

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration)	
)	
Between)	
)	<u>OPINION AND DECISION</u>
)	
FRATERNAL ORDER OF POLICE)	
OHIO LABOR COUNCIL, INC.)	OCB GRIEVANCE NO. 86-607
)	
-and-)	
)	
OHIO STATE HIGHWAY PATROL)	

SAMUEL S. PERRY, IMPARTIAL ARBITRATOR

The Impartial Arbitrator is a member of the Panel of Arbitrators and was mutually selected by the Parties and appointed in accordance with the provisions of the Contract existing between the Parties (Joint Exhibit #1), to hear and decide this matter.

The oral hearing was held on Tuesday, March 17, 1987 in a Conference Room at the Offices Collective Bargaining, Department of Administrative Services, 375 High Street, 17th Floor, Columbus, Ohio 43266-0585.

The following appearances were made for each of the Parties:

FOR THE UNION:

<u>NAME</u>	<u>POSITION</u>
Paul L. Cox	Attorney
Steven C. Sherrod	Trooper/Grievant

FOR THE PATROL:

<u>NAME</u>	<u>POSITION</u>
John M. Demaree	Captain
	Executive Officer
Kenneth B. Marshall	Witness
	Lieutenant
	Post Commander

The Parties agreed that the matter was properly before the Arbitrator for a decision on the merits. The Parties waived a separation of witnesses and requested that the oath be administered to each person called to testify.

The Union requested two (2) copies of this Opinion and Decision and the Patrol requested three (3) copies of this Opinion and Decision.

At the conclusion of the oral hearing, each Party waived filing a post-hearing brief. The oral proceedings in this matter were concluded and the Arbitrator declared the hearing closed on March 17, 1987.

The Arbitrator shall render his Opinion and Decision pursuant to Article 20, Section 20.07 of the Contract (Joint Exhibit #1).

THE GRIEVANCE:

The Grievance (Joint Exhibit #2) consisting of sixteen (16) pages, was offered and admitted into evidence and states as follows:

SEE NEXT SIXTEEN (16) PAGES

Joint Exhibit #2

JUN 30 1986

Revised 5-1-86

OHIO STATE HIGHWAY PATROL - EMPLOYEE GRIEVANCE FORM

- GRIEVANT'S NAME Steven C. Sherrod SP-4, UNIT # 584 POST 76 DIST. 3
- BARGAINING UNIT # 1 3. DISCIPLINARY GRIEVANCE? _____ (IF SO, BEGIN AT STEP 3)
- IMMEDIATE SUPERVISOR AT TIME OF INCIDENT It. K.B. Marshall U-1221 P-76 D-3
- ARTICLE(S) AND SECTION(S) GRIEVED: Article 61 Section 61.06
- STATEMENT OF GRIEVANCE (TIME & DATE, WHO, WHAT, WHERE, HOW) BE SPECIFIC: On 6-3-86
I had a court case when I didn't come out till 2200hrs. My court case was to be
heard at 1700hrs. I came out at 1205hrs. in my personal car due to I had been on
time off with no patrol car. I came out early because I had to get some court
material for the case from Jackson PD. I drove from my house to the PD. arriving
there at approx 1215hrs. I got my material and drove to the post arriving at 1239hrs
- REMEDY REQUESTED: Compensation for time spent in personal car that I claimed
(14 min.)
- GRIEVANT'S SIGNATURE Steven C. Sherrod DATE: 6/3/86

* PRELIMINARY STEP *

- IMMEDIATE SUPERVISOR CONTACTED Sgt. T.E. Escola NAME 6-7-86 DATE
- REPRESENTATIVE (IF ANY): None **JOINT EXHIBIT** DATE OF REPLY: 6/9/86
- COMMENTS BY GRIEVANT: None 2
- GRIEVANT'S SIGNATURE: Steven C. Sherrod DATE: 6-15-86

