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AWARD OF ARBITRATOR

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In the Matter of the Arbitration Between:)

STATE OF OHIO,
OHIO STATE HIGHWAY PATROL
Columbus, Ohio)

-and-)

FRATERNAL ORDER OF POLICE, OHIO LABOR
COUNCIL, INC.)

HARRY J. DWORKIN,
ARBITRATOR

RE: OCB CASE NO. 87-22
Gary B. Bryant, Trooper (Grievant)

A P P E A R A N C E S

On Behalf of Employer

DARRYL L. ANDERSON	Lieutenant, Advocate
JOHN M. DEWARE	Captain, Observer
DENNIS C. BUENO	Captain, Operations
ROBER N. GROOMS	Lieutenant
ROBERT L. GABLE	Sergeant

On Behalf of FOP

PAUL L. COX	Counsel for FOP
GARY B. BRYANT	Trooper (Grievant)

THE ISSUES

- A. IS THE GRIEVANCE ARBITRABLE?
- B. DID THE HIGHWAY PATROL ACT IMPROPERLY, IN VIOLATION OF THE AGREEMENT AND ESTABLISHED POLICY, IN REASSIGNING THE GRIEVANT TO ANOTHER VEHICLE AS A DISCIPLINARY MEASURE?

PRELIMINARY STATEMENT AND BACKGROUND:

As indicated from the foregoing statement, the State Highway Patrol has asserted as a threshold matter that the

State Highway Patrol has submitted the following statement of the issue for consideration by the Arbitrator:

"Based on Article 20, Section 20.02 (Definition of 'grievance') and Section 20.07(6) (Arbitrator Limitations) of the collective bargaining agreement of the parties, is the employer correct in its position that the case in question is not properly a subject of arbitration."

Article 20, Section.02, provides as follows:

20.02 Definitions

- (1) Grievance - The word grievance as used in this Agreement refers to an alleged violation, misinterpretation or misapplication of a specific article or articles, section or sections of this Agreement.
- (2) Disciplinary Grievance - refers to a grievance involving a suspension, removal or a reduction in pay and/or position.

20.04 Grievant

A grievance under this procedure may be brought by any bargaining unit member who believes himself/herself to be aggrieved by a specific violation of this Agreement.

Where a group of bargaining unit members desire to file a grievance involving an alleged violation which affects more than one member in the same way the grievance may be filed by the F.O.P. Ohio Labor Council provided that at least one member so affected signs the grievance. Grievances so initiated shall be called class grievances. The title on the grievance shall bear the name of the one affected member plus the designation et al. Class grievances shall be filed within fourteen (14) days of the date on which any of the like affected grievants knew or reasonably should have had knowledge of the event giving rise to the class grievance. Class grievances shall be initiated directly at the third step of the grievance procedure.

The bargaining agent shall not attempt to process as grievances, matters which do not constitute an alleged violation of the Agreement.

The FOP responds that the grievance is arbitrable on its merits, and that it involves contractual provisions relating to

ARTICLE 2 - EFFECT OF AGREEMENT-PAST PRACTICE

Fringe benefits and other rights granted by the Ohio Revised Code which were in effect on the effective date of this Agreement and which are not specifically provided for or abridged by this Agreement will continue in effect under conditions upon which they had previously been granted throughout the life of this Agreement unless altered by mutual consent of the Employer and the Labor Council.

In the instant case, the grievant was issued a verbal reprimand as a disciplinary measure, coupled with the simultaneous reassignment of his marked vehicle to which he had previously been assigned and permitted to drive to and from his home to the State Highway Patrol Post. At this point it should be noted that the grievant continued to be assigned to a marked vehicle, and was permitted to operate same to and from his home as was customary, except on off days. The gist of the FOP's complaint is, that, the grievant had previously been assigned to a particular vehicle; he had been accustomed to drive this vehicle, and was charged with its maintenance and upkeep. The vehicle in question was assigned to another trooper, which the Union represents was improper, and contrary to established practice. The Union points out that no employee may be deprived of the use of a marked vehicle as a disciplinary measure.

