

#155

AWARD OF ARBITRATOR

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

HARRY J. DWORKIN,
ARBITRATOR

RE: OCB GRIEVANCE NO. 87-1680

A P P E A R A N C E S

On Behalf of Employer

LT. D. L. ANDERSON	Management Advocate
CAPT. C. E. IRELAND	Findlay District Headquarters
LT. D. E. ZWAYER	Walbridge Post Commander

On Behalf of Union

PAUL L. COX	Counsel for F.O.P.
ED BAKER	Staff Representative
CATHY B. PERRY	Legal Assistant
M. E. TINCHER	Trooper (Grievant)

THE ISSUE

WAS THE EMPLOYER CORRECT IN DENYING THE REQUESTS OF THE GRIEVANTS FOR VACATION LEAVE ON JANUARY 19, AND FEBRUARY 2, 1987, AND ON AUGUST 7, 8, AND 9, 1987, DUE TO ANOTHER MEMBER OF THE WORK GROUP, AND SHIFT BEING ON MILITARY LEAVE OF ABSENCE?

IF NOT, WHAT SHALL THE REMEDY BE?

PRELIMINARY STATEMENT AND BACKGROUND:

The instant dispute concerns the proper construction, and application of §43.04 of the collective bargaining agreement which provides the procedure for granting requests for vacation leave:

§43.04 Vacation Leave

Vacation leave shall be taken only at times mutually agreed to by the Employer and the employee. The Employer may establish minimum staffing levels for a Patrol Post or work station which could restrict the number of concurrent vacation leave requests which may be granted for that Post or work station.

The Employer shall grant first priority to vacation leave requests received at least six (6) months, but no more than one (1) year, prior to commencement of the requested vacation leave period. Such "seniority vacation leave requests" shall be granted with preference to employees with the greatest rank or classification within a classification series at the Patrol Post or work station in question. Otherwise, in choosing among conflicting "seniority vacation leave requests," seniority shall govern.

All other requests for vacation leave shall be made at least twenty one (21) days prior to the commencement of the requested vacation leave period. Requests made less than twenty one (21) days prior to the commencement of the vacation leave period may be considered by the Employer but need not be approved, regardless of staffing needs.

When an emergency exists, in the sole and exclusive opinion of the Employer, all vacation leave requests may be denied, including those requests already approved. If an employee is called back to work from a scheduled vacation leave period, the employee will have the right to take the vacation leave at a later time and will be paid at time and one-half (1-1/2) for the time the employee is on duty status.

Pursuant to the plain meaning of the aforesaid language, vacation leave entitlement may be taken "only at times mutually agreed to" by the State Highway Patrol and the employee. The section recognizes further that the State Highway Patrol is authorized to "establish minimum staffing levels" at each Patrol Post, the exercise and effect of which "could restrict the number of concurrent vacation leave requests which may be granted [simultaneously] for that Post or work station." The foregoing language is a recognition of the need to maintain minimum staffing levels, which may limit the granting of vacation leave requests submitted by state troopers for the same vacation time.

Paragraph 2 recognizes seniority as a factor to be considered in early filing of requests for vacation leave. First priority must be granted to vacation requests that are filed at least six months prior to the requested vacation leave period. Such early requests for vacation leave are designated as "seniority vacation leave requests" which the Employer is contractually obligated to grant within each Patrol Post, and classification in accordance with seniority.

Paragraph 3 of §43.04 mandates that requests for vacation leave, other than those subject to preference by reason of early filing must be made "at least twenty-one (21) days prior to the commencement of the requested vacation leave period." In event the request for vacation leave in this category is made less than 21 days prior to the commencement of the vacation leave, the approval of the request is subject to the judgment and discretion

of the Employer, and "need not be approved regardless of staffing needs."

Finally, in emergency situations, the granting of any vacation leave request is subject to the "sole and exclusive" judgment of the Employer. In event of an emergency situation, all vacation leave requests may be denied, including those requests already approved.

The class action grievance before the Arbitrator arose from two separate requests for vacation leave filed by state troopers which were subsequently denied. One request was filed by Trooper Tincher for August 7, 8, and 9, 1987, and the other by Trooper Heyman for January 19, and February 2, 1987. Both troopers were senior members of their respective work groups and shifts, with assigned complements that did not exceed seven in number. There is no dispute but that the reason, and basis for the denial in each instance was, that, a junior member of the work group and shift was on mandatory military leave of absence. In the position of the State Highway Patrol the denial of the request in both instances was contractually warranted, inasmuch as the granting of the request would have resulted in the afternoon shift being undermanned, and would have been in violation of the Divisional Policy which prescribes the maximum number of troopers permitted to leave at the same time based on the normal shift complement.

Two separate grievances were filed which are concerned substantially with the identical issue relating to the denial of requests for vacation leave due to the fact that another member

of the work group, and shift was on mandatory military leave. In effect, therefore, the two grievances present a class action type of dispute, the outcome of which would affect all troopers similarly situated. In one of the grievances the request for vacation leave was filed six months prior to commencement of the requested vacation leave period. In the other case, the request for vacation leave was filed less than six months, but within 21 days prior to the commencement of the requested vacation leave period.