* STEP ONE REVIEW *

- DATE GRIEVANCE RECEIVED 06/17/86 RECEIVED BY LIEUT. K.B. MARSHALL
- STEP ONE MEETING DATE: 06/19/86 TIME: 2:00 P.M. PLACE: MASSILLON POST COMMANDER'S OFFICE
- MEETING OFFICER: LIEUT. K.B. MARSHALL UNIT # 1221
- REPRESENTATIVE AND/OR COUNSEL AT MEETING: T.P.R. R.T. Mc Gough
- DATE OF REPLY: 06/23/86 REPLY: Article 61:06 was complied with by supervision. K.O.T. 2 hours. Overtime was paid for actual time worked since that time exceeded a patrol car. The division will not compensate officers for driving a personal vehicle when a state car is available.
- POST COMMANDER, EQUIV. SUPV. OR DESIGNEE'S SIGNATURE: It. K.B. Marshall
- EMPLOYEE REVIEW: 6/28/86 AGREE: YES ☒ NO ☐ REQUEST STEP 2 REVIEW: ☒ YES ☐ NO
- COMMENTS BY GRIEVANT: _____
- GRIEVANT'S SIGNATURE: Steven C. Sherrod DATE: 6/28/86
- STEP ONE HOURS REP. HRS. 120 GRIEVANT HRS. 120 POST CMDR. HRS. 145

* STEP TWO REVIEW *

- DATE GRIEVANCE RECEIVED: 6/30/86 RECEIVED BY: CAPT. W. H. DAVIES
- STEP TWO MEETING DATE: 7/3/86 TIME: 2:00 P.M. PLACE: MASSILLON OHQ
- MEETING OFFICER: CAPTAIN W. H. DAVIES
- REPRESENTATIVE AND/OR COUNSEL AT MEETING: T.P.R. R.T. Mc Gough
- DATE OF REPLY: 07/07/86 REPLY: Concur with the Post Commander's reply.
The Division will not compensate officers for driving their personal vehicles.
- COMMANDER'S SIGNATURE: _____

