

AWARD OF ARBITRATOR

In the Matter of the Arbitration Between:)
)
OHIO STATE HIGHWAY PATROL)
Columbus, Ohio)
)
-and-)
)
FRATERNAL ORDER OF POLICE,)
OHIO LABOR COUNCIL, INC.)

HARRY J. DWORKIN,
ARBITRATOR

RE: OCB CASE NO. 86-25
Grievance Protesting Failure to
Grant Request for Personal Leave

A P P E A R A N C E S

On Behalf of Employer

JOHN ALEXANDER, ESQUIRE	Counsel for Employer
JOHN M. DEMAREE	Captain
PAUL J. RAPP	Lieutenant
DARRYL L. ANDERSON	Lieutenant

On Behalf of F.O.P.

PAUL L. COX, ESQUIRE	Counsel for F.O.P.
JAMES E. SLAGLE	Trooper
STEVEN L. DUNRAN	Trooper
MICHAEL O. SWEVAL	Trooper (Grievant)

THE ISSUE

WAS THE DENIAL OF THE GRIEVANT'S REQUEST FOR
PERSONAL LEAVE VIOLATIVE OF SECTION 45.06 OF
THE COLLECTIVE BARGAINING AGREEMENT?

PRELIMINARY STATEMENT AND BACKGROUND:

The grievance appealed to arbitration is concerned with the provision appearing in the collective bargaining agreement which authorizes the granting of personal leave subject to

Commander on the ground that the post was "shorthanded" on the shift involved; that the request could not be granted without seriously undermining the minimum manning requirements that were deemed necessary in order to operate effectively.

The provision for personal leave appears in Section 45.06 of the collective bargaining agreement, dated April 28, 1986:

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 a reasonable time in advance of the date or dates requested for use of personal leave unless the use is for an emergency situation.

In addition to the above, Section 45.01 provides that each full-time member "shall be eligible for personal leave with pay." Section 45.05 states that employees may use personal leave for some eight specified reasons.

On May 28, 1986, the grievant was scheduled on the 3 p.m. - 11 p.m. shift. He presented a "request for leave" for June 4, 1986 of eight hours duration. The request was denied, and accompanied by an explanatory notation that: "We already have three units on vacation." On the day in question, June 4, 1986, there was a total complement of 22 uniformed officers assigned to the post, over a three-shift, 24 hour period, including 18 troopers. The personnel assigned to the 7 a.m. - 3 p.m. shift included a post commander, who was on that day assigned to general headquarters, and two troopers.

The 3 p.m. - 11 p.m. shift, the grievant's shift, included one sergeant, and four troopers, of which one trooper was on vacation, and another assigned to the Drum and Bugle detail. Accordingly, as represented by the State Highway Patrol, had the grievant's request for a personal leave been granted, it would

the aforesaid reasons, the State Highway Patrol concluded that it would be unreasonable to grant the grievant's request for personal leave.

A grievance was timely filed, the text of which alleges a contract violation in denying the grievant's request for personal leave. The grievant requested relief in the form of time and one-half pay for the eight hours worked on June 4, 1986, the day for which personal leave was requested, and denied, together with assurance that similar violations would not occur in the future.

In the Step 1 reply, the State Highway Patrol alleged that:

"Trp. Sweval's request for personal leave on June 4, 1986 at 1500 hours was denied on May 29. He was advised that his request was denied because there were all ready three units off in a leave status (Vacation, Holiday and Comp Time Makeup). I additionally told him that I did not want to cut the afternoon shift any shorter than it was.

Trp. Sweval was advised that post operations necessitated that his request be denied because of the shift that he was working. He was working an afternoon shift (3P to 11P) on June 4. If I had granted his request there would have only been one trooper on the road during one of our busier accident periods: namely 1500 to 1800 hours. He was told that had he been working a different shift I would have considered his request.***"

The denial of the grievance, and reply of the State Highway Patrol was as follows:

"Trp. Sweval was advised by myself that two of the four originally scheduled 3PM units had special details that had taken them off the 3PM shift. This left only he and another trooper plus the shift supv. Sergeant Porter. He was told that I did not want to cut down the 3PM shift any more than was all ready done.