The Union has asserted that removal of the grievant's customarily assigned vehicle as a disciplinary measure was in violation of the following, specific provisions of the agreement:

25.02 Patrol Vehicles

The Highway Patrol may assign departmental vehicles for certain employees to use to properly perform their duties.***

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

The Union construes the foregoing language as assuring to each trooper the right to continue driving the vehicle to which he is customarily assigned, and, that by express language the Highway Patrol is precluded from removing such vehicle as a disciplinary measure. The FOP urges that the fact that the grievant was given another marked vehicle, and permitted to drive same to and from his residence, would not suffice to protect against a clear contract violation which resulted from depriving him of his assigned vehicle as a disciplinary measure. The union urges that the grievance presents an arbitrable issue, and that it involves the question whether a contract violation resulted under the circumstances in reassigning the grievant to another marked vehicle.

The FOP is not here seeking a determination as to whether the verbal reprimand issued to the grievant was proper, and for just cause. Both parties have expressed their awareness that Section 20.02 of the Agreement limits disciplinary grievances to "a grievance involving a suspension, removal or a reduction in pay and/or position", which form of discipline is not here involved, same having been limited to a verbal reprimand.

On March 4, 1986, a statement of policy was posted which prohibited the use of patrol cars without prior permission:

"I recently put a note in the read and sign reference the taking of patrol cars home while on time off. The note has mysteriously disappeared from the read and sign book but the problem of patrol cars will not disappear as easily.

I will again say, 'Do not take a patrol car home on time off without first checking with a supervisor.' That should be enough said."

Again, on October 3, 1986, a general policy was issued by State Highway Patrol relating to the use of "Patrol Cars". Essentially, insofar as applicable to the instant case, the policy prohibited the use of a patrol car assigned to a trooper on his days off, without prior approval:

"Effective Immediately no patrol car will be taken home on time off. If you have an off duty detail which you are working on one of your time off days, you will have to drive your P.C. to the post to pick up a patrol car. This will have to be done on the day of the detail and not the day prior to the detail.

If you have court on one of your time off days, before you take a patrol car home you will have it approved by a supervisor. If we do not have enough patrol cars available you may have to drive your P.C. to the post for a patrol car, or to court.

The verbal reprimand was issued to the grievant on the basis that he operated his assigned patrol car to his home on an off day, without having obtained prior permission, which behavior it was represented was in violation of the policy. On October 16, 1986, a supplemental notice was posted which reaffirmed the policy that prohibited use of vehicles on off days, and emphasized the following:

"NO PATROL CARS WILL BE TAKEN HOME BY UNITS GOING ON TIME OFF UNLESS THEY HAVE OBTAINED PERMISSION FROM A SUPERVISOR."

A grievance was filed in timely fashion which challenged both the propriety of the verbal reprimand, and reassignment to another patrol car. The text of the grievance is in the following form:

"On October 16, 1986 Lt. R. N. Grooms issued the Grievant a verbal reprimand for taking car SP-611 home on time off without a supervisor's permission. He then reassigned car SP-611 to Tpr. W. L. Davis III a Trooper with less seniority than the Grievant. Thereby denying the Grievant the opportunity to drive car SP-611 to and from his residence. The Grievant was going on time off on October 8, 1986 and advised Sgt. D. B. Brown U-269 that I would be out in car SP-611 and that it would be in my driveway, so that the post would have it for other units to drive. Since Sgt. Brown did not voice an objection, I thought I had consent by silence on his behalf. As a result car SP-611 was taken from the Grievant and reassigned as a disciplinary action.

Remedy Requested: Reassign Car SP-611 to the Grievant and assign the other patrol cars to the units by seniority."

As indicated in the text of the grievance, it is asserted that it was improper to reassign the patrol car as a disciplinary measure, and further, it was improper to assign the vehicle to a trooper with less seniority. In the preliminary grievance report, the following appears:

"Description of Incident: Patrol Car #SP-611 was assigned to grievant prior to October 16, 1986 and on this date the vehicle was reassigned to Trooper W. L. Davis III. Grievant grieves that Trooper W. L. Davis III has less seniority than he."