In the grievance involving Trooper Tincher, the request for vacation leave was for August 7, 8, and 9, 1987. Trooper Tincher's request was denied by reason of the fact that a junior employee in the work group, and shift was on mandatory military leave during the days in question.

The request of Trooper Heyman was filed for vacation leave for January 19, and February 2, 1987, and was similarly denied for the reason that the work group, and shift would have been undermanned due to one member being on military leave.

In both instances, the F.O.P. claims that the State Highway Patrol disregarded the principle of seniority; that the troopers who were on military leave had less seniority, which the F.O.P. construes as a denial of the contractual right granted senior officers for vacation leave preference on the basis of shift seniority in accordance with the requirements of §43.04.

POSITION OF F.O.P.:

The F.O.P. relies principally on the claim that a contract violation resulted when the Employer chose to recognize the two requests of military leave filed on behalf of junior employees, and, incorrectly construed the contract language by denying the senior officers their "preferred requests" for vacation leave. The F.O.P. contends that the contract language is clear and specific as regard "preferred requests for vacation leave" which are based on seniority. Such requests must be granted at each Patrol Post in accordance with seniority within the work group. The Union reasons that pursuant to the language of the labor agreement, "seniority requests for vacation leave", if made in timely fashion, must be granted "unconditionally"; such requests may not be "evaded", or denied due to the fact that a member of the work group, and shift is on military leave. The F.O.P. reasons that in situations as are here presented it is the responsibility of the Employer "to make necessary adjustments so as to accomodate vacation requests of seniority employees."

The F.O.P. acknowledges that, §15.02 provides for "a military leave of absence" so as to enable troopers to participate in "mandatory annual training or active duty" in the military service.

However, the F.O.P. contends that the granting of mandatory requests for military leave "do not supersede the preferential vacation requests of senior members of the work group." Pursuant

to the F.O.P.'s reasoning, the fact that a member of the work group, and shift, is on military leave is wholly immaterial;

"a subsequent absence for military leave does not change the unconditional obligation of the Employer to grant a timely request of a seniority employee for vacation leave."

The reconciling of such vacation leave requests with absences due to military leave "is solely a problem of management" and does not serve to change the contract language. The F.O.P. suggests that the problem could have been handled, and the senior employees request for preferential vacation leave granted, by utilizing overtime, and thereby accord meaning both to the contractual language governing preferred vacation requests, and at the same time permit troopers to go on military leave.

The F.O.P. suggests also that the coverage problem resulting from military leaves may also be solved by transferring officers "to prevent staffing shortages". "Overtime or transfers can be used if there are manpower problems." (Union brief, page 5).

The F.O.P. maintains that preferential claims for vacation leave must be granted on the basis of seniority, and may not be denied, or by-passed on the ground that a request for military leave is filed, and granted which coincides with the requested vacation leave. In the two instances here presented, a junior member of the work group was granted military leave, following which the senior officers' prior requests for vacation leave was denied on the basis of minimum staffing; however, the denial resulted in disregarding shift seniority as applied to requests for vacation leave.

The F.O.P. reasons that the State Highway Patrol is here seeking to avoid the express intent, and purpose evinced by the parties in negotiating §43.04 which recognizes "preferred requests for vacation leave, on the basis of seniority within a work group, and shift." The F.O.P. views the Employer's position as a punitive measure designed to counteract the contractually mandated permanent shift requirements. Accordingly, the Employer's military leave argument is viewed as an excuse to enable the Employer to avoid the clear mandate of the negotiated language of §43.04. Further, the requirements of military leave existed prior to the April 28, 1986 collective bargaining agreement. The vacation leave provision was negotiated "with full awareness of the military leave practice." The parties did not change the practice governing the granting of military leave, "and the parties assumed it would continue as in the past." With full awareness of the practice regarding the granting of military leave, the parties proceeded to negotiate a six months preferred vacation leave provision, which the Employer is "attempting to disregard through devious means."

The F.O.P. disputes the representation of the Employer that "military leave activities have priority over other leaves":

"Section 43.04 is very specific. There is nothing in the contract to support the Patrol's position that Military Leave takes precedence over Vacation Leave. There is no language in the contract to support the policy in Employer's Exhibit 3 and the Patrol has ignored the language in the Vacation Leave Article." (Union brief, page 3).

The F.O.P. charges that the Employer is "seeking to abrogate a negotiated provision of the agreement for ulterior

reasons, and as a punitive measure so as to counteract the inclusion of a permanent shift provision in the labor agreement." The Union concludes that the policy as regards minimum staffing requirements is a "red herring" designed to confuse, and obfuscate the true purpose of the vacation leave provision. It is the continuing responsibility of management to implement, and observe the negotiated terms and conditions of employment, and to carry out the manifest intent of the contracting parties. Accordingly, the State Highway Patrol is obligated to utilize other alternatives, including overtime if necessary, or the transfer procedure in order to provide minimum manning requirements, and at the same time recognize the preferred status of seniority employees in requests for vacation leave. Relief is requested for all employees affected in the form of eight hours pay for each day they requested, and were denied vacation leave under similar circumstances.

