

AWARD OF ARBITRATOR

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

HARRY J. DWORKIN,
ARBITRATOR

RE: OCB NO. 97-1009
PAID LEAVE GRIEVANCE

A P P E A R A N C E S

On Behalf of Employer

LT. DARRYL ANDERSON
CAPT. J. M. DEMAREE

Advocate
Representative

On Behalf of F.O.P.

PAUL L. COX
DAVID H. PLUNKETT

Counsel for F.O.P.
Trooper (Grievant)

THE ISSUE

WAS THE EMPLOYER CORRECT IN DENYING THE GRIEVANT'S
REQUEST FOR PAID LEAVE TO ATTEND A LOCAL F.O.P.
LABOR COUNCIL MEETING ON FEBRUARY 18, 1987?

IF NOT, WHAT SHALL THE REMEDY BE?

PRELIMINARY STATEMENT AND BACKGROUND:

The grievant is a Trooper assigned to the Toledo Post,
in Lucas County. The grievant holds the office of Union Steward,
otherwise referred to as "Associate", and is a member of con-
tractually recognized labor/management committees. The positions
held by the grievant require him to actively participate in the
administration of the collective bargaining agreement on a

state-wide level. The grievant is a member of the Ohio Labor Council, Inc., Executive Board, in addition to membership in two labor/management committees which are recognized in the collective bargaining agreement.

The grievance, and dispute before the Arbitrator stems from a request submitted by the grievant on February 2, 1987, that he be permitted to attend a meeting of Local Lodge #150, District 4, held at Ravenna, Ohio, some 150 miles distant from the grievant's Toledo Post. The request for leave, with pay, was denied, thereby resulting in the filing of a grievance. The purpose for attending the meeting which accompanied his request for paid leave was to update the local members of Lodge #150, District 4, with reference to the activities, and progress of the two labor/management committees of which the grievant was a member.

The Highway Patrol denied the grievant's request for paid leave on the ground that the contract did not mandatorily provide paid leave in such situations. As result of the denial, the grievant attended the meeting in Ravenna, Ohio, on his own time, and without compensation.

Article 15 of the collective bargaining agreement is entitled Labor/Management Committee, and provides, in part that:

"It is the desire of the Employer and the Labor Council to maintain the highest standards of safety and professionalism in the Highway Patrol.

The Highway Patrol and the Labor Council shall each appoint five (5) members to the Labor/Management Committee. The purpose of this committee is to provide a means for continuing communication between the parties and for promoting a climate of constructive employee-employer relations..."

Article 16 is entitled Health and Safety, and provides, in part as follows:

"§16.01 Mutual Concern
Occupational safety and health is the mutual concern of the Employer, the Labor Council, and employees. The Labor Council will cooperate

with the Employer in encouraging employees to observe applicable safety rules and regulations."

Another committee is established by Article 40, entitled, Physical Fitness and Wellness Policy:

"The Association and the Employer recognize the need for members of the bargaining unit to be in good physical condition. The Association, the Highway Patrol and the Office of Collective Bargaining will jointly develop a systematic approach to physical fitness. This approach will have primary emphasis on the maintenance of good health of the employees, but will provide a systematic standard for progressive discipline for the Patrol to utilize if physical fitness is not maintained. This policy will be implemented no later than January 1, 1987 unless the date is mutually extended by the parties."

Article 1 sets forth the mutual desire of the parties to share, and exchange pertinent information among the nine lodges:

"It is understood that the Lodges of the Fraternal Order of Police are constituent groups of the Ohio Labor Council and that the Labor Council may share time and other resources provided to it by this Agreement with the nine (9) Fraternal Order of Police Lodges which have a membership open to troopers. The use of any such time or resources will be under the auspices of the Labor Council.

This Agreement is made for the purpose of promoting cooperation and harmonious labor relations among the Employer, employees of the bargaining unit, and the Labor Council for the public interest, establishment of an equitable and peaceful procedure for the resolution of differences and to protect the public interest by assuring the orderly operations of the State government."

As heretofore indicated, the grievant is a member of two labor/management committees, and requested paid leave in order to attend a meeting of a local lodge of District 4, for the stated purpose of updating members on the progress of the two committees of which he was a member.