The State Highway Patrol denied the grievance claiming that no contract violation, or right, was involved in reassigning a vehicle as a disciplinary measure, and that such decisions are reserved to management, citing Article 4, Paragraph 11, Management Rights, in which it is recognized that management retains the right to: "determine and manage its facilities, equipment, operations, programs and services". In its statement of position the State Highway Patrol advanced the following arguments:

"The fact that a verbal reprimand was issued was previously grieved at the preliminary level and found to have no standing due to the contractual agreement that verbal reprimands are not grievable. That issue will not be addressed here.

Article 2 (Past Practice) became effective on the date of the contract between the State of Ohio and the F.O.P./O.L.C. Only actions after that date can be considered as past practices. There has been nothing at this work site to establish a past practice on car assignments.

Article 25.02 (Patrol Vehicles) Paragraph 2 states that an employee will not lose the opportunity to drive a marked motor vehicle to and from their residence as a result of disciplinary action taken against the employee. At no time has the grievant been denied use of a marked motor vehicle to drive to and from his residence while working.

The remedy sought, assign Car 611 to the grievant, is a management right per Article 4 of the contractual agreement."

The State Highway Patrol emphasizes that the Agreement expressly excludes verbal reprimands from the grievance procedure:

20.08 Disciplinary Grievances

7. Verbal reprimands shall not be grievable under this contract.
8. Written reprimands shall be grievable. They shall be filed directly at level 3 which shall be the final level of review. Written reprimands shall not be subject to arbitration under this Agreement.

During the course of the hearing before the Arbitrator, the parties entered into a stipulation pursuant to which it was agreed that their respective positions would be presented to the Arbitrator both as regards arbitrability of the issue concerning reassignment of the grievant's patrol vehicle, and the merits. In event the Arbitrator should determine that the issue was arbitrable, he would then address the merits of the issue in the form of an appropriate award.

POSITION OF EMPLOYER:

The State Highway Patrol strongly asserts that the issue raised by the grievant fails to present an arbitrable issue under the Agreement, and therefore, is not properly before the Arbitrator on the merits. The substance of the grievance asserts a violation of Section 25.02, governing the use of marked vehicles by state troopers. The grievant was issued an oral reprimand for improper use of a marked patrol vehicle, specifically, for driving the vehicle home on an off day without permission. In the view of the State Highway Patrol there exists no contractual right authorizing the use of a motor vehicle to and from a state trooper's residence, and such matters are within management's judgment and discretion pursuant to Section 25.02. The Highway Patrol points out that the only prohibition as regards management's right to assign vehicles

was not denied the use of a marked vehicle, notwithstanding the vehicle which he had customarily used was reassigned to an employee with less seniority, and, the action was taken simultaneously with the verbal reprimand. The State Highway Patrol reasons that the grievant has not been denied the privilege of driving a marked patrol car as result of the verbal reprimand. His vehicle was assigned; the grievant was assigned to another vehicle with the right to use same to and from his residence, except on off days.

The Highway Patrol reasons that as regard the merits the Labor Agreement contains no language that grants to a state trooper the exclusive right to a particular vehicle; accordingly, the re-assignment of a vehicle driven by a patrol officer remains a matter within management's authority, and does not give rise to an arbitrable issue. The State Highway Patrol argues that Article 25, dealing with "Patrol Vehicles" is inapplicable, inasmuch as the grievant does not claim that he lost the opportunity to drive a marked motor vehicle to and from his residence, nor was he "deprived" of the use of marked vehicle as a disciplinary measure. The indisputable fact is, as claimed by the State Highway Patrol, that he continued to be granted the opportunity to drive a marked vehicle to and from his residence, although another vehicle from the one which he had previously used. The Highway Patrol reasons that there is no language in the Labor Agreement that grants to a patrol officer the exclusive right to a particular vehicle, and therefore, no violation of any contractual rights has been demonstrated that would give rise to an arbitrable grievance.

The procedure, and practice governing the use of vehicles at the West Jefferson Patrol Post was explained by Lt. R. N. Grooms, the Post Commander. He testified that there are 20 patrol officers assigned to the post, on three shifts. There are 14 marked patrol cars, thereby indicating that there is an insufficient number of

"some officers must double up." Each officer is charged with responsibility for maintaining the vehicle in operable condition, upkeep, and necessary equipment. As a matter of practice, vehicles are normally assigned on the basis of seniority.