OVER

1986 JUN - 9 PM
RECEIVED
HIGHWAY PATROL

*** STEP TWO REVIEW (CONTINUED) ***

22. REVIEW BY EMPLOYEE: DATE: ___/___/___ . AGREE: YES NO REQ. STEP 3 REVIEW: YES NO

23. COMMENTS BY GRIEVANT: _____

GRIEVANT'S SIGNATURE: _____ DATE: ___/___/___

24. STEP TWO HOURS. REP. HRS. _____ GRIEVANT HRS. _____ DIST. CMDR. HRS. 45

*** STEP THREE REVIEW ***

25. DATE GRIEVANCE RECEIVED ___/___/___ . RECEIVED BY _____

26. STEP THREE MEETING DATE: ___/___/___ . TIME: _____ .M. PLACE: _____

27. MEETING OFFICER _____

28. REPRESENTATIVE AND/OR COUNSEL AT MEETING: _____

29. DATE OF REPLY: ___/___/___ . REPLY: _____

DIRECTOR/SUPERINTENDENT OR DESIGNEE'S SIGNATURE: _____

30. REVIEW BY EMPLOYEE AND/OR REPRESENTATIVE: DATE: ___/___/___ . AGREE: YES NO
REQ. STEP 4 REVIEW: YES NO

31. COMMENTS BY GRIEVANT OR REPRESENTATIVE: _____

GRIEVANT'S OR REPRESENTATIVE'S SIGNATURE: _____ DATE: ___/___/___

32. STEP THREE HOURS REP. HRS. _____ GRIEVANT HRS. _____ DESIGNER HRS. _____

*** STEP THREE DISCIPLINARY GRIEVANCE REVIEW ***

33. REVIEW BY O.L.C. REPRESENTATIVE: DATE: ___/___/___ . AGREE YES NO

REQ. STEP 5 (ARBITRATION) REVIEW: YES NO

34. DATE REQUEST FOR ARBITRATION FILED: ___/___/___ .

35. COMMENTS BY REPRESENTATIVE: _____

36. REPRESENTATIVE'S SIGNATURE: _____ DATE: ___/___/___ .

*** STEP FOUR REVIEW ***

37. DATE GRIEVANCE MAILED TO THE OFFICE OF COLLECTIVE BARGAINING ___/___/___ .

38. DATE GRIEVANCE RECEIVED AT THE OFFICE OF COLLECTIVE BARGAINING: ___/___/___ .

39. STEP FOUR REVIEW DATE: ___/___/___ . DIR. OF O.C.B. OR DESIGNEE: _____

40. DATE OF REPLY: ___/___/___ . REPLY: _____

DIRECTOR OF O.C.B. OR DESIGNEE'S SIGNATURE: _____

41. DATE REVIEWED BY O.L.C. REPRESENTATIVE: DATE: ___/___/___ AGREE: YES NO

REQUEST ARBITRATION: YES NO

42. DATE REQUEST FOR ARBITRATION FILED: ___/___/___ .

43. COMMENTS BY REPRESENTATIVE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: ___/___/___ .

44. RESPONSE TIME EXTENSIONS: (INITIALED BY REPRESENTATIVES OF MANAGEMENT & OLC)

DATE FOP/OLC
STEP: 3 EXTENDED TO: 11/7 SIGNATURE: _____

STEP: 3 EXTENDED TO: 11/7 SIGNATURE: EAB

STEP: _____ EXTENDED TO: _____ SIGNATURE: _____

JOINT
EXHIBIT

MANAGEMENT



OHIO DEPARTMENT OF HIGHWAY SAFETY

RICHARD F. CELESTE
GOVERNOR

WILLIAM M. DENIHAN
DIRECTOR

16 Pages

JOINT
EXHIBIT
2

Bureau of Motor Vehicles

October 24, 1986

Beverly A. Luciw-Fay, Director
Governor's Office of Voluntary Citizens Participation
State House
Columbus, Ohio 43215

Dear Ms. Luciw-Fay,

Per your request, a statement of the "Flex-Time" policy for the Department of Highway is as below:

"Departmental Employees working hours other than normal hours will be briefed and scheduled by their supervisor as to their reporting time subject to the approval by the Section supervisor and Assistant Director. "Flex-Time" parameters are 7:00 a.m. to 6:00 p.m. Monday through Friday.

Please call if additional information is needed.

Sincerely,

Cynthia E. Sands

Cynthia E. Sands
Personnel Officer

cc: William M. Denihan, Director
Robert E. Prease, Assistant Director
Cathy I. Copeland, Deputy Director
✓ Col. Jack Walsh, Highway Patrol
Michael J. McCullion, Registrar



683 (16) 321 SIGNITA
**Ohio Department of
Administrative Services**

375 S. HIGH STREET, 17TH FLOOR
COLUMBUS, OHIO 43266-0585

RICHARD F. CELESTE, GOVERNOR

OFFICE OF COLLECTIVE BARGAINING

November 25, 1986

DJ
#76

Trooper Steven C. Sherrod
7600 Aramis
Massillon, OH 44646

2/13/87
arb.

RE: Step 4 Grievance Review
OCB Grievance #G86-0607
Highway Safety (#31)
State Highway Patrol

Dear Trooper Sherrod:

The above grievance is denied for the reasons cited at Step 3.

Sincerely,

Edward H. Seidler
Edward H. Seidler
Deputy Director

EHS:ME:lc

cc: Peter Coccia, Labor Relations Coordinator
Highway Safety

Paul Cox, Attorney
Fraternal Order of Police

Ed Baker, Staff Representative
Fraternal Order of Police

✓ Major Thomas Rice, Labor Relations Coordinator
State Highway Patrol

RECEIVED
HIGHWAY PATROL
1986 DEC -5 PM 3:51

JOINT
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2

STATE HIGHWAY PATROL

STATE OF OHIO

Richard F. Celeste
Governor

Colonel Jack Walsh
Superintendent



DEPARTMENT OF HIGHWAY SAFETY

William M. Denihan
Director

FILE NO. 00-5-10

Columbus, Ohio 43266-0562
November 6, 1986

Trooper Steven C. Sherrod
7600 Aramis
Massillon, Ohio 44646

RE: Grievance No. 31

Dear Trooper Sherrod:

Attached you will find my Level III decision regarding the above numbered grievance.

Very truly yours,

M.D. T.W. Rice

T. W. Rice
Major, Personnel
Ohio State Highway Patrol

TWR/slb

Attachment

cc: Ed Seidler, Director the Office of Collective Bargaining
Peter Coccia, ODHS Labor Relations
Ed Baker, FOP/OLC, Inc., Staff Representative
Paul Cox, FOP/OLC, Attorney
File

JOINT
EXHIBIT

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A level III Grievance Hearing was held on November 5, 1986, in Columbus, Ohio regarding grievance number 31, Grievant Trooper Steven C. Sherrod; with the following persons present:

MANAGEMENT

T. W. Rice, Major/Personnel/
Labor Relations/Hearing Officer
Capt. John Demaree
Lt. D. L. Anderson

LABOR

Tpr. Steven Sherrod, Griev.
Mr. Ed Baker, Staff Repres.

The parties agreed we were properly constituted and there were no procedural objections.

