder Graham was conducted. It apparently followed the management caucus noted above. During this meeting Seidler proposed that issue 24 - Pilot Pay, of the Fact Finder's Report, be modified to reflect that pilot pay supplement be paid only for flight time. As Cox testified, he balked, and stated that he couldn't sell that proposition to his negotiating committee and that if Seidler insisted there was "no deal" with respect to life insurance, health insurance, etc. Cox informed Seidler that he would not agree to any changes to Fact Finder Graham's recommendation with respect to pilot pay (fully set forth above). According to Cox, Graham and Seidler then talked together alone, after which it was agreed that there would be no change in Fact Finder Graham's pilot pay recommendation.

On the following day Deputy Director Seidler sent a letter to House Speaker Vernal G. Riffe reciting that following the Legislature's rejection of the fact finder's report "the parties met. . .and resolved the differences." This letter goes on to recite the resolution reached with respect to these items, four in number, to wit, life insurance, health insurance, union time and physical fitness standards, "the major issues. . .of concern to the State." The letter concluded as follows:

⁸Seidler did not testify.

" Consequently, the contract is a composite of the issues agreed upon, the balance of the fact finding report recommendations⁹ and the addition of a special recognition program and a supplement for increased traffic activity. This material is basically the same as the material submitted to you last week. Attached is the fiscal analysis prepared by the Office of Budget and Management. This combined set of letters constitute the employer's formal request for funds as required by the statute. "

In this regard the Office of Budget and Management's letter, referred to by Seidler, had the following to say with respect to pilot pay:

"Article 23 - Pilots

Description: This article provides for a 10 percent pay supplement for pilots. This supplement will be over and above the existing hazardous duty pay supplement. Current practice does not provide such a supplement.

Fiscal Effect: Minimal - the 10 percent supplement for five pilots will cost the State approximately \$14,383 per year, and will be absorbed by the agency."

It was Patrol Representative Alexander's representation that the Patrol and OBM did not communicate with each other with respect to the latter's fiscal impact summary to the Legislature, and Alexander contends that OBM's summary is therefore "without impact" on the instant case.

In any event, by a course of inaction the Legislature was deemed to have accepted the Fact Finder's Report and

⁹It will be recalled that the fact finding report recommendations with respect to pilot pay were as set forth herein at page 6 and were not modified by the parties.

Recommendations, as specifically modified by the parties following the Legislature's initial rejection of same. The parties' contract was executed April 24, 1986.

Following the parties' execution of the contract Section Commander Hedlesten, on behalf of the Patrol promulgated the following pilot pay policy:

The ten percent trooper pilot pay will be administered as follows:

Based on flight hours, if a trooper flies up to and including three (3) hours, they will get flight hours plus one (1) hour at ten percent.

Over three (3) hours, they will get flight hours plus two (2) hours up to eight (8) hours total time.

The plus one (1) hour in the three (3) hour time is for pre-flight and securing the aircraft.

The plus two (2) hour rule is for preflight, lunch and fuel break, and securing of the aircraft at the end of their tour.

The time will be entered in the case investigation hours caption of the HP-17 daily by the trooper's area supervisor.

In this regard, according to Hedlesten, he was advised by Major R. L. Yingling to pay the pilots a 10% supplement for flight time only and that subsequently he was advised to pay it for pre-flight and post-flight duties and for lunch. It was further Hedlesten's testimony that in formulating the above policy he discussed with his supervisor what would be equitable and that the policy noted above evolved from those discussions. More specifically, Hedlesten and his supervisor determined that an hour to eat lunch and refuel

and one-half hour for pre-flight and one-half hour for post-flight duties was "equitable".

When on the first full pay period following the parties' execution of the contract the Grievant received pilot pay only for his flight time he filed the instant grievance.

Major T.W. Rice's answer for the Patrol at Step 3 comprises a succinct rationale for the Patrol's denial of the grievance. It was adopted by Deputy Director Seidler, who responded for the Patrol at Step 4. Major Rice's answer, after setting forth the language of the grievance, recites that management's contention is that ". . .the intent of the language in Article 23 was to have the pilots . . .receive an additional ten percent. . .pay for their professional achievement while they were flying or involved with related activities associated with flying. . .management maintains that it was not the Fact Finder's intent to pay pilots 'professional achievement pay' for duties which do not require training over and above that of an ordinary trooper." Rice's response further recites as a "Finding" that:"the hearing officer finds that the employer is acting in 'good faith' by paying pilots 'professional achievement pay' only while flying or performing related duties. It is not the intent of the language contained in Article 23 to pay pilots an additional ten percent (10%) pay for duties not related to flying.

Pilots in the bargaining units, assigned to the Aviation Section, receive ten percent (10%) hazard duty pay, the same as other troopers. When not flying, pilots perform duties as other troopers, i.e. routine patrol, accident investigation etc., therefore, it is not felt pilots should receive professional achievement pay for flying related duties."