The Agreement expressly provides for paid leave for Union Associates where needed to enable associates to participate in the "administration of the Agreement". The controlling language is, as follows:

"§8.02 Associate Time

The Labor Council may designate one Labor Council Associate and alternate at each Division facility.

The Labor Council Associates are Union Stewards as that term is generally used. The Associate or alternate will be permitted time off, as set forth below, during the work week to attend to administration of the Agreement. During such time, the Associate or alternate shall continue to be paid at their regular rate and shall receive all fringe benefits, seniority accrual and other benefits. When not using time for such purposes, Associates and alternates will perform their regularly assigned job duties.

In addition to the time permitted by the grievance procedure, each Labor Council Associate or alternate shall be permitted to use a reasonable amount of paid time to consult with Labor Council representatives and represent bargaining unit members at grievance meetings.

Labor Council Associates or alternates shall investigate and process grievances for employees and represent employees as provided for in the grievance procedure contained in Article 20 on paid time with no loss of benefits. Each Associate or alternate will notify his or her Post Commander of the necessity to leave their work assignment to carry out their duties in connection with this Agreement. Prior to conducting any activity under this section, Associates or alternates will secure the permission of the Supervising Officer as specified by the Employer. Permission will be granted after consideration of work operations of the Patrol. Such permission will not be unreasonably withheld.***

***He shall identify the nature of the activity he is to perform."

The grievant presented his "Associate Leave Request" on February 2, 1987. The text of the request sets forth the purpose for which leave was being requested:

"...for the express purpose of Meeting with Labor Council members in Ravenna to update them on the progress of Labor Management and Health and Wellness Committees."

The request was disapproved:

"Lt. Anderson GHQ Personnel advised me on Feb. 5, 1987 that the request would be denied but they would handle it in writing with Ed Baker. Feb. 6, 1987 Capt. Ireland advised Sgt. L. G. Woolum by telephone of the denial and this denial was transmitted verbally by telephone to Tpr. Plunkett by Sgt. Woolum the same day."

In a letter by the Ohio State Highway Patrol dated February 3, 1987, signed by Edward F. Baker, F.O.P. Staff Representative, appears the following:

"Trooper David Plunkett is requesting time to attend the district 4 meeting February 18, 1987 from 6:00 p.m. to 9:00 p.m. to explain the Health & Wellness recommendations and to field questions from the floor at the meeting. This will require Trooper Plunkett to leave for the meeting at approximately 4:00 p.m. Anything you do to grant this request will be greatly appreciated."

A grievance was filed alleging that the denial of the request for paid leave was in violation of Section 8.02:

"On 02-02-87 I applied for associate leave under 8.02 to meet with other Labor Council members in Ravenna on 02-18-87 I was advised by Sgt. L. G. Woolum that the request was to be denied. On 02-09-87 I inquired of Capt. C. E. Ireland as to when the HP 31 was going to be returned so that I would have the denial in writing and I could file the grievance at that time rather than having to wait until the 18th when I did not receive the time. On 02-17-87 I requested the return of the HP 31 from Lt. T. H. Bilang. I finally had the request returned disapproved on 02-18-87."

"Remedy Requested: 8 hrs of AAT for the trip to Ravenna. I left Toledo and at 15:00 hours and returned at 00:15 hours on 02-19-87."

"Comments by Grievant: This time is justified under Section 8.02 and was unreasonably denied."

The preliminary grievance report contains the following:

"He was requesting Associate Leave on 02-18-87 to go to Ravenna to meet with Labor Council Members to update them on the progress of Labor Management and Health & Wellness Committees."

The Step II Review sets forth that the meeting of the F.O.P. Lodge, at Ravenna, Ohio was held on February 18, 1987, with 15 members attending.

The State Highway Patrol affirmed its position in its Step III Decision, to the effect that, no violation of the language of Section 8.02 - Associate Time, had been demonstrated.

Major T. W. Rice concluded as follows:

"Clearly, Section 8.02 guarantees the steward paid leave time to investigate and process grievances, and to represent bargaining unit members at grievance hearings. The Steward's grievance duty rights is not at issue here. The issue in the instant case is whether the Employer must grant the grievant, who is the Associate at the Toledo post and is also a member of the Labor

Council Executive Board, paid Associate Leave time to travel a distance of approximately 130 miles (one way) to meet with a group of bargaining unit members to discuss union business.

