

OCB Award No: 28

OCB Grievance No: 686-0129

Union: FOP

Department: Highway Safety

Arbitrator: Curry

Award Date: 8/3/5

OFFICE OF THE ARBITRATOR

March 5, 1987

In the Matter of the Arbitration between:

THE OHIO STATE HIGHWAY PATROL)	
DEPARTMENT OF HIGHWAY SAFETY)	
State of Ohio)	
)	OCB Grievance No. 86-129
and)	David H. Plunkett, Grievant
)	
FRATERNAL ORDER OF POLICE)	
OHIO LABOR COUNCIL, INC)	

APPEARANCES

For the Patrol:

Captain John M. Demaree	Advocate
Lt. Darryl L. Anderson	Labor Relations Specialist
Lt. T. H. Bilang	Post Commander, Toledo

For the F.O.P.:

Paul L. Cox, Esq.	Attorney
Edward F. Baker	Staff Representative
Tpr. David H. Plunkett	Grievant

Arbitrator:

Earl M. Curry, Jr.

BACKGROUND

The instant arbitration arose as the result of a grievance filed by the Fraternal Order of Police, Ohio Labor Council, Inc., (the "F.O.P." or "Union") on behalf of Trooper David H. Plunkett (the "Grievant") protesting the denial by the Ohio State Highway Patrol (the "Patrol") of four hours of report-back pay to the Grievant pursuant to Section 61.04 of the parties Agreement. Instead, the Patrol paid the Grievant two-hours of court time pay pursuant to Section 61.06 of the Agreement. When the parties were unable to resolve this matter between themselves, they referred it to arbitration pursuant to Section 20.07 of the Agreement.

STATEMENT OF THE FACTS

In June of 1986 the Grievant was working a 10:00 PM to 6:00 AM shift. While on duty on June 13, 1986 he made a DWI arrest. In addition to the DWI, the situation gave rise to additional charges for disorderly conduct and/or resisting arrest. The DWI charges could be put on the traffic ticket and dropped off at the Sylvania Municipal Court at the end of the Grievant's shift. The additional charges required that a long form affidavit be filled out and signed by the Grievant as arresting officer. To fill out and sign this affidavit the Grievant was required to appear at the Prosecutor's Office. This could be done only during normal business hours. The Grievant's shift ended at 6:00 AM. He went home at that time. At 8:30 AM he went to the Sylvania Municipal Building in Sylvania, Ohio and completed

the necessary affidavit. He was there approximately one-half hour. After completing these duties the Grievant requested report-back pay pursuant to Section 61.04 of the Agreement. The Patrol denied his request for report-back pay and, instead paid him for court time pursuant to Section 61.06 of the Agreement. As stated above, a grievance was filed that led to the instant arbitration.

ISSUE

Is the Employer in violation of the collective bargaining agreement, specifically Article 61, Section 61.04 (Report-Back Pay) by denying the Grievant a minimum of four hours pay in the instant case? If so, what shall the remedy be?

PERTINENT CONTRACT PROVISIONS

Article 61 - Overtime

61.04 Report-Back Pay

- A. "Report-Back" occurs when a member of the bargaining unit is called to return to work to do unscheduled, unforeseen or emergency work after the member has left work upon the completion of the regular day's work, but before he or she is scheduled to return to work.
- B. When a member reports back, he or she shall be paid a minimum of four hours pay at his or her regular rate, including shift differential if ordinarily paid.
- C. Regularly scheduled shift hours following report back are to be paid at straight time.

61.06

Members of the bargaining unit who are required to appear in court during their off duty hours shall be

guaranteed a minimum of two hours pay or actual hours worked, whichever is greater. The Employer shall not change an employee's schedule or scheduled shift in order to avoid payment for court time incurred during off-duty hours without the consent of the employee involved. Payment shall be made in cash or compensatory time at the discretion of the employee. Employees shall notify their immediate supervisor when they are required to appear in court.

