

CONTRACTUAL GRIEVANCE PROCEEDINGS  
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration  
Between:

THE STATE OF OHIO  
Department of Public Safety  
State Highway Patrol

-and-

THE FRATERNAL ORDER OF POLICE  
Ohio Labor Council, Inc.  
State Unit I

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\* Case Number I JD 1-86  
\* OCB Number 86-5  
\* Patrol Number 20  
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\* Decision Issued  
\* April 29, 1987  
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APPEARANCES

FOR THE STATE

Major T. W. Rice  
Captain J. M. Demaree  
Lt. D. L. Anderson

Personnel Commander  
Personnel Officer  
Management Representative

FOR THE FOP

Paul L. Cox  
Edward F. Baker  
Philip R. Sheaffer  
David H. Plunkett

Executive Director  
Staff Representative  
Grievant  
Ohio State Trooper

ISSUE: Article 37, Section 37.02 -- Whether Academy travel pay can be conditioned on use of State car.

Jonathan Dworkin, Arbitrator  
16828 Chagrin Boulevard  
Shaker Heights, Ohio 44120

THE ISSUE

The grievance protests a Management regulation which, in the Bargaining Unit's view, impermissibly restricts a contractual benefit. The benefit is travel-time pay for Ohio State Troopers when they periodically are assigned training tours at the Highway Patrol Academy in Columbus, Ohio. Normally, Troopers on such assignments receive wages for the time spent in transit. The wage entitlement is defined by the following provisions of the Collective Bargaining Agreement between the Highway Patrol and the Ohio Labor Council:

## ARTICLE 26 - HOURS OF WORK AND WORK SCHEDULES

26.02

Employees shall be at their work sites, report-in location or headquarters location promptly at their shift starting time. Any employee 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. [Emphasis added.]

## ARTICLE 37 - EDUCATIONAL INCENTIVE AND TRAINING

. . .  
37.02  
. . .

Travel time to and from training programs shall be considered as on-duty hours and compensated appropriately

The Employer imposed a condition on travel-time wages. On February 25, 1986 -- two months before the contractual language took effect -- the Highway Patrol Personnel Commander issued a Statewide directive denying the allowance to Troopers who elect to drive personal vehicles to the Academy rather than available Patrol cruisers. The directive, which was addressed to all District Commanders, stated in part:

During the ongoing inservice course, we will continue to provide state patrol cars to our officers for transportation to and from the Academy. You may, however, receive requests from several troopers under your command to drive their personal vehicles to and from the Academy for a specific reason such as to visit relatives while in the Columbus area or to handle an item of personal business.

. . .  
Officers may drive their personal vehicles to the Academy under the following conditions:

- . . .  
3. Driving time to and from the Academy in a personal vehicle will not be compensated.

During and after the 1986 negotiations, travel pay and transportation continued to be subjects of controversy between the parties. The regulation in question was particularly irritating to the FOP since it was regarded as infringing on an important benefit obtained after hard bargaining. Historically, Troopers have been permitted to drive their own automobiles to training assignments. It was the FOP's view that the contractual silence on use of private vehicles nullified the prior regulation. The Unit believed that Management overreached its legitimate authority by imposing forfeitures on the guaranteed wage benefit.

The FOP's opportunity to test its belief came when Grievant, a Trooper assigned to the Ravenna, Ohio, Post, was scheduled for training on May 5, 6, and 7, 1986. Although fully aware he was risking travel pay, he declined an available cruiser and drove his own car between Ravenna and Columbus. His authorized travel time was four hours and, in order to obtain payment, he was forced to trade off four hours' leave from his compensatory-time bank.\* He initiated a grievance protesting the loss and demanding reimbursement.

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\* Grievant also lost overtime which would have been paid had he availed himself of the cruiser. However, the grievance specifically requests only restoration of the four hours of compensatory time and the decision will be limited to an evaluation of that demand. Since the potential overtime claim was not included in the grievance, it will not be considered.

Under authority of Article 20. Section 20.04 of the Agreement, the FOP joined in the grievance by adding the words, "et al." to the Employee's name, thereby converting the dispute to a "class" or "policy" grievance on behalf of the entire represented workforce. Consequently, the initial steps of the grievance procedure were bypassed; the matter was advanced to Step 3. The Patrol remained firm in its position that the protested regulation was enforceable as a proper exercise of Management Rights and denied the grievance. The FOP appealed to arbitration. A hearing was convened in Columbus, Ohio on December 12, 1986. At the outset, the Representatives of the parties stipulated that the appeal to arbitration was procedurally correct and the Arbitrator was authorized to issue a conclusive award on the merits of the dispute. Arbitral jurisdiction is more specifically defined and limited by the following language in Article 20, Section 20.07:

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.

At the close of the hearing, the parties obtained additional time for submission of briefs.