The Union stated the remedy sought was that stated on the grievance. That the grievant(s) was a member of FOP/OLC at the time of the alleged incident giving rise to the grievance and further, that the grievant's home address is correctly stated on the grievance form.

UNION CONTENTION

The union believes Trooper Sherrod and all members of the class action should be paid for the time they spend travelling to and from court cases when they use their personal car, regardless of the fact the Division makes a patrol car available for transportation from the Patrol post.

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MANAGEMENT'S CONTENTION

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It is management's contention that Article 61.06 is being complied with in the grievances named in this class action, and particularly this grievance.

Specifically Article 61.06 states:

"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."

In the cases in question, all members claiming grievances were paid a minimum of two hours or actual time worked, whichever time was greater.

The question is forwarded by the grievants concerning paid commutation time when enroute to and from court when driving their personal vehicle.

Contractually, members have no specific guarantee of driving a state car to court cases.

However, Article 25.02 states:

"The Highway Patrol may assign departmental vehicles for certain employees to use to properly perform their duties. Such vehicle assignments are based upon responsibilities of the employee and in part, on an employee's availability to return to duty in a timely fashion when an emergency situation arises. The use of divisional vehicles is for official business purposes only and not for pleasure or personal use. If departmental vehicles are unavailable and an employee is required to use the employee's own vehicle for official business purposes, the employee will be reimbursed at a rate established by the Internal Revenue Service."

It has been management's policy, based on Article 4, Management Rights, to provide a marked patrol car to troopers to drive to and from court cases, if a car is available.

A certain number of patrol cars are assigned to each patrol post location, based on assigned personnel strength. Just as an off-duty unit may be required to provide commutation time from home to the post, and back - during regular work shifts, they may be so required prior to and after attending a court case during their off-duty hours.

Consequently, it is management's contention the time spent by an off-duty member driving to and from a post in his/her personal car should not be compensated. Management will continue to provide a state vehicle for court cases, from the patrol post. If a state vehicle is unavailable and an employee is required to use his/her own vehicle for official business purposes, the employee will be reimbursed at the rate established by the Internal Revenue Service.

In the specific case under consideration, a state vehicle was provided, and court overtime was paid according to Article 61.06. Therefore, the grievance should be denied.

FINDING

JOINT
EXHIBIT

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The hearing officer finds that management acted responsibly and followed established procedure in the grievance in question, and all like grievances included in the class action. A patrol car was provided for court, from the post the grievant is assigned to. Just as a member may have to provide his/her own transportation to and from their normal report-in location before and after a regular duty assignment, it may be necessary for them to do likewise before and after a court appearance during their off-duty hours.

Therefore, the request for time spent in personal vehicles as related to off-duty court appearances is denied.

MAJ. THOMAS W. RICE
Thomas W. Rice, Major

11/6/86
Date

GRIEVANCE SIGN-IN FORM
STEP III HEARING

Grievance Number #31

Grievant Name Trooper Steven C. Sherrod

Date November 5, 1986

Location GHQ-Columbus

NAME	AGENCY
1. <u>Edward J. Rosen</u>	<u>FOP/OLC</u>
2. <u>J. H. [unclear]</u>	<u>OSP Mass. [unclear]</u>
3. <u>[unclear]</u>	<u>OSP Pers.</u>
4. <u>L. H. [unclear]</u>	<u>OSP PERSONNEL</u>
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____

JOINT
EXHIBIT
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STATE HIGHWAY PATROLColonel Jack Walsh
SuperintendentDEPARTMENT OF HIGHWAY SAFETY
William M. Denihan
Director

STATE OF OHIO

Richard F. Celeste
Governor

FILE NO.

00-5-134

Columbus, Ohio 43266-0562
March 12, 1987Paul Cox
FOP/DLC, Inc.
4222 East Broad Street
Columbus, Ohio 43213

Dear Mr. Cox:

Please be advised that during the arbitration case scheduled to be heard by Mr. S. Perry on Thursday, March 12, 1987 management intends to present the following witnesses:

<u>O.C.B. #</u>	<u>GRIEVANT NAME</u>	<u>WITNESSES</u>
76-607	Tpr. S.D. Sherrod	Capt. D. C. Bueno Lt. K. B. Marshall Lt. D. L. Anderson Sgt. T. E. Escola

This notification is in compliance with point 8 of subsection 20.07 (Arbitration) of the Unit #1 contract.