There is no clear language in the first two paragraphs of Section 8.02 covering the set of circumstances at hand.***

***To allow member paid release time not specifically required by contract is counter productive to the Employer's mission.

***Consequently, no specific paid release time is provided for in the final contract.

This proper understanding of the intent of the language of the second paragraph of Section 8.02 is sufficient justification to deny the grievance at hand. However, management can also make a strong case for denying the leave request due to the aspect of reasonableness. In the case at hand, the grievant, who is both a steward, a Labor Council Executive Board member, and a member of the committee attempting to implement a comprehensive physical fitness and wellness policy, as required in Article 40 of the contract, requested the leave so as to present information on the committee's progress to a group of bargaining unit members located at Ravenna. As previously mentioned, this is 130 miles one way from the grievant's assignment.

The Employer has not acted arbitrarily, capriciously, or in a discriminatory manner in the case at hand. Conversely, management carefully considered the facts at hand prior to denying the request for 8.02 leave time. There has been no violation of the contract. The grievance must be denied."

By way of relevant background, the current and first collective bargaining agreement resulted from fact-finding proceedings before Dr. Harry Graham. In his report, Dr. Graham discussed the positions of the parties with reference to different types of paid leave proposed by the Union, including the following:

"The Union also proposes that various amounts of time be allocated members of the bargaining unit for the purpose of attending various types of Union meetings and conventions. Specified Union officers should receive eighty (80) hours paid time to conduct Union business.

The Union seeks establishment of 'Labor Council Associates', known more commonly as union stewards. They should be provided time to handle grievances. Should paid time for stewards to handle grievances be denied, the Union desires that the time limits for filing or processing grievances be extended. The Union also proposes that stewards have additional time off to consult with various other Union officials.

In order to deal with arrangements for negotiating the next Collective Bargaining Agreement, the Union proposes there should be a negotiating of seven members. They should be on paid administrative leave for the time of each negotiation session.***"

The Fact-Finder set forth the position of the State Highway Patrol and observed that:

"The State is willing to provide the Union with a total of 1040 unpaid hours of leave annually for the conduct of Union business and attendance at Union conventions.***"

In his discussion, and evaluation of the positions of the parties Fact-Finder Graham observed as follows:

"The main bone of contention in this article is the provision of paid time to Union members to serve as Staff Representatives. The State points that it is philosophically opposed to such a practice. It puts the State in the position of paying for large amounts of time that are not going to be spent on the people's business. Furthermore, the main criteria relied upon by Factfinders supports its positions.***"

In the absence of evidence to the contrary, the Factfinder has no option but to recommend to the parties that the State not provide the type of paid leave sought by the Union...the Factfinder has no option but to recommend to the parties that there be no paid leave"

As regard other types of paid leave for Union Stewards, or Associates, Fact-Finder Graham recommended as follows:

"The Labor Council may designate one Labor Council Associate and alternate at each Division facility. The Labor Council Associates are Union Stewards as that term is generally used. The Associate or alternate will be permitted time off as set forth below during the workweek to attend to administration of the Agreement. During such time the Associate or alternate shall continue to be paid at their regular rate and shall receive all fringe benefits, seniority accrual and other benefits."

was for the purpose of attending to the "administration of the Agreement", including a report on the activities and progress of the two committees of which the grievant was a member. The activity for which the grievant requested paid leave was directly related to the administration of the Agreement. Trooper Plunkett had expressly informed his supervisor as to "the nature of the activity he was to perform." As result of the denial, the grievant was required to attend the Ravenna meeting on his own time, thereby constituting a denial of a specific benefit negotiated by the parties, and appearing in the agreement.

The grievant testified that he was a member of the Executive Board, and a duly designated member of two committees. He represented that, on other occasions he had attended various types of meetings, including joint seminars in Columbus, Ohio, at which a number of F.O.P. Associates, and alternates were in attendance. In addition, on January 7, 1987, he participated in a meeting of the Ohio Labor Council Associates of District 1, and, in both instances he was granted paid leave. The grievant testified that he had received paid leave for the purpose of attending Executive Board and Health and Wellness committee meetings. However, he was denied his request to attend a District 4 meeting scheduled at Ravenna, Ohio on February 18, 1987, the purpose of which was to update the membership as regard committee activities, which denial is deemed at variance with the agreement.