He was also told that we all ready had three units on vacation that day and this was the maximum the Post was allowed off. Subsequent to this request I have been advised by Lt. Thompson that the Mansfield Post was allowed three troopers and

had requested that day off on holiday makeup. He said that Tpr. Bauer had verbally asked him for this off the day before. Tpr. Bauer was scheduled to work the 8PM shift this day. After reviewing the HP-29 I told Sgt. Porter that Tpr. Bauer could have the day off as eight hours of HHD.

Trp. Sweval was told that had he been working another shift other than 3PM shift I would have considered his request for personal leave on June 4, 1986."

/s/Lieutenant P. J. Rapp

In the Step 2 reply, the State Highway Patrol conceded that seniority was a factor to be included in considering a request for personal leave, including other factors such as manpower requirements, and vacation scheduling.

The State Highway Patrol has maintained that no contract violation has been demonstrated; that it acted reasonably and fairly, and that its decision is supported by the "Management Rights" clause:

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;

(3) Maintain and improve the efficiency and effectiveness of governmental operations;

(5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote or retain employees;

(6) Determine the adequacy of the work force:

(8) Effectively manage the work force;

POSITION OF F.O.P.:

The FOP maintains that the Post Commander's denial of the grievant's request that he be granted a personal leave day on June 4, 1986, was unreasonable, arbitrary, capricious, and in violation of the contract. The FOP points out that the June 4, third shift, did not involve an emergency situation. The request was submitted well in advance, on May 28, 1986, and provided adequate opportunity for supervision to have rearranged its schedule, and assignments, so as to grant the grievant's request for personal leave. In support of its position the FOP points out that another trooper, assigned to the 8 p.m. - 4 a.m. shift, was granted a personal leave day on June 4, 1986, which he had requested on the previous day, June 3, 1986. As regards this argument, the State Highway Patrol represents that Trooper Bauer, who was granted a personal leave day on June 4, 1986, had been scheduled to work the 8 p.m. shift, and that his being off on that shift on June 4, 1986, was not of a critical nature; further, had the grievant "been working another shift other than 3 p.m. shift" his request for personal leave on June 4, 1986, would have been considered, and granted.

The FOP maintains that the denial of the grievant's request for personal leave on June 4, 1986, was unreasonable, and in violation of Section 45.06. The FOP reasons that a request for personal leave should be accorded consideration, and not denied in a capricious or arbitrary manner. The FOP suggests further that, as reflected by the instant case, the contract language applicable to personal leave has not been observed in a meaningful fashion.

avoid compliance with the contractual requirements through scheduling maneuvering. For all of the aforesaid reasons, the FOP requests that the grievance be granted; that a determination be made that the State Highway Patrol violated the collective bargaining agreement in its denial of the grievant's request for personal leave, and that he be awarded compensation in the form of eight hours at time and one-half. In addition, the FOP requests that the Arbitrator direct in his award that the State Highway Patrol discontinue such violations of the contract.

POSITION OF STATE HIGHWAY PATROL:

The State Highway Patrol acknowledges that Section 45.06, provides for the use of personal leave "upon giving reasonable notice to the employee's supervisor." However, the State Highway Patrol asserts that, by virtue of express language conditioning the granting of personal leave, management is accorded the discretionary right to determine whether the circumstances relating to the functions of the State Highway Patrol, and manpower needs, would warrant the granting of the request. The State Highway Patrol points out that Section 45.06 expressly states, "[personal] leave shall not be unreasonably denied." Such language, in the judgment of the State Highway Patrol contemplates an evaluation of a request for personal leave, and a decision made in good faith based on the attendant circumstances. Further, the provision permitting personal leave days is entitled "Notification and Approval of Use of Personal Leave", thereby indicating the mutual recognition of the contracting parties that the right to use a designated personal leave day is not absolute; each request is dependent on the circumstances, and exercise of sound judgment including consideration of all relevant factors, such as seniority.