Very truly yours,

Major T. W. Rice
Personnel Commandercc: Mr. Ed Baker
Peter Coccia
Ed Seidler
John Alexander
Captain DaviesJOINT
EXHIBIT

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STATE HIGHWAY PATROL

INTER-OFFICE COMMUNICATION

Date 6-9-86

To Lt. K. B. Marshall Attention _____

From Sgt. T. E. Escola

Subject Preliminary Grievance Report Filed by Tpr. S. C. Sherrod

On Saturday night at 10 PM Tpr. Sherrod filed this Preliminary Grievance report to me. It has to do with KOT that he was denied from I believe Tuesday June 3, 1986. I did not call you immediately Saturday night but tried all afternoon Sunday and until 11:00 PM. I will answer this but I wanted to talk to you first. I'll call you some time today after I get up. I explained to Sherrod that the policy is that we do not get payed to drive our P.C.'s to court but he was not satisfied with it.

JOINT
EXHIBIT

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STATE HIGHWAY PATROL

INTER-OFFICE COMMUNICATION

Date June 9, 1986

To Captain W. H. Davies Attention Lieut. C. R. Miner

From Lieut. K. B. Marshall

Subject Grievance - Trooper S. C. Sherrod

Attached is a preliminary Grievance report filed with Sergeant T. E. Escola Saturday June 7, 1986 by Trooper S. C. Sherrod, Unit 584.

On Tuesday June 3, 1986, Sherrod had a court case in the Stark County Juvenile court which was scheduled to start at 1400 hours. According to the HP-53B he was signal two from his home in a personal car at 1205 hours, and arrived on post at 1239 hours. After picking up a patrol car, he went signal two from the post at 1307 hours and arrived there at 1328 hours. At 1435 hours he went two from the court and arrived back on post at 1455 hours. The log indicates that he left post for his home at 1507 hours. There is no indication on the log of the time he arrived back at his home. As a result of this court case, Sherrod claimed three hours of K.O.T.

While doing a verification of overtime on June 4, 1986, Sergeant R.E. Eastwood authorized Two hours of K.O.T. This decision was discussed with me and I agreed.

The actual time worked by Sherrod on June 3, 1986, while in uniform and driving a patrol vehicle was 2Hours 16 Minutes. I recommend that we authorize an additional 16 minutes overtime to satisfy the trooper. I don't know if that is the remedy he wants, or would accept, however, I feel that it is the only one we could qualify according to our management position.

L. K. B. Marshall
Lieut. K. B. Marshall
Massillon Post Commander

JOINT
EXHIBIT

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STATE HIGHWAY PATROL
INTER-OFFICE COMMUNICATION

Date 6-15-86

To Lt. K.B. Marshall Attention

From Steven C. Sherrod

Subject Grievance

I then left for the case in a patrol car at 1307hrs. I arrived at the court at 1328hrs. I left the court at the completion of the case at 1435hrs., and arrived on post at 1455hrs. I then left the post at 1507hrs. and arrived at home at approx. 1530hrs. I then changed clothes and took the material from Jackson PD. back to them. I claimed 3hrs. court and was given 2hrs. because I was told I couldn't be compensated for time spent in my personal car.

Put with Grievances

JOINT
EXHIBIT

STATE HIGHWAY PATROL

INTER-OFFICE COMMUNICATION

Date June 16, 1986

To Major T. W. Rice Attention _____
From Captain W. H. Davies _____
Subject Preliminary Grievance - Trooper S. C. Sherrod, Unit 584,
Post 76, District 3 _____

Attached is a Preliminary Grievance report from Sergeant T. E. Escola, Unit 217, Post 76. The preliminary grievance procedure was started by Trooper S. C. Sherrod, Unit 584.

Trooper Sherrod used his personal vehicle to drive to the Post for a court case. He stopped at the Jackson Township Police Department to pick up the BAC logs for a contested OMVI case. He then drove to the Post, picked up a patrol car and went to court. He returned to the Post after the case and drove his personal vehicle home. The log indicates he called the Post at 1205 to advise he was signal 2 enroute to the Post, arrived at the Post at 1239. The log also indicates he left the Post for court at 1307, arrived at court at 1328. He was at court until 1435 and arrived back at the Post at 1455. He departed for home at 1507. He claimed three (3) hours K.O.T. He was authorized two (2) hours and 16 minutes. He was not paid for time spent in his personal vehicle.