By way of summation, the Union maintains that pursuant to the language of Section 8.02, and consideration of the findings, and discussion of Fact-Finder Graham, the purpose of the grievant's request for paid leave was contractually proper and was unreasonably withheld, resulting in a contract violation.

The Union maintains that the reasons advanced by the Employer for denial of the grievant's request for paid leave are without contractual support, or foundation. In fact, the denial

POSITION OF F.O.P.:

The Union maintains that paid leave for Union associates, or stewards, is expressly provided for, and contemplated by Section 8.02 of the agreement, and that the grievant's request to attend a meeting of local lodge members in Ravenna, Ohio, was unreasonably denied. In the judgment of the F.O.P. the purpose of the grievant's request was well within the parameters of the language of Section 8.02 as contemplated by the parties, and is supported by the discussion of Fact-Finder Graham.

The Union underscores the fact that the grievant is a duly designated member of both the Labor/Management Committee, and Fitness and Wellness Committee, which committees are provided for, and referred to in the agreement. Accordingly, it was deemed necessary, and within the contemplation of the contracting parties that associates, or alternates be permitted time off, with pay, for the purpose of attending to the "administration of the Agreement", (Section 8.02).

The F.O.P. points out that its members are organized throughout the State of Ohio for administrative purposes so as to coincide with Highway Patrol districts, and divisions. Each district has a lodge with local lodge officers. Three organizational meetings are scheduled periodically, including district meetings. These meetings are deemed necessary in order to fulfill the requirements of the contract, including the work of the Labor/Management Committee (Article 15), and Fitness and Wellness Committee (Article 40).

On the basis of the language of Section 8.02, together with other provisions deemed relevant, the Union contends that the purpose of the grievant's request for paid leave was well within the stated objectives of the agreement, and that his request was unreasonably denied. The Union asserts that the grievant's request to attend a meeting of Local Lodge #150 in Ravenna, Ohio

of the request is at variance with past practice in comparable situations; the decision was "devoid of plausibility", and was arbitrary. The basic issue which the Arbitrator is requested to consider, and determine is whether the purpose of the request for paid leave was contractually appropriate. The decision is not governed by other considerations including whether some other labor council associates could have performed the functions in a more expeditious manner, the location of the meeting, or travel considerations, all of which are deemed irrelevant in face of the contractual language. The Union reasons that there is no language appearing in the contract that supports any of the four reasons advanced by the State Highway Patrol for denial of the request; no such restrictions, as advanced by the Employer have been negotiated, or appear in the contract as conditions governing the granting of paid leave.

The Union represents that, "the grievant applied for 8.02 leave to attend a meeting of the Associates and members of the Highway Patrol District 4 to discuss the progress of the Labor/Management and Physical Fitness Committees on which he served." The F.O.P. Urges that the State Highway Patrol has conceded that,

"Section 8.02 time may be used for purposes outside the grievance procedure but argued that such uses must be 'based on the totality of the circumstances in question and must be considered on a case-by-case basis'." (Union brief, page 3)

However, the F.O.P. contends that the Employer is seeking to reserve to itself the right to decide whether the use of the time was reasonable, and has unreasonably, and arbitrarily denied the grievant's request. The F.O.P. reasons that:

"Once the Employer concedes that Section 8.02 time may be used for purposes other than grievance administration, the intent argument based upon F.O.P. contract proposals and Dr. Graham's report is really moot. F.O.P. Associates either have the right to use Section 8.02 time for contract administration purposes or they do not. Since the Employer agrees that they do, the only issue that remains is to determine the circumstances that will justify denial of that time by the Employer." (Union brief, pages 3 & 4).

Pursuant to the language of Section 8.02 "permission will be granted after consideration of work operations of the patrol" which requires the test of reasonableness of the request. In the instant case, the Employer had no valid reason to deny Section 8.02 time, and the grievant's request was unreasonably denied. The Employer may not seek to exercise judgment as to whether the use of such time was necessary. This area is solely within the province of the associate requesting paid leave, and the Union:

"While the Employer has the right to assure itself that the Section 8.02 time requested will be used for contract related matters, it cannot substitute its judgment for the Labor Council's on the necessity of the activity. Here, the grievant wanted to use Section 8.02 time for a proper purpose. The grievant was entitled to the paid time if no operational problem prevented it. The Employer does not assert such an operational problem. In the absence of such an operational problem, the Section 8.02 time requested by the grievant should have been allowed." (Union brief, page 5).