The verbal reprimand was issued to the grievant by reason of an occurrence on October 8, 1986, following which the grievant was scheduled for two days off; nevertheless, he drove his car from the patrol post to his residence. As he was leaving he remarked that, "my car will be in my driveway if you need it." The State Highway Patrol maintains that his behavior in said respects was totally inconsistent with the posted policy of March 4, 1986, which required that a patrol officer obtain express permission from a supervisor in event he desired to drive a marked vehicle home on an off day. The grievant was issued a verbal reprimand on October 16, 1986, coupled with reassignment of the grievant's vehicle to a junior employee, and assignment of the grievant to another marked vehicle.

Throughout the arbitration hearing the State Highway Patrol maintained that it was within its authority to determine the assignment of marked vehicles, except as disciplinary measures, or by reason of marital status, or location of the trooper's residence. In the instant case, the grievant was not deprived of the use of a marked vehicle for disciplinary reasons. The State Highway Patrol reasons that, "no trooper has any right to be assigned a particular vehicle on an on-going basis; assignment of vehicles is within the recognized authority of management."

By way of summary, the Employer reasons that the following conclusions are warranted, both on the basis of the evidence, and applicable provisions of the Agreement:

"The Employer argues thae case at hand is not subject to arbitration, according to the contractual definition of the term 'grievance' and the con-

However, if the arbitrator decides the case is arbitrable due to an understanding that the grievant, in good faith, believes he has been wronged, the Employer has proven beyond all doubt that there is no violation of the collective bargaining agreement.

The Employer has shown management has established a well thought out and documented policy concerning commutation in marked patrol cars. The Employer has shown this policy has been applied fairly, and is not in violation of any contractual provisions.

The Employer has further shown the grievant has not suffered any contractual violations regarding the specific section cited. As in the past, the grievant continues to drive a marked motor vehicle to and from his residence, when conditions of the established policy are met. The grievant has not lost the enjoyment of this policy as the result of the disciplinary action cited.

The Employer has shown that the subject of 'assignment' of individual patrol cars remains an exclusive right of management, just as it was prior to the contract.***"

POSITION OF FOP:

The FOP maintains that the issue of assignment of marked vehicles to particular officers on the basis of seniority, presents an arbitrable grievance, and involves a specific contractual right, or "fringe benefit". The FOP cites Section 25.02 (Patrol Vehicles), which it urges should be interpreted as granting to a state trooper the right to use a marked vehicle to and from his residence, and prohibits the denial of such "opportunity to drive" as a disciplinary measure taken against an employee. By way of background, the FOP represents that it has sought throughout, and consistently maintained during contract negotiations, including fact-finding procedure, that a state trooper should be assigned "a particular vehicle". The subject matter was dealt with by Fact-Finder Graham, who made the following observations:

"During the mediation sessions and at the hearing

of imposing discipline. Sufficient instances of such action occurring in the past were introduced to convince the Factfinder that the concern of the Union is not misplaced. To deal with that situation, the Factfinder recommends that there be included in R16, Section B the following language: '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, and disciplinary action taken against an employee or the marital status of the employee...''

The FOP reasons that the Fact-finder intended, and recommended that each state trooper be assigned a "particular marked vehicle" and that this recommendation was adopted by the parties. The Factfinder's recommended language amply supports the position of the FOP as regards the exclusivity of the right to operate a marked vehicle based on seniority.

The FOP claims that the grievant was deprived of the use of the patrol car to which he was previously assigned solely by reason of the imposition of discipline in the form of a verbal reprimand. The reassignment of a vehicle as a disciplinary measure is expressly prohibited by Section 25.02, and the parties so intended. The reassignment of the grievant's marked vehicle "was a residual disciplinary consequence of the verbal reprimand, and is prohibited by the contract." Accordingly, a contract violation resulted when the State Highway Patrol "reassigned" Vehicle 611, and deprived the grievant of the right to drive such vehicle to and from his residence, and reassigned responsibility for maintaining said vehicle. Testimony was adduced through the grievant, a 20 year veteran with the State Highway Patrol, assigned to District 6. Trooper Bryant testified that he had been assigned to Vehicle 611, which he operated for some 10 months, and had maintained the vehicle, washed, and groomed same continuously. He testified that it was established practice to assign vehicles by seniority, except for off days and vacations, when the vehicle was

As a result of the occurrence on October 16, 1986, when the grievant drove the vehicle to his residence on an off day, Vehicle 611 was reassigned to a trooper with less seniority, seven years as compared to the grievant's 20 years, thereby presenting a clear violation of both the contract, and past practice.