A copy of the Preliminary Grievance report was given back to him on June 10, 1986: he did not agree with the reply and indicated that a grievance would be filed.

W. H. Davies
Captain W. H. Davies

WHD:lb
Attach.
cc: File
CF-03-2-5

JOINT
EXHIBIT

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JUN 23 1986

File No. 76-2-180

STATE HIGHWAY PATROL

INTER-OFFICE COMMUNICATION

Date June 23, 1986

To Captain W. H. Davies Attention Lieut. C. R. Miner

From Lieut. K. B. Marshall

Subject Grievance - Trooper S. C. Sherrod

**JOINT
EXHIBIT**

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On Thursday June 19, 1986, Trooper S. C. Sherrod, and Trooper R. T. McGough were in my office at 2:00 Pm for a STEP ONE Grievance meeting.

A grievance hearing format form was completed and Trooper Sherrod was given an opportunity to plead his case. Sherrod was in good spirits and displayed no hostility. He stated that he had filed his grievance at the recommendation of Trooper McGough in order to clarify the difference in Article 61:06 and the Overtime Compensation procedure. Sherrod felt that he had acted in good faith, and was in fact doing patrol business, and should have been compensated for it.

After Sherrod spoke, Trooper McGough was given an opportunity to speak. McGough echoed Sherrod's statements, and further stated that he did not expect a favorable response from management at the Step one and Two levels.

McGough also stated that he felt Sherrod would not have to attend a Step Three meeting, since the grievance would in all probability be combined with similar actions currently pending.

When both officers were done talking, I asked Sherrod some questions as follows:

1. Did you notify a supervisor of the fact that you were required to appear in court on your day off ?
A. No. But it was listed on the HP-45.9
2. Did you contact a supervisor and request permission to do patrol business in your personal car ?
A. No
3. Was there a patrol car available for you to go to court ?
A. Yes
4. Did you read the I.O.C. in the Read and Sign informing all officers at the massillon post compensation would not be made for driving personal cars ?
A. Yes, but I think I read it after the date of this action.

I have attached a copy of the HP-67A, HP-67, Grievance Hearing Format, and my letter informing Sherrod of the Step One Meeting. I have mailed a copy of Grievance related materials to Mr. Ed Baker, and returned the originals to Sherrod for his further disposition.

L. K. B. Marshall
Lieut. K. B. Marshall

STATE HIGHWAY PATROL

INTER-OFFICE COMMUNICATION

Date July 7, 1986

To Major T. W. Rice Attention _____

From Captain W. H. Davies

Subject Grievance - Trooper S. C. Sherrod, Unit 584, Post 76,
District 3


Attached is a copy of the grievance filed by Trooper S. C. Sherrod. The grievance has progressed through the Step Two Review.

The Preliminary Step was heard by Sergeant T. E. Escola, the Step One review by Lieutenant K. B. Marshall.

Trooper Sherrod appeared at my office for the Step Two Review at 2:00 PM July 3, 1986. Trooper R. T. McGough represented the OLC. Trooper Sherrod feels that he should be compensated for his court time from the time he left his home until he arrived home. He used his personal vehicle, stopped by a local police department to pick up needed documents, then proceeded to the Post. He used a patrol car to go to court, then returned to the Post, picked up his personal vehicle. He stopped at the police department to drop off the documents that he had for court.

In discussing this with Trooper Sherrod, he stated that he did not request to talk to a supervisor when he called in to advise he was enroute to court. He advised only the Dispatcher. He was on time off the day before so he did not have a patrol car at home. He advised that there was one available when he got to the Post. He further stated that he did read about not being compensated if he drove his personal car. He was not sure if it was before or after this incident.

The Post was correct by only compensating Trooper Sherrod for the time he was in a marked patrol car.


Captain W. H. Davies

WHD:lb
Attach.
cc: File
CF-03-2-5

JOINT
EXHIBIT

76-1039 DHDH076000 FILE 76-5-65 PAYROLL/ATTENTION LIEUTENANT HOLBEN/
DHDH076000 0091 09:47:44 06/09/86

76-1039 DHDH076000 FILE 76-5-65 PAYROLL/ATTENTION LIEUTENANT HOLBEN/
FOR PAYROLL ENDING JUNE 7, 1986 MAKE THE FOLLOWING CORRECTION TO THE
K.O.T. TOTAL OF TROOPER S.C. SHERROD, UNIT 584, POST 76. ADD
SIXTEEN (16) MINUTES OF K.O.T. FOR TIME WORKED JUNE 3, 1986 AT
STARKE COUNTY JUVENILE COURT.