POSITION OF EMPLOYER:

The State Highway Patrol maintains that the grievant's request for paid leave was unwarranted; the request did not qualify under the express language of Section 8.02.

As regards the administration of the contract language such requests are considered on an individual basis. The Employer states that it has considered, granted, or denied such requests consistent with the contract language. Specifically, as regards the grievant's request for paid leave the State Highway Patrol concluded that attendance at a meeting of a local lodge at Ravenna, Ohio did not qualify for paid leave under the agreement. The stated purpose of attending the meeting was not to conduct any business involving committees of which the grievant was a member, nor was it concerned with administration of the agreement.

Accordingly, the request for paid leave was properly denied. The travel time involved was unreasonable. The trip involved travel of approximately 300 miles; other union officials

were available who were closer to the meeting site. The stated purpose of the request did not qualify under Section 8.02 of the Agreement. The State Highway Patrol maintains that no contractual violation has been demonstrated. The contract does not grant paid leave for attendance at a local lodge meeting:

"The Employer strongly believes the requested leave time was properly denied. Testimony will show that the type of activity undertaken by the grievant does not fall within the intent of the language found in Section 8.02." (Employer opening statement, page 2).

The Employer represents that the grievant's purpose in attending the local lodge meeting did not qualify for paid leave under the language of Section 8.02. As regard requests for purposes other than specifically spelled out in Article 8, the Employer considers such requests on a case-by-case basis. Among the factors considered are, the circumstances surrounding the request, the nature of the request, number of employees involved, type of activity, and impact on the operation of the division to which the Trooper is assigned:

"In the case at hand, the leave request was denied due to the totality of the circumstances. Based on the rationale presented to the Employer at the time, it was unreasonable to grant the grievant paid leave time for several reasons. First, he had to drive approximately 150 miles each way to attend the meeting. Thus, he was requesting pay for approximately six hours of driving time. Second, there were other Union officials who could have accomplished his stated mission, including the Labor Council's full-time Staff Representative, who resided closer to Ravenna than the grievant. Third, in a previous, similar request, which was granted, the Labor Council Staff Representative had indicated there would be no further requests for paid leave for the specific purpose stated on the date in question. Perhaps most importantly, the grievant was asking for paid leave during a time he was not scheduled to work, which meant he was requesting extra pay and benefits as the result of a Union activity he was volunteering for." (Employer brief, pages 5 & 6).

The Employer reasons that its decision denying the request for paid leave was consistent with the language of Section 8.02. In the first place, the grievant's request for paid leave was not for the purpose of attending to the "administration of the

Agreement." However, even were the request to be viewed as for the purpose of attending Labor Council meetings, the contract contemplates "a reasonable amount of paid time" in such situations, thereby recognizing the Employer's right to exercise discretion based on the "totality of the circumstances". In such situations, "[p]ermission will be granted after consideration of work operations" and, "[s]uch permission will not be unreasonably withheld", (Section 8.02). The Employer reasons that, based on the "totality of the circumstances" paid leave was not unreasonably withheld, and, that the grievant did not have an absolute contractual right to be granted paid leave for the purpose requested.

By way of summary, the Employer concludes as follows:

"In summary, the Employer asserts the grievant has no absolute contractual right to paid leave in the case at hand. The Employer asserts the contractual language, in conjunction with management's right to properly manage the workforce, properly leaves the granting or denial of leave for the incident in question the right of management. Based on the totality of the circumstances, the Employer correctly and reasonably denied the request." (Employer brief, page 11).

"In the case at hand, management carefully considered the grievant's request. First, it was clearly indicated by both Mr. Baker [Labor Council's Staff Representative] and the grievant that he wished to attend the meeting as a committee member, whose purpose was to update the general membership on the progress of the two committees of which he was a member. There was no mention or indication that he wished to attend as an Associate to confer with other Associates, until the concept was forwarded by the Union's advocate at arbitration." (Employer brief, pages 15 & 16).