On the basis of the foregoing factors, the State Highway Patrol represents that its denial of the grievant's request for personal leave was neither arbitrary, nor discriminatory, and that the decision was made in good faith. The State Highway Patrol points out that the grievant was scheduled to work on the 3 p.m. - 11 p.m. shift, which was "shorthanded" on June 4, 1986, by reason of the fact that one trooper was on vacation, and another assigned to the Drum and Bugle detail. Accordingly, had the grievant's request been granted, it would have resulted in only one trooper being on duty throughout the shift, including a sergeant in a supervisory capacity. In the judgment of supervision, the level of manpower would have been inadequate during a busy period which is described as the "most critical period traffic wise."

Under the circumstances that existed supervision determined that the grievant's request for personal leave could not be granted "because of the shift that he was working." It was pointed out in answer to the grievance that, the grievant was scheduled for the afternoon shift, and that, "if I had granted his request there would have only been one trooper on the road during one of our busier accident periods,**he was told that had he been working a different shift" his request would have been favorably considered.

The State Highway Patrol reasons that, "post operations must be considered in all leave requests" and that, there may be circumstances when requests for personal leave had to be denied. The State Highway Patrol represents that it made a reasonable, and good faith decision that the grievant's request for a personal leave day on the afternoon shift of June 4, 1986 could not be granted without severely impacting on the manning requirements, and functions of the State Highway Patrol, and that no contract violation has been demonstrated.

ARBITRATOR'S FINDINGS AND OPINION:

The keystone issue to be decided by the Arbitrator is whether the denial of the grievant's request for a personal leave day under the circumstances that existed was reasonable, and contractually warranted. In resolving the dispute, the Arbitrator must necessarily accord consideration to the facts as disclosed by the evidence, together with all applicable provisions of the collective bargaining agreement. Pursuant to Section 20.07(6) of the collective bargaining agreement, the parties have seen fit to impose traditional limits on the Arbitrator's authority and functions:

"The arbitrator shall have no power to add to, subtract from or modify any of the terms of [the] Agreement, nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the express language of this Agreement."

The Arbitrator is bound by the restrictions which the parties have deemed appropriate.

A reading of Section 45.06 together with related sections, clearly indicates that the parties have provided in comprehensive fashion for personal leave days, including eligibility, personal leave credits, and the principal uses for which personal leave days may be requested. Of particular significance as regards the instant grievance is the language of Section 45.06, which contemplates that, in exercising the right to a personal leave day the state trooper must give notification to his supervisor, and obtain advance approval. In the judgment of the Arbitrator, the requirement that "approval" must be obtained implies that a request is to be considered, and denied, or approved based on factors and circumstances that are relevant, and germane to the decision. The supervisor, in reviewing a request for personal leave is required

inherent in the exercise of judgment and discretion as contemplated in the collective bargaining context. The foregoing guidelines are confirmed by the language that, "personal leave shall not be unreasonably denied."

The Arbitrator is required to determine whether the denial of the grievant's request for personal leave on June 4, 1986 was unreasonable, arbitrary, discriminatory, or ulteriorly motivated. In considering the issue presented, the Arbitrator must accord meaningful effect to all other provisions that may be relevant, including Article 4 - Management Rights, which, among other recognized areas of authority, grants to the Employer the "exclusive rights and authority of management", including maintenance of "efficiency and effectiveness of [the] governmental operations, to determine the adequacy of the work force, and, to effectively manage the work force."

Based on the evidence, and all applicable provisions of the agreement, the Arbitrator determines that no violation of the agreement has been demonstrated, and that the decision of the Post Commander to deny the grievant's request for a personal leave day was neither unreasonable, discriminatory, or ulteriorly motivated. The Arbitrator points out that the grievant was assigned to the afternoon shift, 3 p.m. - 11 p.m., on which there are normally scheduled five units, consisting of one supervisory sergeant, and four troopers. On June 4, 1986, one trooper was scheduled on vacation, and a second assigned to the Drum and Bugle detail, thereby leaving two troopers to perform highway patrol functions. Had the grievant's request been granted, it would have left only one trooper on the afternoon shift, which would have been patently inadequate staffing for the busy afternoon shift, and would have seriously hampered the Employer in performing its statutory duties, including enforcement of traffic laws and investigation of

arbitrary, or capricious. In light of the evidence, the decision of supervision met the test of reasonableness.