ADDITIONAL FACTS AND CONTENTIONS

A sentence in Article 65 of the Agreement states, "A state car will be provided for state business." The Patrol argues that once it gave in on this concession it was entitled to demand the returns that a State car provided; and the returns are substantial. A Trooper in a private automobile, dressed in civilian clothing, has no apparent police authority. If s/he encounters a law breaker or a distressed motorist, it is best to ignore the situation. Intervention as a civilian could have negative results, causing liability for the State. A uniformed Trooper in a police cruiser, on the other hand, is in a position to give valuable service in exchange for travel-time wages. His/her presence on the highway is a deterrent to potential traffic violators in and of itself. Additionally, s/he can assist other motorists, investigate accidents, intercept road hazards, and take necessary action to enforce the law. According to the Patrol, it was this exchange which was contemplated when it was agreed that cruisers would be made available for trips to the Academy and Troopers would be paid for travel time. It was never the Employer's intention to make these concessions and forego the resulting advantages to the taxpayers of the State.

The Patrol argues that the regulation did not come as a surprise to the Bargaining Unit, nor was it possible that it was overlooked during contract negotiations. The directive was promulgated and enforced while the parties were bargaining for their first Agreement; when (in the FOP's words) "the issue of transportation and automobiles was active and hot." The regulation was in place on February 25, 1986; the Agreement became effective on April 28, 1986. The Patrol regards the Unit's failure to address this issue at the bargaining table as a tacit acceptance of the rule.

The Employer concedes that the FOP's position may be compelling if it is measured only against the portion of Article 37, Section 37.02 which calls for the travel-time wage allowance. It argues, however, that the single contractual sentence should not be read in isolation -- it should be examined as an integral part of the whole Agreement. The Patrol urges the Arbitrator not to ignore Article 4, the Management Rights Clause, in interpreting the meaning and intent of Article 37, Section 37.02. Article 4 vests the Employer with numerous powers, including authority to:

- (1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy . . .
- (2) Direct, supervise . . . employees;
- (3) Maintain and improve the efficiency and effectiveness of governmental operations;
- (4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

- . . .
- (8) Effectively manage the work force;
  - (9) Take actions to carry out the mission of the public employer as a governmental unit;

. . .

  - (11) Determine and manage its facilities, equipment, operations, programs and services;

The Employer points out that the FOP's claim intrudes on Management Rights to the extent that it seeks to abolish authority to regulate the travel allowance. It is argued that this grievance raises an area of conflict and tension between benefits of employment and the contractually vested authority of the Patrol. In such circumstance, it is contended, an arbitrator should adopt a balanced approach to make certain that both of the conflicting provisions survive and neither becomes materially subordinate to the other. In the Employer's judgment, recognition of the validity of each of the competing provisions necessarily leads to an award confirming that the travel allowance was never intended to be unrestricted or immune from reasonable rules and regulations. As stated, the rule at issue in this dispute was unquestionably reasonable. It guaranteed efficiency and service in exchange for an "extra" wage benefit.

Another Section of the Agreement which the Patrol contends should not be overlooked is Article 65 which guarantees that a State car will be made available for travel to the Academy. It is



argued that this requirement was not negotiated in a vacuum; it was intended to relate directly to the travel allowance in Article 37, Section 37.02. The benefit was meant to be mutual. It was anticipated that Troopers assigned to the Academy would be given an appropriate means of transportation and, at the same time, the State would receive value when the cruisers were used. In other words, once the State automobile was provided, it was intended that it be used. The Patrol urges that the regulation in question does no more than to assure this negotiating intent is carried out. Accordingly, it argues that the grievance is without merit and should be denied.

\* \* \*

To a casual observer, this grievance might appear trivial. On average, Troopers undergo three days of training at the Academy every eighteen months. It does not seem overly taxing for the Patrol to require them to make the trip in a cruiser, especially since cruiser availability derives from an FOP proposal. However, the Representative of the FOP introduced background establishing that the right to use personal automobiles is important and valuable. The Academy is located in a relatively isolated area of Columbus. It is a self-contained educational and living facility. It is designed to provide lodging, board, and recreation. However, many Troopers experience "cabin fever" when forced to stay at the

Academy the full seventy-two hours of a three-day assignment. The training schedule, including lunch, consists of nine hours per day. Troopers are on their own and receive no pay for the remaining fifteen hours per day. Some have relatives or friends in the Columbus area whom they visit on their free time. Others simply want to leave the confinement of the Academy for a few hours. When the only transportation is a police cruiser, the Troopers literally become prisoners of their environment. Cruisers are unavailable for leisure. Article 25, Section 25.02 restricts use of State automobiles to "official business purposes only and not for pleasure or personal use." The reason Troopers prefer their own automobiles was summarized in the FOP Representative's comments at the close of his presentation:

You can't do anything at the Academy. After finishing the eight-hour day there, one has to serve another sixteen hours without pay unless he or she has some mobility. Cruisers have to stay parked. They are useless when it comes to free time.

The FOP's contractual argument is straightforward and uncomplicated. According to the FOP, it is neither necessary nor proper for the Arbitrator to attempt to glean negotiating intent from "extraneous" sections of the Agreement. Article 37, Section 37.02 is clear, unambiguous; its meaning is apparent. It states that travel time to and from training sessions will be compensated as

on-duty hours. It expresses no qualification or condition. It does not mention pay deprivation for using a private automobile. The FOP concludes that the Patrol's policy, which seeks to place a unilateral condition on a bilaterally created right, unequivocally violates the Employer's contractual commitment. The FOP calls particular attention to Article 20, Section 20.07, Subsection 6 of the Agreement which prohibits an arbitrator from amending, altering, or modifying explicit language of the Agreement. It notes that this restriction would be breached if the Arbitrator were to issue an award qualifying what now stands as an unqualified benefit. Therefore, the FOP maintains that this grievance must be sustained.