ARBITRATOR'S FINDINGS AND OPINION:

The Arbitrator is duty-bound to consider the grievance on the basis of the evidence, and applicable provisions of the agreement. The parties have enjoined on the Arbitrator the obligation to conform his decision to the evidence, and applicable provisions of the agreement without diminution, or enlargement:

"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 language of this Agreement."

As the Arbitrator views the core of the grievance, it is concerned with whether paid leave is contractually warranted when requested by a labor council associate in order to attend a local lodge meeting for the purpose of updating the members as regard the activities of the Labor/Management Committee, and Fitness and Wellness Committee of which the grievant was a member.

The Arbitrator acknowledges that both parties are entitled to full, and meaningful implementation of the terms and conditions which they negotiated, and incorporated in their agreement. Section 8.02 provides for paid leave for certain purposes, and for labor council associates, and alternates at each division facility, under qualifying conditions.

One type of paid leave is subject to, and conditioned on the requirement that the purpose of the leave be "to attend to administration of the agreement", (Section 8.02). It is therefore patently clear that the parties negotiated a paid leave provision subject to specific restrictions, as distinguished from general appearance participation in Union meetings. The paid leave with which the parties, and Arbitrator, are here concerned is of a designated category, as distinguished from other types of paid leave.

Section 8.02 also provides for "paid time" applicable to participation in grievance meetings:

"In addition to the time permitted by the grievance procedure, each Labor Council Associate or alternate shall be permitted to use a reasonable amount of paid time to consult with Labor Council representatives and represent bargaining unit members at grievance meetings."

It is evident that the parties intended, and chose to delineate, and distinguish as between different types of leave, and activity for which payment would be made. Such distinction is

reflected by the language of Section 8.02 that, the associate "shall identify the nature of the activity he is to perform" when entering another work area for the purpose of engaging in the functions of an associate, or union steward.

As regards the instant case, the language provides that paid leave is to be provided for the purpose of attending to the "administration of the Agreement." The parties have deemed it appropriate to expressly set forth the type of activity for which paid leave would be provided, including mandatory paid leave, and paid leave that is reasonable and subject to the exercise of sound discretion.

It was acknowledged by the State Highway Patrol throughout the course of the arbitration hearing that requests for paid leave other than for the administration of the agreement are handled on a case-by-case basis, and in light of the totality of the circumstances. It is not the purpose, or intent of the Arbitrator to any way modify the existing practice. Thus, as indicated during the arbitration hearing, in a number of instances associates, or union stewards have been granted paid leave for the purpose of attending meetings of committees recognized by the collective bargaining agreement. As regards the instant factual situation, and, on the basis of the evidence, it appears that the grievant's purpose in attending the Ravenna meeting was not to participate in meetings of the two committees of which he was a member; rather, his attendance was for the express purpose of updating the local lodge membership as regard committee activities which does not appear in the agreement to automatically warrant granting of paid leave. The Arbitrator is therefore constrained to accept the reasoning of the Highway Patrol that, the type of activity, and purpose for which the grievant desired to attend the Ravenna meeting "did not fall within the intent of the language found in Section 8.02".

In the judgment of the Arbitrator, the language negotiated by the parties governing paid leave for associates, or alternates, does not apply to local lodge meetings the purpose of which is to discuss the activities on a state-wide basis of two contractually recognized committees of which the grievant was a member. Such activity does not reasonably fall within the purview of "the administration of [the] Agreement." In event the parties should deem it appropriate to extend paid leave on a mandatory basis to other types of Union activity, such request should be the product of negotiation, and specifically set forth in the Agreement. Such extension of benefits cannot, however, be achieved through arbitration.

Both parties have made reference to the views expressed by Fact-Finder Graham in the course of which he dealt with a variety of types of proposed paid leave. Although the discussion of Fact-Finder Graham is relevant by way of commentary, and its reasoning effect, it cannot control over express language that appears in the agreement. Fact-Finder Graham observed, on page 16 of his Report, that the Union had proposed that "various amounts of time be allocated members of the bargaining unit for the purpose of attending various types of union meetings and conventions. Specified officers should receive 80 hours paid time to conduct union business." Fact-Finder Graham concluded that:

"the Factfinder has no option but to recommend to the parties that the State not provide the type of paid leave sought by the Union."

