

OFFICE OF THE ARBITRATOR

July 6, 1987

In the Matter of the Arbitration Between:

THE STATE OF OHIO HIGHWAY PATROL	)	
	)	742
and	)	OCB Grievance No. 87- <del>554</del>
	)	OSHP Grievance No. 139
	)	
THE FRATERNAL ORDER OF POLICE	)	
OHIO LABOR COUNCIL, INC.	)	
UNIT 1	)	

APPEARANCES

For the Highway Patrol:

Lt. Darryl L. Anderson	Personnel/Labor Relations
Captain John M. Demaree	Management Representative
Captain C.J. Nishwitz	District 9 Commander
Sgt. R.J. Woodford	Asst. Post Commander, Portsmouth

For the F.O.P.:

Paul L. Cox, Esq.	Attorney
Edward Baker	Staff Representative
Trooper Larry K. Phillips	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. Unit 1, (the "Union" or "F.O.P.") on January 16, 1987, protesting the refusal of the State of Ohio Highway Patrol (the "Patrol") to grant Trooper Larry K. Phillips (the "Grievant") request for two hours of accumulated holiday compensatory time or, in the alternative, to grant his leave request for two hours of personal leave. When the parties were unable to resolve this matter through their negotiated grievance procedure, they referred it to arbitration pursuant to Article 20, Section 20.07 of their Agreement.

### STATEMENT OF FACTS

The facts of the instant matter are not in dispute. The Grievant is a Trooper assigned to the Portsmouth post of the Ohio State Highway Patrol. On Friday, January 16, 1987, the Grievant was working the 12 midnight to 8:00 AM shift. From 4:00 AM until 7:00 AM he was the only trooper scheduled to work the two county area for which the Portsmouth post is responsible. At approximately 4:35 AM he approached his supervisor, Sergeant R.J. Woodford, and requested to make-up two hours of accumulated Holiday Compensatory Time, for the last two hours of his shift, i.e., from 6:00 AM until 8:00 AM. When Sergeant Woodford denied the request for Holiday Compensatory Time make-up, the Grievant submitted a second, similar leave request, indicating he wished

to use Personal Leave. Sergeant Woodford also denied this request and the instant grievance ensued.

### ISSUE

The parties have stipulated that the issue before the Arbitrator in the instant case is as follows: Was the Employer's denial of the Grievant's request for Holiday Compensatory Time make-up, and subsequent request for Personal Leave on January 16, 1987, in compliance with the relevant provisions of the collective bargaining agreement between the parties?

If not, what shall the remedy be?

### PERTINENT CONTRACT PROVISIONS

#### ARTICLE 4 - MANAGEMENT RIGHTS

Except to the extent modified by this Agreement, the Employer reserves exclusively all of the inherent rights and authority to manage and operate its facilities and programs. The exclusive rights and authority of management include specifically, but are not limited to the following:

- (1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services its overall budget, utilization of technology, and organizational structure;
- (6) Determine the adequacy of the work force;
- (8) Effectively manage the work force;

#### ARTICLE 44 - HOLIDAYS

##### §44.03 Computation of Holiday Pay or Compensatory Time

An employee who is required to work a holiday or is called in may choose to receive overtime pay equivalent to one and one-half ( $1\frac{1}{2}$ ) times the hours worked times the total rate or receive compensatory time equivalent to one and one-half ( $1\frac{1}{2}$ ) times the hours worked. All compensatory time accrued will be

placed into a special holiday bank. All overtime worked by an employee on a holiday will be compensated at two and one-half (2½) times the hours worked.

Holiday Compensatory Time will be used by the end of the year, or by June 30th of the following year if the work occurred in the second half of the year. Holiday Compensatory Time not used by these dates shall be compensated.

Upon separation from state service for any reason including retirement, members will receive compensation for all holiday compensatory time earned but not used pursuant to this section.

