

ARBITRATION

THE OHIO STATE HIGHWAY PATROL

and

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

DECISION AND AWARD

The issue in this proceeding is whether the Ohio State Highway Patrol ("Employer") violated the parties' collective bargaining agreement by establishing one shift for Radio Dispatchers containing different beginning and ending times throughout the week. The underlying facts are as follows.

The bargaining unit covered by the collective bargaining agreement consists of four different classifications of employees: State Troopers, Communications Technicians, Radio Technicians, and Radio Dispatchers. The principal duties of Radio Dispatchers are to answer radio and telephone calls and dispatch personnel as needed. The Employer contends that these duties require the presence of a Radio Dispatcher at each post at all times, and the Union does not dispute that contention.

In order to achieve this result, the Employer has scheduled one Dispatcher at each post on each of three shifts, i.e., 8 a.m. to 4 p.m., 4 p.m. to midnight, and midnight to 8 a.m. However, because the normal work week is only forty hours long (Art. 26.01, below), this schedule leaves two days on each shift each week with no Dispatcher scheduled. Therefore, the Employer has scheduled an additional, "fill-in" shift, which covers five of these six gaps, and utilizes cadets in training, overtime assignments, or Troopers not assigned elsewhere to fill the sixth gap. Thus, a typical schedule would appear as follows ("X" denotes a day off):

<u>Shift</u>	<u>Schedule</u>							
8 a.m.	8A	X	X	8A	8A	8A	8A	
4 p.m.	4P	4P	4P	X	X	4P	4P	
12 p.m.	X	X	12M	12M	12M	12M	12M	
Fill-in	12M	12M	8A	4P	4P	X	X	

Article 26.01 of the parties' collective bargaining agreement provides as follows:

Permanent shifts shall be established. Shift assignments will be made by the facility administrator on the basis of seniority on March 1st and September 1st of each year. The assignments made on March 1st will be for the period from September 1st to February 28th, and the assignments made on September 1st will be for the period from March 1st to August 31st. In accordance with this section, shift assignments will be permanent and no rotation of shifts will occur. The normal work week shall be forty (40) hours.

The Union argues that this provision requires each employee to work the same hours each day - i.e., to have a consistent beginning and ending time, and therefore precludes the usage of the so-called "fill-in" shift. However, as the Employer points out, where the parties intended such a result, they so stated, as in Article 26.07, which provides, "Radio Technicians shall be scheduled Monday through Friday on the day shift."

Moreover, the Union's interpretation of the phrase "rotation of shifts" is not in accord with standard usage of that term. Roberts' Dictionary of Industrial Relations (Rev. Ed., 1986) defines "shift" as follows:

A regularly scheduled period of work during the 24-hour day for a plant. The shift has a fixed beginning and ending each day. . . .

* * * * *

A shift is referred to as a fixed shift when the employees remain on the same schedule for long periods of time. It is referred to as a rotating shift when crews change their hours at periodic intervals. It is referred to as a . . . swing shift when it is the rotating shift or a fourth shift in a plant which operates on an around-the-clock basis in a seven-day period. The name is derived from the nature of the operation, since all four shifts or the special shift rotate or swing to different days and hours at specified intervals.

It is evident from the above definitions that the "fill-in" shift is a fixed shift, since the employees "remain on the same schedule for long periods of time" - namely, six months. It is also a swing shift, since it "rotate[s]

or swing[s] to different days and hours at specified intervals." It is not a rotating shift, because the crews do not change their hours at periodic intervals - their hours are fixed throughout the six-month assignment period. Therefore, it is not prohibited by the collective bargaining agreement, which only precludes "rotation of shifts."

The history of Article 26.01 fully supports this interpretation. Prior to the enactment of this Agreement, Troopers and Dispatchers worked on a shift schedule that rotated weekly. During the negotiations leading to this Agreement, the Union insisted that this system be changed. The issue was eventually submitted to a Factfinder, who found the following:

The major item in dispute in this issue is concerned with the issue of permanent or rotating shifts. During the course of mediation a great deal of time was spent on this issue without securing agreement. No reader of this report or casual observer of the troopers employed by the Ohio State Highway Patrol can be aware of the passion with which troopers dislike rotating shifts. This is one of the most significant issues in dispute between the parties.

The Factfinder has examined the Master's thesis introduced by the Union in support of its position on this issue. For purposes of this report, that thesis has the advantage of having 96 responses from troopers attached to the Ohio Highway Patrol. . . . It clearly shows that the current system of rotating shifts is repugnant to troopers. The data is unambiguous. Troopers prefer to have a permanent shift. Their second choice is to rotate shifts on a monthly basis.

Additional support for the position of the Union is found in the Columbus Dispatch of February 9, 1986. On page 18A there is an article headlined "police shifts set to match body clocks." That article discusses the rotational pattern of police officers in Philadelphia. It is similar to the pattern followed by the Ohio Patrol in that officers rotate weekly. The problems raised by officers in Philadelphia are identical to those described by Ohio troopers. The article points out that rotation may lead to digestive disorders and increased heart attack risk. The City of Philadelphia is changing its rotational pattern to deal with the concerns of its officers. Those concerns have been supported by studies of the body's adjustment to changing shifts through its biological clock. [Emphasis supplied.]

The above discussion makes clear that the issue addressed by the Factfinder was whether to eliminate the prior practice of scheduling shifts on a weekly basis, and adopt instead a permanent shift system. At no time does he suggest that shifts should have the same starting and ending times. The Union now asserts that such was its intent throughout the negotiations, but there is no evidence that that intent was stated during negotiations. Moreover, it is clear that the Employer had no such understanding; its cost analysis of the Agreement, prepared by the Office of Budget and Management prior to the adoption of the Agreement, indicates that the "major provisions of this Article [26] should not lead to additional costs," which would not be the case if the Employer were obligated to schedule all Radio Dispatchers on shifts with the same beginning and ending

times.¹

In sum, the parties' collective bargaining agreement does not require that the Employer schedule Radio Dispatchers on shifts which have the same starting and ending times, and accordingly has not violated the Agreement by scheduling a permanent "fill-in" shift which consists of fixed, albeit differing, hours.

The grievance is denied.

February 7, 1987
Dated

Abigail Modjeska
Abigail Modjeska, Arbitrator

COUNTY OF FRANKLIN

STATE OF OHIO

¹The Employer contends that to meet the Union's demand, it would have to schedule nine dispatchers at each post, rather than the four currently scheduled, at an additional cost to the Employer of \$4,606,048.22 per year. The Union disputes this figure, but does not indicate what it should be. Evaluation of the accuracy of the Employer's estimate is not necessary here.