LIEUTENANT K.B. WATSON DSP MASSILLON 0942D VM

JOINT
EXHIBIT

PS Form 3811, Dec. 1980

1. SENDER Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)
The following service is requested (check one):
☐ Show to whom and date delivered
☐ Show to whom, date, and address of delivery

2. RESTRICTED DELIVERY
(The restricted delivery fee is charged in addition to the return receipt fee.)

3. ARTICLE ADDRESSED TO: TPR. STAVIN SHERRO
7600 ARAHUIS
WASHINGTON, OH, 44646

4. TYPE OF SERVICE:
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER: P085 808 310

5. Always obtain signature of addressee or agent.
 Not received the article described above.
SIGNATURE: [Signature] ☐ Addressee ☐ Authorized agent

6. DATE OF DELIVERY: 11-12-86

7. ADDRESSEE'S ADDRESS (Only if requested):

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS: pk

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

JOINT
EXHIBIT

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THE ISSUE:

The Issue as framed by the Patrol, is as follows:

Is the Employer in violation of Article 61, Section 61.06 (Court Appearance), of the collective bargaining agreement by not compensating the Grievant for the time spent in personal car? If so, what shall the remedy be?

PERTINENT PROVISIONS OF THE CONTRACT (Joint Exhibit #1):

ARTICLE 25 - UNIFORMS, WEAPONS,
EQUIPMENT

. . .

§25.02 Patrol Vehicles

The Highway Patrol may assign departmental vehicles for certain employees to use to properly perform their duties. Such vehicle assignments are based upon responsibilities of the employ and in part, on an employee's availability to return to duty in a timely fashion when an emergency situation arises. The use of divisional vehicles is for official business purposes only and not for pleasure or personal use. If departmental vehicles are unavailable and an employee is required to use the employee's own vehicle for official business purposes, the employee will be reimbursed at a rate established by the Internal Revenue Service.

No employee will lose the opportunity to drive a marked motor vehicle to and from his or her residence as a result of the location of that residence; as disciplinary action taken against an employee; or as the result of the marital status of the employee.

. . .

ARTICLE 26 - HOURS OF WORK AND
WORK SCHEDULES

. . .

§26.02 Report-in and Computation Time

Employees shall be at their work sites, report-in location or headquarters location promptly at their shift starting time. Employees who must begin work at some location other than their actual work location or report-in location shall be paid from the time they leave their residence until the time they return to their residence.

ARTICLE 61 - OVERTIME

. . .

§61.06 Court Appearance

Members of the bargaining unit who are required to appear in court during their off duty hours shall be guaranteed a minimum of two (2) hours pay or actual hours worked, whichever is greater. The Employer shall not change an employee's schedule or scheduled shift in order in (sic) 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.

FACTS AND BACKGROUND:

The Parties to this matter are the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as Union) and the Ohio State Highway Patrol (hereinafter referred to as the Patrol). The Grievant in this matter is Trooper Steven C. Sherrod.

The facts giving rise to this arbitration occurred on June 3, 1986. The Grievant was scheduled to begin his work shift at 10:00 p.m. He was required to be in Court on that day, however, at 2:00 p.m. Sherrod left his home in his personal automobile at approximately 12:05 p.m. On his way to the Patrol Post, he stopped at the Jackson Police Department at approximately 12:15 p.m. to pick up some materials that he needed for the Court case. At 12:39 p.m., the Grievant arrived at his Post, where he prepared for Court and took care of some other routine matter. Sherrod drove a Patrol car to Court. At approximately 2:55 p.m., the Grievant returned the Patrol car to the Post and left the Post at 3:07 p.m. in his personal car. He arrived at his home at approximately 3:30 p.m. After changing his clothes, Sherrod returned the materials which he had picked up earlier to the Jackson Police Department.

The Grievant was originally paid for two hours. A grievance was filed alleging that the Grievant was entitled to be paid for three hours. The original decision was amended and the Grievant was paid an additional sixteen minutes.

POSITION OF THE UNION:

The Union contends that the Grievant should be paid for an additional forty-four minutes. He was paid for two hours and sixteen minutes when he should have been paid for three hours.