The F.O.P.'s Position:

The F.O.P. takes the position that the plain meaning of the clear and unambiguous language of Article 23 is that pilots are to receive a 10% supplement over and above their base rate, 100% of their work time, and not for just that percent of their work time that they are flying or engaged in flight-related activities. This professional achievement pay supplement is intended to recognize and reward the pilot's special skills, argues the F.O.P. The professional achievement pay supplement is for achieving the status of pilot. The evidence of record, asserts the F.O.P., so indicates.

The Patrol, contends the F.O.P., in urging as a construction of Article 23 that said article was intended only to confer a 10% pay supplement for flight time and flight-related activities, is attempting to re-write already agreed to contract provisions.

So it is that the F.O.P. urges that the grievance be sustained.

The Patrol's Position:

The Patrol takes the position that in Article 23 it was the intent of the parties that pilots would receive a 10% pay supplement only for such work time as was taken up in piloting or flying, that is, flight time, and flight related activities, such as pre-flight checks and the securing of the aircraft used. It was not intended, asserts the Patrol, to apply to 100% of the pilots's work time. But the intent of the parties, asserts the Patrol, is controlling.

According to the Patrol, during the course of the fact finding process, which ultimately led to acceptance of an amalgam the Fact Finder's recommendations and certain modifications thereto (no such modifications being relevant to this case), the Patrol was led to believe that the collective bargaining language being recommended by the fact finder would relate to flight time only; that such a restriction on the 10% pay supplement represented a compromise position agreed to by the parties. This compromise was to be embodied in a letter-of-intent, asserts the Patrol, albeit such never was entered into. Failure to enter into this letter of intent, asserts the Patrol, merely indicates that the F.O.P. has had a change of heart. It is the Patrol's contention that in these circumstances fairness

and equity require a ruling to the effect that the grievance is without merit.

So it is that the Patrol urges that the grievance be denied.

The Issue:

Under "Article 20 - Grievance Procedure, paragraph 20.07 Arbitration 9. Issues," the parties have provided that they ". . . shall attempt to reduce to writing the issue or issues to be placed before the arbitrator," and that "in such cases where such a statement of the question is submitted," the arbitrator shall be confined "solely" to said issue or issues. In the instant case, while the parties attempted to reduce to writing the issue to be presented, their efforts did not meet with success. Thus the Patrol takes the position that the issue is: "Has the Ohio State Highway Patrol conformed with the intent of the parties in Article 23 of their collective bargaining agreement through the Patrol's policy of compensating members of the bargaining unit who serve in the aviation section only for piloting or flight-related activities? If not, what shall the remedy be?" The F.O.P. on the other hand sees the issue to be: "Whether or not the collective bargaining agreement's language at Article 23 entitles pilots to a professional achievement pay supplement of 10% of the minimum rate of their classification base rate pay?"

The contract is silent concerning what was intended in those cases, such as here, where the parties attempts to frame an issue and reduce it to writing are unsuccessful. In this circumstance, as the Elkouris have observed in their learned arbitration treatise, ". . . the burden of pinpointing the issue falls to the arbitrator after the parties have attempted without success to agree upon a statement thereof. . . ." ¹⁰ Taking up that burden here, and after fully considering the entire record, I find the issue to be best stated as follows:

. "Has the Patrol violated Article 23 of the contract by paying the professional achievement pay supplement therein provided for only for flight time and flight related activities, and if so, what is the appropriate remedy?"

Discussion and Opinion:

This case involves a contract interpretation issue with respect to Article 23 - Pilots. As has been seen the Patrol contends that the professional achievement pay supplement provided for therein is to be paid only for flight-time and flight-time related activities, whereas the F.O.P. contends that this supplement is an "add on" to the

¹⁰ How Arbitration Works, Elkouri & Elkouri, 4th Edition 1985, BNA Books, Inc., Washington D.C., p.230. See also: Wagner Casting Co., 74 LA 80, 81-82. (Talent, 1980); Public Service Company of New Mexico, 70 LA 788, 789 (Springfield, 1978); East Orange Board of Education, 69 LA 674, 674-675 (Spencer, 1977).

pilots minimum rates of their classification base rate pay, due by virtue of the pilots very status as pilots. And as noted above, the F.O.P. contends that Article 23 clearly and unambiguously so provides. Close scrutiny of Article 23, however, persuades me that an ambiguity adheres in the language of Article 23. An ambiguity is injected into the Article by the use of the phrase "professional achievement pay supplement." This phrase renders plausible the constriction of Article 23 that the Patrol urges. This phrase suggests that perhaps the parties intended, as the Patrol here contends, that the additional 10% pay was for flight time endeavors only. Given this ambiguity, resort to parole evidence, such as the negotiation history which led up to Article 23, to resolve the ambiguity and ascertain the parties intent, is fully warranted.