By way of summary, the FOP contends that the Agreement specifically deals with marked vehicles, and that said language clearly and expressly "prohibits denial of the privilege of driving a marked vehicle" for disciplinary reasons. The State Highway Patrol has acknowledged that the "reassignment of the grievant's motor Vehicle 611 was for disciplinary reasons." Further, the evidence establishes that the grievant had over a period of some 10 months regularly operated Vehicle 611 to and from his residence, until the occurrence of October 16, 1986, when the vehicle was reassigned to a junior employee. Accordingly, solely as the result of the verbal reprimand, the grievant lost the right to operate Vehicle 611 to and from his home. Such deprivation of a contractual benefit is unaffected by the fact that he was permitted to drive another marked vehicle. The language of the Agreement does not permit reassignment of a marked vehicle "as a disciplinary tool". The threat of reassignment may not be utilized for the purpose of "patrolling behavior, or as a behavior modification technique." By way of relief, the FOP requests an award in the form of a "cease and desist order" designed to end the practice in some districts, of using the assignment of marked vehicles as disciplinary measures.

ARBITRATOR'S FINDINGS AND OPINION:

A. Arbitrability:

The text of the grievance recites that on October 16,

Vehicle 611 home on an off day, without first obtaining permission of his supervisor. The grievance asserts that the particular vehicle was then reassigned to a trooper with less seniority, and that Vehicle 611 "was taken from the grievant and reassigned as a disciplinary action." By way of relief, the FOP requests an award that would "reassign car 611 to the grievant, and that other patrol cars be assigned to the units on the basis of seniority."

In its Step 3 response to the grievance the State Highway Patrol raised the issue of arbitrability on the ground that grieving a verbal reprimand is prohibited by Article 20, Section 20.08.

In the judgment of the Arbitrator the language of the Agreement specifically excludes verbal reprimands from the grievance procedure. Pursuant to Section 20.02 - Definitions, a disciplinary grievance is limited to a suspension, removal, or reduction in pay and/or position, which actions are not here involved. Inasmuch as, pursuant to Section 20.04, a grievance must be grounded on "a specific violation of [the] Agreement", a verbal reprimand does not fall within parameters of Section 20.04.

The parties have specifically excluded verbal reprimands from the grievance procedure. Section 20.07 states categorically, and in unambiguous language, that "verbal reprimands shall not be grievable under this contract." Accordingly, the Arbitrator concurs in the prior finding of Hearing Officer Rice that, a verbal reprimand is excluded from the grievance procedure by Section 20.08, and verbal reprimands are not grievable, and do not present arbitrable issues.

However, a reading of the text of the grievance indicates that a complaint is also made as regards the reassignment of Vehicle 611 to a junior officer, as a disciplinary measure. Included in the relief requested is, that, car 611 be reassigned to the grievant, and that other patrol cars be assigned to the units

grievance relating to reassignment of Trooper Bryant's car, and a policy grievance that is applicable generally. It appears to the Arbitrator that the question of reassignment of a patrol car to another trooper is inextricably intertwined with the disciplinary issue, although in the form of a verbal reprimand. The Arbitrator notes that the FOP has contended that, (a) marked vehicles must be assigned on the basis of seniority, and (b) once assigned to a trooper the vehicle cannot be reassigned as a disciplinary measure.