The Union argues that since the Grievant was required to stop at the Jackson Police Department to pick up materials for Court, he began work at that location, and therefore, under Section 26.02, he should be paid from the time he left home until the time he returned home.

POSITION OF THE PATROL:

The Patrol argues that under Section 61.06, the Grievant was properly paid for the hours he actually worked. A marked patrol car was available for the Grievant's use and the fact that he drove his personal car to and from the

Post is not compensable. The Patrol further argues that although an officer may be in uniform, he is not on duty unless he is able to respond to emergency calls, take enforcement action, and is subject to call, all of which the Grievant was not able to do when he left home.

DISCUSSION AND OPINION:

The Union argues that the issue is not whether or when the Grievant was furnished a Patrol car, but whether he actually did the work, regardless of what car he was in. In essence, the Union argues that since the Grievant was required to stop at the Jackson Police Department, his work day began there and according to Section 26.02 of the Contract, he should be paid portal to portal.

Section 26.02 is written in mandatory language as opposed to permissive language. This section allows an employee to receive portal to portal pay if that employee is required to begin work at some location other than his actual work location. While the Grievant in the present case was required to go to the Jackson Police Department to pick up needed materials, he was not required to report there before reporting to his Post.

Throughout the hearing, the testimony indicated that an employee begins work when he reports to the assigned Post. If, the Arbitrator were to accept the Union position that the Grievant began working when he stopped at the Jackson Police Department, he would not only be ignoring the testimony, but also the Patrol policy of making Patrol cars available to officers whenever they are performing official business. The Patrol admitted that cars are not always available, in which case Patrol Officers are compensated for using their personal cars. In the present case, however, there was a Patrol car available for the Grievant at the Post. Undeniably, the Grievant was engaging in official business when he stopped at the Jackson Police Department, but under the Contract it is the time at which he stopped which prohibits the compensation.

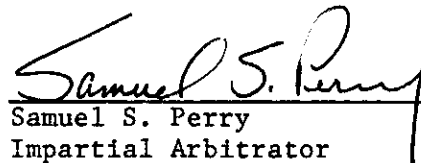
In light of these facts, absent authorization to drive his personal car to the Jackson Police Department to pick up the materials, it cannot rightfully be said that the Grievant was on duty at the time and therefore should not be compensated as if he were.

Moreover, the Arbitrator is further persuaded in his decision by the Grievant's own testimony that he stopped at the Jackson Police Department because it was closer to his home and therefore more convenient. Acting in an

official capacity for the sake of convenience is absent from this Contract. If the Grievant was acting in an official capacity when he picked up the materials for Court, then that status should have remained until the materials were returned. In this case however, the Grievant picked up the materials in his personal car before going to the Patrol Post and returned the material to the Jackson Police Department after leaving the Patrol Post in his personal car and in civilian clothing. These facts indicate to the Arbitrator that the Grievant himself did not consider picking up and returning the materials a part of his working hours.

On this basis, the Arbitrator concludes that the Grievant was properly paid for time acutally worked, according to Section 61.06 of the Contract.

The Grievance is therefore denied.


Samuel S. Perry
Impartial Arbitrator

VOLUNTARY LABOR ARBITRATION TRIBUNAL

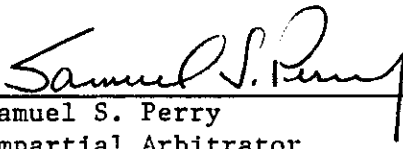
In the Matter of the Arbitration)	
)	
Between)	
)	<u>OPINION AND DECISION</u>
)	
FRATERNAL ORDER OF POLICE)	
OHIO LABOR COUNCIL, INC.)	OCB GRIEVANCE NO. 86-607
)	
-and-)	
)	
OHIO STATE HIGHWAY PATROL)	

SAMUEL S. PERRY, IMPARTIAL ARBITRATOR

The Undersigned Arbitrator having been duly appointed by the Parties, in accordance with the Contract entered into by and between the Parties, effective April 28, 1986, and having duly heard the allegations and proofs of the Parties, decides as follows:

The Grievance filed herein by Steven C. Sherrod is Denied.

Opinion rendered, Award signed, issued and dated at Beachwood, Cuyahoga County, Ohio this 15th day of April, 1987.



Samuel S. Perry
Impartial Arbitrator
Four Commerce Park Square, #600
23200 Chagrin Boulevard
Beachwood, Ohio 44122
216/292-8200