#### ARTICLE 45 - PERSONAL LEAVE

##### §45.06 Notification and Approval of Use of Personal Leave

Employees may use personal leave upon giving reasonable notice to the employee's supervisor. Personal Leave shall not be unreasonably denied. Such requests should be in writing. Requests should, when possible, be made within a reasonable time in advance of the date or dates requested for use of personal leave unless the use is for an emergency situation.

#### ARTICLE 61 - OVERTIME

##### §61.07 Requests for Compensatory Time Off

Requests for compensatory time off must be submitted in writing twenty-four (24) hours in advance of the anticipated time off.

##### §61.08 Granting of Compensatory Time Off

Compensatory time off shall be granted at the discretion of the Employer in accordance with the operational requirements of the facility.

#### CONTENTIONS OF THE PARTIES

##### F.O.P.'s Contentions

The F.O.P. contends that the Grievant's request for Holiday Compensatory Time; and his subsequent request for Personal Leave,

were both unreasonably denied on January 16, 1987. It argues that the Patrol has failed to develop a consistent and uniform standard to apply state wide to requests for either Holiday Compensatory Time make-up or Personal Leave. It argues that the reasons stated by the Patrol for denying this request - lack of manpower, has been proven by it to be a false issue. There have been many instances, it argues, as shown at the arbitration hearing, where the post area coverage was equal to or less than that which would have remained had the Grievant been granted the requested leave.

It argues that Section 44.02, computation of Holiday Pay or Compensatory Time, does not have any time limits restricting the make-up of Holiday Compensatory Time. This section, it argues, does not require prior notification as does compensatory time off under Section 61.07. Therefore, it argues, Holiday Compensatory Time should not be treated like regular compensatory time and does not require a 24-hour advance written notice. It further argues that Procedure File 00-10-ADM 4258, which requires 48 hours advance written notice for use of Personal Leave is not consistent with the language of Section 45.06 which states that "Requests should, when possible, be made a reasonable time in advance of the date or dates requested for use of personal leave unless the use is for an emergency situation." It argues that that the contract does not define "reasonable time" and that the use of Personal Leave should not be restricted by the 48 hour advance written notice required by the Procedure.

It asks, accordingly, that the grievance be sustained and the Arbitrator hold that the Patrol's application of its leave procedures was incorrect.

Patrol's Contentions

The Patrol denies that it has violated the Agreement as alleged by the F.O.P. It argues that Article 4 of the Agreement reserves to management the authority to manage and operate its facilities and programs and that the Grievant's contractual rights have not been violated in the instant case. It argues that the Grievant's request for leave was not unreasonably denied, based on the fact that had the leave request been granted, only the shift supervisor would have remained on duty until the day shift officers reported for work. It points out that Section 45.06 states, in relevant part that: "Employees may use personal leave upon giving reasonable notice to the employee's supervisor ..." It argues that the Grievant failed to give "reasonable notice" in the instant case and that Procedure File 00-10-ADM 4258 defines reasonable notice as 48 hours for the taking of Personal Leave. Further, it argues that the Grievant's request for use of Personal Leave was not an emergency situation under Section 45.06.

In regard to the taking of Holiday Compensatory Time off it argues that there is no specific language in Section 44.03 regarding the use of compensatory time and that Section 61.07 and Procedure File 00-10-ADM 4258 requires that requests for compensatory time off must be submitted in writing 24 hours prior to taking the time off. It argues that the decision of the

supervisor in question in denying this request was reasonable based upon the operational needs of the post and that the Grievant's requests were not timely made.

It asks, accordingly, that the grievance be denied.

#### DISCUSSION

In the opinion of the Arbitrator the grievance should be denied. The F.O.P. has failed to prove that the Patrol has violated the parties collective bargaining agreement in denying either of the Grievant's requests. While the parties have stipulated the above issue, the specific matter to be decided herein, as the Grievant recognized and noted in his comments at the Step One Review, is whether the Patrol can require notice to be given either; 24 hours in advance of the use of Compensatory Holiday Time; or 48 hours in advance of the use of Personal Leave time. The Arbitrator believes that it can require such notice for the following reasons.