Inasmuch as the agreement expressly deals with the subject matter of assignment of patrol vehicles, Article 25, the conclusion is required that the grievance alleges a contract violation and is arbitrable. Pursuant to the second paragraph of Section 25.02, the State Highway Patrol is prohibited from depriving a state trooper of the opportunity of driving "a marked motor vehicle to and from his or her residence...as disciplinary action taken against an employee..." In the judgment of the Arbitrator the grievance falls well within the definition appearing in Section 20.04, which defines a grievance as being grounded on a belief that a "specific violation" of the Agreement had occurred. The grievance relates to Article 2, which states that fringe benefits "and other rights granted by the Ohio Revised Code which were in effect on the effective date" of the Agreement, and not specifically abridged by the Agreement, "will continue in effect, in the same manner as prior to the Agreement." In order for a grievance to be viable, and arbitrable, it is not required that a prima facie demonstration be made in the form of proof that the merits of the grievance are substantial; it is sufficient if the grievant has a good faith belief that the grievance involves a specific term of the Agreement, and asserts a violation, misinterpretation or misapplication of a specific article of the agreement, which the Arbitrator finds here to be the case.

As observed by Hearing Officer Rice:

"The primary focus of this grievance centers on the fact that management reassigned Car 611 to another trooper as the result of disciplinary action arising from the grievant taking a patrol car home during his time off without a supervisor's permission. This fact is not disputed. However, management has not precluded the grievant from driving a marked motor vehicle to and from his residence as the result of the disciplinary action. In fact, he is still doing so on a routine basis."

However, the Arbitrator disagrees with the conclusion of Hearing Officer Rice insofar as it states that:

"...The grievant has no standing to file a grievance, based on the definition of a grievance as found in the contract, and on the sections cited in the grievance."

The instant Arbitrator concludes that, the grievance in the respects indicated presents an arbitrable issue, and should be resolved on the merits.

B. THE ISSUE ON THE MERITS:

As regard the merits, in the judgment of the Arbitrator the issue is, whether, the decision to remove Vehicle 611 from the grievant's control, and reassign him to another patrol car, which action was taken in connection with the verbal reprimand, demonstrates a violation of Article 25, Section 25.02, or other applicable provisions of the Agreement?

The Arbitrator feels that on the basis of a consideration of the evidence, including the comprehensive and well reasoned post hearing briefs submitted by the parties, no contract violation has been demonstrated. The language of Section 25.02 was adopted in precise form, as recommended by Fact-finder Graham. A reading of Dr. Graham's Report fails to indicate that either the parties, or Fact-finder addressed, or dealt with the precise issue whether a trooper is entitled to continue operating the vehicle to which he had been assigned so as to preclude reassign-

judgment of the Arbitrator the language recommended by the Fact-finder, and adopted by the parties (Section 25.02) is limited to the right of a state trooper to drive a marked motor vehicle to and from his residence, and prohibits denial of this opportunity by reason of the location of the individual's residence, or as disciplinary action against the employee. To the extent warranted by the language, the contract provides a distinct benefit which state troopers are entitled to enjoy during the life of the Agreement. However, it would strain the contract language beyond that which is warranted to interpret the language as guaranteeing that a marked vehicle, once assigned, shall continue to be assigned to the same trooper. The language does not so provide; the only logical construction of the relevant language is that, a patrol officer is protected against loss of the opportunity to drive a marked motor vehicle; however, it does not pertain to a specific, or identified vehicle. The Arbitrator is compelled to conclude that no violation of the contract resulted by reason of the fact that the grievant was assigned to another vehicle in connection with a verbal reprimand. The indisputable fact is, that, the grievant continued to operate a marked vehicle to and from his residence, in accordance with established policy. An individual state trooper is not granted, under the language of the Agreement, a proprietary right to use a particular vehicle, as distinguished from a marked vehicle.

The FOP has reasoned that the assignment of a particular vehicle to a trooper on the basis of seniority is a recognized past practice, which the contract requires be continued in effect. Article 2 of the Agreement fails to support this contention. Article 2 relates solely to "fringe benefits and other rights granted by the Ohio Revised Code" in effect as of the effective date of the agreement, and which shall continue in effect unless

"opportunity" to drive a marked vehicle stems from the collective bargaining agreement, as distinguished from a "right" granted by the Ohio Revised Code. Under these circumstances the Arbitrator concurs in the statement of Hearing Officer Rice that:

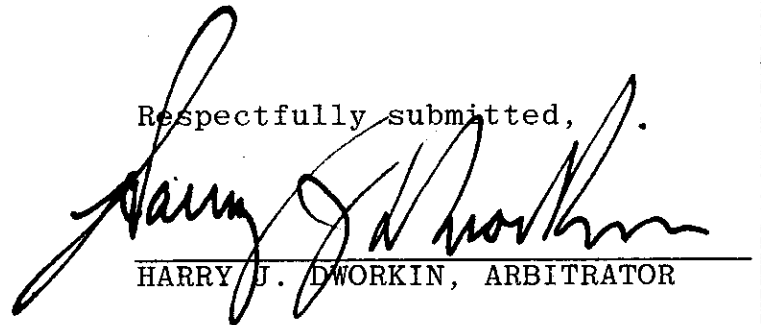
"Clearly, assignment of patrol cars to individual troopers was not; and remains, neither a benefit nor a right granted by the Ohio Revised Code, therefore, it is not a contractually-based past practice right."

Pursuant to Section 25.02, "the Highway Patrol may assign departmental vehicles for certain employees to use to properly perform their duties" (underscoring added). This right is consistent with Article 4 - Management Rights, which vests in management the traditional rights to operate its enterprise, and "reserves exclusively all of the inherent rights and authority to manage and operate its facilities and programs." Although the reassignment of the vehicle previously operated by the grievant to a junior trooper was admittedly "as a disciplinary measure", such action was not prohibited by the contract. The grievant continued to exercise his right, and "opportunity" to drive a marked vehicle to and from his residence. The right to assign vehicles is a matter vested in, and reserved exclusively to management, and has not been "abridged" or modified by any language appearing in the Agreement. Whereas Section 25.02 prohibits the denial of the opportunity to drive a marked vehicle as a disciplinary measure, such language does not prohibit reassignment to another vehicle as long as the opportunity remains intact. It is understandable that a patrol officer would prefer that he be assigned to a particular vehicle, for which he may have developed some measure of affinity due to routine use, daily maintenance, and upkeep. An individual officer may feel comfortable seated behind the wheel of a particular vehicle, familiar with the "feel of the saddle" as it were. However, the issue must be decided solely on the basis

parties, and Arbitrator are so bound. There exists no right to operate a "specific patrol car". Reassignments may be made in accordance with the prudence, and judgment of management. Should the parties deem it appropriate to grant a trooper the right to be assigned a particular vehicle on an on-going basis, such would have to result from negotiations; and included in the Agreement.

The contract language fails to indicate that the parties provided in their Agreement a specific right to be assigned to a particular vehicle, or to prohibit reassignment of a vehicle to another officer even though junior in seniority. Such decisions remain within the express and residual authority of management. It is implied, however, that in making reassignments of vehicles the decision would be the result of prudent judgment, made for a valid reason, and not taken in an arbitrary manner, or for an ulterior purpose. Good faith is implicit in all contractual dealings whether or not expressly set forth. The Arbitrator has wrestled with one aspect of the case, namely, the fact that the reassignment of the vehicle was closely related to the issuance of a verbal reprimand, which was not grievable. However, there exists no restriction, or prohibition against reassigning a vehicle to another officer, so long as the employee retains the opportunity to drive a marked vehicle, which the Arbitrator finds here to be the case.

Respectfully submitted,



HARRY J. DWORKIN, ARBITRATOR

A W A R D

I.

Verbal reprimands are excluded from the grievance procedure, and therefore may not be grieved;

II.

The language of Section 25.02 protects an employee from loss of the opportunity to drive a marked motor vehicle to and from his residence by reason of the conditions therein set forth; such opportunity may not be discontinued by reason of location of the residence, or as a disciplinary measure; however, the contract language contains no prohibition against reassigning a vehicle to another trooper providing the officer continues to be accorded the opportunity to drive a marked vehicle;

III.

As regards past practices, Article 2 of the Agreement makes reference to "fringe benefits and other rights granted by the Ohio Revised Code"; the Arbitrator concludes that the Ohio Revised Code contains no provision which grants to an officer the right to continue operating a particular vehicle, or to protect a trooper against reassignment of a vehicle, and therefore, the language of Article 2 is not applicable to the grievance before the Arbitrator.

AWARD SIGNED, ISSUED AND DATED AT CLEVELAND, CUYAHOGA COUNTY, OHIO, THIS 18TH DAY OF JUNE, 1987.



HARRY J. DWORIN, ARBITRATOR