CONTENTIONS OF THE PARTIES

F.O.P. Contentions

The F.O.P. contends that the Patrol violated the Agreement when it failed to pay the Grievant four hours of report-back pay pursuant to Section 61.04 and, instead, paid him two hours of court time pay pursuant to Section 61.06. It argues that a member of the bargaining unit is entitled to a minimum of four hours of pay when the member is required to return to work to do "unscheduled unforeseen or emergency work" and that the Grievant's going to the Prosecutor's Office was both unscheduled and unforeseen. It further argues that the Grievant did not go to court in the instant case as contemplated by Section 61.06 but rather went to the Prosecutor's Office. It asks, accordingly, that the grievance be sustained and the Grievant paid report-back pay rather than court time pay.

Patrol's Contentions

The Patrol denies that it violated the provisions of the Agreement in the instant case. It argues that the filing of affidavits as the result of an arrest is in fact a court related activity and as such would fall within the parameters of Section 61.06. It argues that report-back pay under Section 61.04 was intended to compensate members of the bargain-

ing unit who are called out to do unscheduled, unforeseen or emergency work such as accidents, snow storms or riots. It was not intended to be used for the purpose of compensating individuals for doing court related business which was clearly the case in this instance. The procedure of filing the affidavit in the Prosecutor's Office is required by the Sylvania Municipal Court. The Grievant was aware of this procedure and it was for this reason that he returned to the court on his own to complete the filing of charges. He was not "called to return to work" as required by Section 61.04. It argues that management acted fairly and in good faith in the instant case in paying the Grievant court time for this court related activity. The denial of "Report-Back Pay" was not capricious, arbitrary or discriminatory. It asks, accordingly, that the grievance be denied.

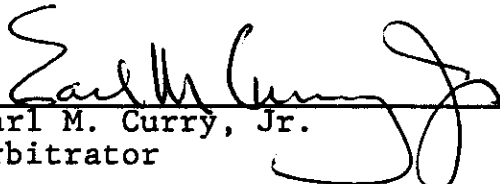
DISCUSSION

In the opinion of the Arbitrator the grievance should be denied. The Arbitrator does not believe that the Patrol violated the Labor Agreement in the instant case by paying the Grievant for court time pursuant to Section 61.06 rather than report-back pay pursuant to Section 61.04. The Arbitrator is persuaded that the work the Grievant was performing, in the instant case, was court related work and that the contemplation of the parties was that this type of work should be covered by Section 61.06. Lt. Darryl Anderson, the Patrol's note taker during the party's negotiation of these provisions testified that when the parties

discussed the report-back pay provision the examples used as to when this provision would be applicable regarded weather emergencies, highway accidents and disturbances at state correctional facilities. Court related matters were not discussed in connection with this provision according to Lt. Anderson. If the parties had intended the filing of charges by affidavits to be an activity included in the type of activity contemplated under the report-back pay provision, the Arbitrator believes that they would have discussed it during their negotiations. The uncontroverted testimony of Lt. Anderson is that the other examples mentioned above were the only examples used when discussing this provision. Nothing that was court related was discussed in regard to this provision. On the other hand, the parties adopted the court time pay provision without much discussion at all as to what constitutes court time. The Arbitrator believes that the ordinary meaning of this provision must include court related activities since the parties did not discuss the matter here or in the report back pay provision discussions. Going to the Prosecutor's Office to file charges is certainly a court related activity. The Patrol management made a determination in this case that was neither arbitrary nor capricious but rather conformed to the accepted practice of applying the specific provision rather than the general. Therefore, the Arbitrator does not believe that the parties intended the type of activity involved in the instant case to be covered by the report-back pay provision, but rather believes that they intended this type of situation to be covered by the court time pay provision.

AWARD

For the reasons discussed just above the grievance is denied.



Earl M. Curry, Jr.
Arbitrator

Shaker Heights, Ohio
March 5, 1987