First, in regard to the request for Personal Leave, Section 45.06, quoted above, states that employees are to give "reasonable notice" to their supervisor prior to taking leave. Requests for leave are to be made within a "reasonable time" in advance of the date requested to be off, unless the use is for an emergency situation. There has been no contentions made, in the instant case, that an emergency existed. Therefore, Section 45.06 requires that the request for leave be made "within a reasonable time in advance of the date or dates requested ...". The section does not define "reasonable time." However, the

Patrol has defined reasonable time as a matter of policy, in its Procedure File 000-10-ADM 4258 as 48 hours in advance of the time requested off. The Patrol has done so under the authority reserved to the Employer under Article 4 of the Agreement. That policy appears to be reasonable on its face and there has been no evidence presented to show that it has not been applied in a fair and reasonable manner. The Patrol has the right under the Agreement to set policies to insure uniformity in the administration of the Agreement. Determining that 48 hours notice is required because of manpower considerations is not unreasonable and provides uniformity in the administration of the Agreement.

Even if the Patrol had not promulgated Procedure File 00-10-ADM 4258 and determined that 48 hours is required to give notice for use of Personal Leave, the Arbitrator does not believe, given the facts of the instant case, that the Grievant gave "reasonable notice," within the contemplation of Section 45.06, to his supervisor in the instant case. Giving approximately one and one-half hours notice is not, in this Arbitrator's opinion, "reasonable notice," and clearly is not what was contemplated by Section 4.506. Section 45.06 states that "requests should ... be made within a reasonable time in advance of the date or dates requested ..." (emphasis added). The ordinary connotation to be given to this language is that the request is to be made on a date prior to the dates requested for use as personal leave. This the Grievant did not do. He requested the use of personal leave on the same date as that for



which he was requesting it. The only exception in Section 45.06 is for an emergency situation and there was no emergency in the instant case. The Arbitrator does not believe, given the circumstances of the case, that the Grievant's supervisor acted unreasonably or violated the provisions of Section 45.06 in denying the Grievant's request for Personal Leave.

Secondly, regarding the Grievant's request to make-up Holiday Compensatory Time, Section 44.03 does not discuss the use of Compensatory Time. Rather, this section deals with how that time is accrued. However, Section 61.07 does deal directly with that issue and clearly states that "requests for compensatory time off must be submitted in writing 24 hours in advance of the anticipated time off." The F.O.P. has argued that Holiday Compensatory Time off should not be treated in the same manner as regular compensatory time and therefore, does not require the 24 hours advance written notice required for "regular" compensatory time under Section 61.07. This argument is not persuasive. Rather, Procedure File 00-10-ADM 4258 with its 24 hour notice requirement is consistent with Section 61.07. Nothing in the Agreement or the party's practices has been pointed out to the Arbitrator to indicate that Holiday Compensatory Time requests should be treated any differently than regular compensatory time requests. The Patrol's policy as set forth in the Procedure File 00-10-ADM 4258 is uniform for both types of compensatory leave.

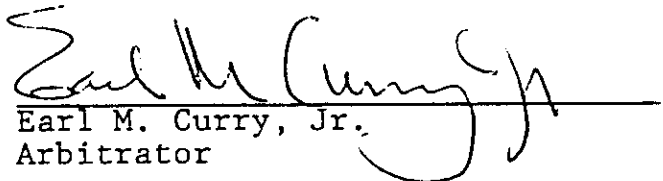
In regard to the granting of compensatory time off Section 61.08 clearly states that it "shall be granted at the discretion

of the Employer in accordance with the operational requirements of the facility." (emphasis added)

The record indicates that Sergeant Woodford denied the Grievant's requests based on the "operational requirements of the facility." Had he been granted either request, only he would have been on duty until the day shift officers reported to work. This denial of the Grievant's request does not appear to the Arbitrator to be unreasonable, given the circumstances. The Grievant's contractual rights have not been violated in the instant case.

AWARD

The grievance is denied for the reasons stated just above.

  
Earl M. Curry, Jr.  
Arbitrator

Shaker Heights, Ohio  
July 6, 1987