Turning to the parole evidence introduced at the arbitration hearing, I note at the outset that having calculated the cost of the F.O.P.'s pilot pay proposal on the basis of 2080 hours per annum (40 hours per week x 52 weeks per year) it is clear that the Patrol understood the F.O.P. pilot pay proposal to involve an add on to the pilot's pay and not to involve merely a supplement for flight-time, which was engaged in by the pilots only 75% of their time, i.e., for only 1660 hours per annum.

In addition a review of the Fact Finder's report readily reveals that the Fact Finder also understood the

Union sought "an additional increment of ten percent (10%) for pilot pay" in juxtaposition to a 10% bonus type payment for flight time, i.e., flight pay. Thus in the clearest of language the Fact Finder found that ". . . the Union is correct." Furthermore, the Fact Finder understood that the Patrol opposed granting what the Union sought solely because pilots already recieved hazard pay and ". . . as they receive hazard pay, no additional increment is warranted." But the Fact Finder clearly rejected this rationale-in-opposition and characterized the Patrol's rationale as "incomplete in its analysis," since all troopers receive hazard pay, with the result that no distinction for pay purposes existed between troopers and pilots. The Fact Finder concluded, however, that ". . . a distinction should exist," and hence he recommended a "10% pay supplement for pilots". No reference to flight time or flight pay was made by the Fact Finder in his "discussion" of pilot pay. This lack of any reference to flight time readily demonstrates that the Fact Finder simply didn't contemplate confining the 10% pay supplement to flight time. Most significant, however is the fact that the Patrol never so much as asked the Fact Finder during the formal fact finding hearings to do so.

While the Patrol asserts that it has not communicated with the Office of Budget and Management such that the latter's view cannot bind the Patrol, nonetheless I find it

enlightening that OBM as a third party, had no difficulty interpreting the Fact Finder's recommendation as providing for a "10 percent pay supplement for pilots" which was "over and above" the hazardous duty pay supplement. OBM, as did the Fact Finder, made no mention of flight time, and from their fiscal impact figures it appears that they calculated such on the basis of an assumed 2080 hours per annum, thereby indicating that the supplement was not to be confined to flight time.

The crux of the Patrol's case is based on events transpiring on March 24, 1986, and in particular on events occurring during management's caucus with Fact Finder Graham, who at that juncture was functioning merely as a mediator. Thus during the caucus management expressed the view, not contradicted by Graham, that Graham's fact finding report provided for a 10% supplement applicable to 100% of the pilots' work time, whereas the Patrol was only willing to pay a supplement for actual flight time. In my view it is clear that Graham, as mediator, simply undertook to seek the F.O.P.'s approval to change the concept of pilot pay as he, Graham, had recommended it be paid, and make it applicable only to flight time, i.e., when pilots were ". . . in the air." And while the record made before me fails to establish who initiated the concept of the device of a letter of intent, it is entirely feasible that Graham did so. But it is axiomatic that Graham, as merely mediator,

could not unilaterally effect the change the Patrol sought. Indeed, when Graham later met with F.O.P. spokesman Cox, it was Patrol spokesman Seidler, and not Graham, who breached the topic of changing the concept underlying pilot pay, converting it in essence to flight pay. But as the record reflects without contradiction, this change was rejected out of hand by the F.O.P., and suffice it to say that there is no evidence whatsoever that the device of a letter of intent was ever brought to the F.O.P.'s attention. Thus when Seidler failed to continue to press for such a change (and indeed, according to Cox affirmatively agreed that there would be no change) Seidler accepted and the parties therefore agreed to pilot pay as provided for by Fact Finder Graham, which, as understood by both parties, provided for a 10% pay supplement applicable to 100% of a pilot's work time and not just to flight time. The short of the matter is that the Patrol simply did not obtain the flight pay concept it desired. That the bargain struck on pilot pay was not confined to flight time is made manifest by yet further evidence of record. Thus, had in fact the parties agreed to confine pilot pay to flight time, they presumably would have proceeded to spell out precise procedures since it was self-evident that pilots were not always engaged in flying activities. That management representatives got together, without the presence of F.O.P. representatives, and hashed out an "equitable" formula of flight pay is indicative that

the parties, the Patrol and the F.O.P. together, never reached any agreement to confine pilot pay to flight time. Still further evidence that no such restriction was ever agreed to is to be found in the lack of any specific reference to such in Seidler's letter to the Legislature of March 25, 1986. Logic dictates that if Seidler, as chief-spokesperson, believed he had obtained a modification to the Fact Finder's recommendation he would have set such forth in said letter. Having failed to do so, and therefore referring the Legislature to the fact finding reports' recommendations on the issue, among others, of pilot pay, the inescapable inference is that, as Seidler was aware, the modification the Patrol sought was not obtained.