Additionally, Fact-Finder Graham stated that he "has no option but to recommend to the parties that there be no paid leave for Union Staff Representatives." However, Fact-Finder Graham did recommend "that a bank of 2080 hours be made available to the Union for such purposes as contemplated in its proposal", that is, "attendance at various union meetings and conventions." This recommendation was not adopted. Nevertheless, Fact-Finder Graham

recognized that both parties would benefit "from a system of enforcement of the agreement relying upon knowledgeable union stewards." Fact-finder Graham proceeded to recommend the language that appears on page 20 of his Report. However, the language that was finally adopted is as appears in Section 8.02, and limits compulsory paid leave to paid leave to associates or alternates "to attend to administration of [the] Agreement", as well as for other purposes that are not here involved.

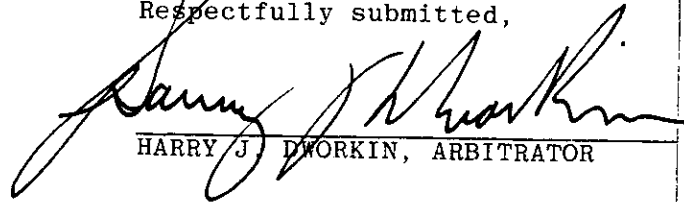
As regard other types of paid leave, pursuant to Section 8.02, Labor Council Associates or alternates are permitted a "reasonable amount of paid time" to consult with Labor Council representatives, and for other purposes. The inclusion of the adjective "reasonable" contemplates that the decision be "governed by reason", be rational, honest, fair, and equitable, as distinguished from being arbitrary. This conclusion is buttressed by the language that, "permission [for paid leave] will not be unreasonably withheld."

The foregoing language necessarily requires that the decision be made on an individual basis, based on consideration of relevant factors and the "totality of the circumstances." The grievant under the circumstances here presented did not have an absolute contractual right to be granted paid leave, and the agreement does not provide such.

On the basis of all of the evidence, including consideration of the bargaining history, and background, it is the conclusion of the Arbitrator that the request of the grievant, a Labor Council Associate, to attend a local lodge meeting of District 4, at Ravenna, Ohio, for the purpose of reviewing with the membership the activities of two labor management committees of which the grievant was a member, is not contractually authorized and is subject to sound exercise of discretion, and,

"such permission will not be unreasonably withheld." Inasmuch as the Employer acted reasonably, the grievance will be denied.

Respectfully submitted,



HARRY J. DWORKIN, ARBITRATOR

A W A R D

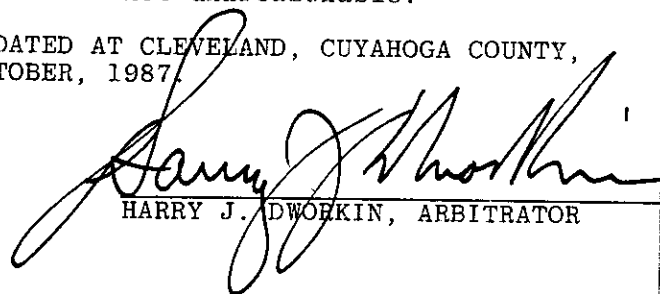
I.

No violation of the contract resulted when the Employer denied the request of the grievant, a Labor Council Associate, for paid leave for the purpose of attending a local lodge meeting of District 4, in Ravenna, Ohio, on February 18, 1987; the purpose for attending the meeting was to discuss, and review the activities of two labor management committees of which the grievant was a member, and did not directly concern the administration of the Agreement;

II.

The type of activity for which the grievant requested paid leave did not fall within the contemplation of the parties as set forth in Section 8.02; the purpose for requesting paid leave was subject to the Employer's sound exercise of discretion, and reasonableness of the request; the Employer's denial of the request under the totality of the circumstances was not unreasonable.

AWARD SIGNED, ISSUED, AND DATED AT CLEVELAND, CUYAHOGA COUNTY, OHIO, THIS 22nd DAY OF OCTOBER, 1987.



HARRY J. DWORKIN, ARBITRATOR