#### OPINION

The policy at issue is reasonable, efficient, and unquestionably in the best interest of the State of Ohio. If anything, the Employer should be commended for its sensitivity to improving safety on Ohio highways. While enforcement of the policy may result in personal inconvenience to some Troopers once every eighteen months, its benefits far outweigh the annoyance to a few individuals. Personally, the Arbitrator favors the policy and, as a citizen of this State, would prefer to see it enforced. However, no arbitrator is authorized to base a decision on his/her personal preference. By accepting the opportunity to resolve contractual disputes between

these parties, the Arbitrator explicitly agreed to bind himself to the limitations expressed in Article 20. Article 20 demands that arbitrators confine themselves to contractual language.

From a technical point of view, the Patrol's policy violates the express language of Article 37, Section 37.02 of the Agreement. As the FOP argues, the portion of Section 37.02 which guarantees travel pay is unconditional. It states that travel time for training is to be considered on-duty and compensated accordingly. It grants the allowance to all members of the Bargaining Unit. The policy breaches this contractual mandate because it singles out some members of the Unit -- Troopers who accept the proffered option to travel in their own automobiles -- and denies them a benefit which the FOP negotiated in their behalf. When the Patrol enforces the rule, it departs from its contractual promise.

The Arbitrator does not mean to imply that the Patrol is powerless to make reasonable rules regulating travel pay and/or any other benefit of employment. But regulations are not legitimate if they are so substantively encompassing that they retract the Employer's contractual obligation. An employee earns travel pay when s/he travels to the Academy for training. That is the only condition to the allowance which the Agreement contemplates. It follows that this grievance must be sustained because Grievant made the trip which triggered the benefit.

It should be carefully noted that this decision is not intended to destroy the Patrol's regulatory power. So long as the

contractual benefit remains intact and is not withheld from any employee who meets the condition of traveling to the Academy, a reasonable rule may properly impose ministerial requirements.

During the hearing, the Employer warned that an award sustaining the grievance would be followed by a new rule abolishing the personal automobile option which has existed for years. All Troopers will be required to use State vehicles for travel to and from the Academy. In its post-hearing brief, the Patrol stated that it has the authority to remove the privilege but has refrained from doing so to this point:

One need look no further than Article 4 - Management Rights, to see management possesses the absolute right to require bargaining unit members to drive a state car, if management so choses. To this point management has stopped short of this requirement.

Management acted in good faith and took into consideration both the contract and bargaining unit members' desires in formulating the policy on driving personal vehicles to training programs. Instead of requiring all members to drive a state vehicle (an option that is still retained by management) troopers are given the option of driving their own cars on their own time . . . . To grant the grievance, the Arbitrator would preclude management from offering the bargaining unit member the choice to drive their own vehicles.

The Arbitrator is not permitted to comment on whether or not the Patrol can unilaterally discontinue the option. According to

Article 20, Section 20.07, Subsection 9 of the Agreement, arbitral review is limited "solely to the issue or issues presented and [an arbitrator] 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." The only issue submitted is whether travel pay could be denied to an employee exercising the option granted by the Patrol. Section 20.07, Subsection 9 prohibits analysis beyond resolving this issue. Whether or not the Patrol can require Troopers traveling to the Academy to use available cruisers is a problem which relates to this case but is not essential to the issue presented.

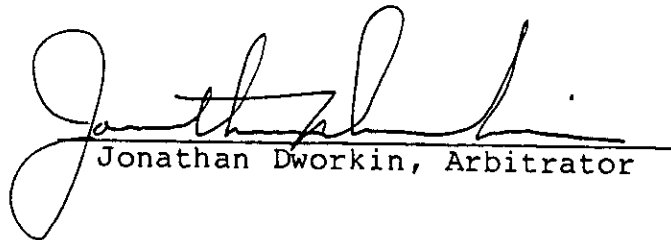
In summary, it is the decision of the Arbitrator that the rule abridges a negotiated benefit and exceeds the boundaries of Management Rights. While the Employer may govern the workforce through rule making, it cannot condition a negotiated benefit on compliance with a non-negotiated rule. It cannot legitimately enforce a regulation which selectively cancels a contractual allowance. Because the regulation in question expands Management's prerogatives beyond these limitations, the grievance will be sustained.

AWARD

The grievance is sustained. The Employer is directed to restore four hours to Grievant's compensatory time bank.

The grievance became applicable to the entire Bargaining Unit when the FOP added the words, "et al." to Grievant's name on the Grievance Form. As a result, this award applies to all Troopers accepting the option to drive their personal automobiles to and from training at the Highway Patrol Academy.

Decision Issued:  
April 29, 1987



Jonathan Dworkin, Arbitrator