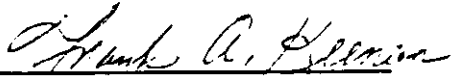
It can thus be seen that the record evidence rather overwhelmingly supports the F.O.P.'s contentions and undermines the Patrol's contentions. The issue posed is answered affirmatively. So it is that the grievance must be sustained.

Award

For the reasons more fully set forth above the grievance is sustained. Pilots are to be made whole by the payment to them of the 10% professional achievement pay supplement in accordance with the formula set forth in Article 23, retroactive to the effective date of the

contract, less of course monies already received pursuant to the Patrol's erroneous pilot pay policy.

Dated: October 27, 1986


Frank A. Keenan
Panel Arbitrator

30.07 Arbitration

1. Arbitration Panel

Within thirty (30) days after this Agreement becomes effective, the parties (The Office of Collective Bargaining and the F.O.P. Ohio Labor Council) shall select a panel of arbitrators. The panel shall be assigned cases in rotation order designated by the parties. Each arbitrator shall serve for the duration of this Agreement, unless his/her services are terminated earlier by written notice from either party to the other. The arbitrator shall be notified of his/her termination by a joint letter from the parties. The arbitrator shall conclude his/her services by settling any grievances previously heard. A successor arbitrator shall be selected by the parties.

The panel shall consist of at least six (6) and no more than eight (8) arbitrators. Each party shall propose ten (10) names. Each party shall strike at least six (6) names from the other party's list and may strike as many names as the striking party desires. If fewer than six (6) names are left, the party shall submit a new list with ten (10) additional names on it and the process shall be repeated. The parties may agree to an alternative method of selecting arbitrators.

Should the parties be unable to agree on any of the other details of the arbitration process, all unresolved questions shall jointly be submitted to an arbitrator on the list of arbitrators chosen at random, for resolution, whose decision will be binding on the parties.

Within 60 days of the effective date of this Agreement, the parties will mutually agree on a set of rules of arbitration. Insofar as is practical the rules will be based on the Voluntary Rules of the AAA that are applicable to this contract.

2. Witnesses

The Employer agrees to allow witnesses time off with pay to attend the hearing.

3. Expenses

- a. All fees and expenses of the arbitrator will be equally divided between the parties.

b. If one (1) party desires a transcript of the proceedings, the total cost for such transcription shall be paid by the party desiring the transcript. If the other party desires a copy, then the total cost for such transcription shall be shared equally by both parties. The parties agree that normally transcripts will not be requested.

c. All other costs incurred by the parties will be paid by the party incurring the costs.

4. The parties may be represented by their representatives or legal counsel. More than one issue may be submitted at the same time to arbitration, particularly if they are related to each other.

5. Arbitration Decisions

The arbitrator shall render his/her decision as quickly as possible, but in any event, no later than thirty (30) days after the conclusion of the hearing unless the parties agree otherwise. The arbitrator shall submit an account for the fees and expenses of arbitration.

The arbitrator's decision shall be submitted in writing and shall set forth the findings and conclusions with respect to the issues submitted to arbitration. The arbitrator's decision shall be final and binding upon the Employer, the F.O.P. Ohio Labor Council and the employee(s) involved, provided such decisions conform with the Law of Ohio and do not exceed the jurisdiction or authority of the arbitrator as set forth in this Article. The grievance procedure shall be the exclusive method of resolving grievances.

6. Arbitrator Limitations

Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the express language of this Agreement.

7. Subpoena

a. The arbitrator shall have authority to subpoena witnesses pursuant to Section 2711.06, of the Ohio Revised Code. Upon receiving a request to issue a subpoena(s) the arbitrator shall contact the other party and hear and consider objections to the issuance of said subpoena(s). The arbitrator shall not subpoena persons to offer repetitive testimony.

- b. When the arbitrator determines that so many employees from the same facility have been outpencened that would impede the ability of the Employer to carry out its mission or inhibit the Employer's ability to conduct an efficient operation he or she shall make arrangements to take the testimony desired in such manner as will not cause these problems.
- c. Where the intent of the parties is determined to be relevant, no more than one (1) member of either bargaining committee may be called as a witness by a party.

8. Discovery

Five (5) days prior to the start of an arbitration hearing under this Article, the parties shall deliver the names of all witnesses to each other. Where either party will make an issue of "intent", that party will notify the other party ten (10) days prior to the hearing.

9. Issues

Prior to the start of an arbitration under this Article, the Employer and the bargaining agent shall attempt to reduce to writing the issue or issues to be placed before the arbitrator. In cases where such a statement of the question is submitted, the arbitrator's decision shall address itself solely to the issue or issues presented and shall not impose upon either party, any restriction or obligation pertaining to any matter raised in the dispute which is not specifically related to the submitted issue or issues.