Another argument advanced by the FOP, which the Arbitrator has considered, relates to the fact that Trooper Bauer had been granted a make-up day on June 4, 1986, thereby suggesting discriminatory treatment. However, an examination of the circumstances indicates that Trooper Bauer was scheduled to work the preceding, or day shift which, in the judgment of supervision, did not present the critical traffic conditions as did the grievant's afternoon shift. Accordingly, the fact that Trooper Bauer, assigned to the day shift, was granted a request of make-up holiday time on June 4, would not per se evidence discriminatory, or unreasonable treatment, inasmuch as the shift was different, the day shift as compared to the afternoon shift, the scheduling was different, and concerned different degrees of traffic conditions.

A third argument advanced by the FOP is, that, the grievant's request could have been granted, and at the same time sufficient staffing would have been made available by requiring a trooper on another shift "to double back" so as to provide services on the afternoon shift. While this argument suggest a circumstance that supervision could have evaluated, and considred, it was not a mandatory requirement, particularly in light of Section 26.05 - Double Backs; where a trooper is required to "double back" the contract provides for time and one-half pay. There is no requirement on management to incur additional cost in the form of "double back" in order to accomodate a trooper's request for personal leave. While such manner of handling the request is permissible, it does not give rise to a mandatory obligation; the failure to utilize the "double back" procedure is in no respects suggestive of a contract violation, unless it can be shown that "double back" has been generally used in order to accomodate requests for personal leave.

provide assistance to motorists, and investigate accidents, it cannot be said that the denial of the grievant's request was unreasonable or contractually improper. The responsibility of assuring adequate manning is recognized by the collective bargaining agreement, and involves an inherent responsibility of State Highway Patrol management. Of particular significance is the fact that, had the grievant's request for personal leave on June 4, 1986 been granted, it would have left only one trooper on the afternoon shift, which would have been patently inadequate. While recognizing that a request for personal leave should be granted where reasonable, and the circumstances permit, the mere fact of denial of a request does not give rise to a contract violation. Each situation must necessarily be judged on a case-by-case basis, including, at all times, the exercise of good faith, and consideration of all relevant factors. The rights and authority of the State Highway Patrol, and the terms and conditions of employment as set forth in the collective bargaining agreement must be fairly balanced, and decisions made on the basis of fairness, and reasonableness. It would appear that the policy as regards the consideration and granting of requests for personal leave should be formulated, and uniformly administered among all districts. The policy, when so promulgated, should be administered so as to avoid unreasonable, or arbitrary results. A request for personal leave should not be denied on spurious grounds, or in a capricious manner.

The Arbitrator determines that under the circumstances that prevailed on the afternoon shift on the day in question, the denial of the grievant's request was not unreasonable, and conformed to the Employer's responsibility as regard its contractual, and statutory functions, and no violation of the terms and conditions of employment as appear in the collective bargaining agreement has been demonstrated.

A W A R D

I.

Pursuant to Section 45.06 of the collective bargaining agreement, employees may request approval of personal leave days, which requests shall not be unreasonably denied; in determining whether a request for personal leave should be granted, or denied, the employer is required to act reasonably, in good faith, and avoid decisions that may be ulteriorly motivated, arbitrary, or discriminatory;

II.

Among the factors that may be considered in passing upon a request for personal, are the recognized functions and responsibilities of management, including the efficient and effective operation of its enterprise, and adequacy of the work force;

III.

The State Highway Patrol is duty-bound to formulate, and publish a policy as regards the administration of requests for personal leave, which policy should be uniformly, and consistently administered;

IV.

Under the facts and circumstances here present, and in view of the fact that the Mansfield Post had limited, and inadequate personnel scheduled for the afternoon shift, the decision of supervision to deny the grievant's request for a personal leave day was neither discriminatory, nor unreasonable, and was not violative of the agreement.

AWARD SIGNED, ISSUED AND DATED AT CLEVELAND, CUYAHOGA COUNTY, OHIO, THIS 14TH DAY OF JULY, 1987.


HARRY J. DWORKIN, ARBITRATOR