POSITION OF STATE HIGHWAY PATROL:

The State Highway Patrol contends that no contract violation resulted, and none has been demonstrated in denying the grievants' requests for vacation leave. The decision under the circumstances involved the exercise of managerial judgment consistent with the contract language. The decision was warranted in order to maintain minimum staffing levels within the work groups, and shifts involved, and at the same time permitting

another member of the work group and shift to go on military leave, which was a mandatory obligation.

In the case of the grievance arising from the Toledo Post, "the denial was based on existing Divisional Policy, which dictates that only one trooper per work shift will be on leave at a time." The Divisional Policy provided in pertinent part as follows:

"At a patrol post the maximum number of troopers permitted on leave at any time shall be as follows:

<u>TROOPERS ASSIGNED</u>	<u>PERMITTED ON LEAVE</u>
0 thru 7	1
8 thru 14	2
15 thru 23	3
24 thru 31	4

At those facilities where two or three troopers are permitted to be on leave at the same time, only one trooper from each work shift group will be permitted leave at any one time." (Employer brief, page 11).

The State Highway Patrol reasons that it was required to take into consideration the contract language governing vacation leave requests, as well as the granting of military leave of absence for mandatory training with the armed forces, together with the existing Divisional Policy concerning vacation leave "which dictates that only one trooper per work shift group will be on leave at a time." The State Highway Patrol represents that, "all three of these contractually-related factors had to be taken into consideration in the case at hand."

The Employer represents that the denial of the requests for vacation leave filed on behalf of senior members of the work

group, and shift, were denied "based on a clearly established minimum staffing level for the work-shift group" to which the two grievants were assigned, and that the action taken was consistent with management's contractually recognized right to establish minimum staffing levels. The Employer reasons that, "the required minimum staffing level is needed to insure the effective delivery of service" to the general public.

On April 8, 1987, which was subsequent to the signing of the collective bargaining agreement on April 28, 1986, a military leave policy was formulated, and issued, which includes, in pertinent part the following:

"...As the arbitrator points out, clear language of the contract overrules contradicting policy. Therefore, management must contact an employee's military commander prior to the dates of scheduled weekend drills to attempt to reschedule the employee's drill dates, or the employee shall have his/her schedule adjusted to allow attendance to the weekend drill..."

"Commanders should be aware that military leave activities have priority over other leaves. If a weekend drill date or required summer camp conflicts with another employee's leave request, the military leave shall prevail."

On October 24, 1986, the State Highway Patrol issued a policy governing "annual leave requests" which included the following language:

INTENT

The intent of this procedure is to provide control over the granting of vacation to division employees and to limit the granting of vacation, by itself or in conjunction with accumulated holiday, compensatory

time and/or personal leave; in such a manner that the operational effectiveness of any office or facility will not be adversely affected.

RESTRICTIONS

The order of priority for granting leave requests shall be as follows:

- 1 - Vacation
- 2 - Holiday/Compensatory Time
- 3 - Personal Leave

At a patrol post the maximum number of troopers permitted on leave at any time shall be as follows:

<u>TROOPERS ASSIGNED</u>	<u>PERMITTED ON LEAVE</u>
0 thru 7	1
8 thru 14	2
15 thru 23	3
24 thru 31	4

As pointed out by Lt. Darryl Anderson, Personnel Coordinator, the vacation leave policy is not intended to prescribe a minimum number of troopers on duty on each shift; rather, a minimum staffing problem is dealt with by restricting the number of troopers who may be off per shift at any given time. The vacation leave policy prescribes the number of troopers who may be off at the same time based on the complement assigned to the post:

"The established policy instead provides guidance for the maximum number of troopers allowed on leave from each shift. This is a much more manageable and logical approach in providing guidelines for granting or denying leave requests, and at the same time insuring the established statutory duties of the Division are met.

As indicated in testimony, the policy is flexible and allows for extraordinary circumstances.

In the instant cases, allowing either Tpr. Tincher or Tpr. Heyman leave from their assigned shift would have severely limited their post's delivery of services to the motoring public during the times in question." (Employer brief, page 12).

As regards the F.O.P.'s suggestion that the minimum staffing levels should have been dealt with by utilizing overtime, the State Highway Patrol represents that utilization of overtime would be costly, and would adversely impact on the budget.

By way of conclusion, the Employer reasons as follows:

"...It is the Employer's firm believe the plain language of the contract, read in pari materia provides a clear, concise and definitive answer. Article 43, dealing with vacation leaves, clearly indicates the leave is permissive and subject to minimum staffing concerns. Conversely, Article 52 clearly indicates military leaves of absences are in fact required. The result of a trooper being on vacation leave or military leave is the same: that officer is not available to perform the duties the Ohio State Patrol is required to perform while on leave. The Employer's logic is therefore obvious: troopers on military leave are considered when other leaves are encountered.

There has been no contractual violation in the Employer's action. There was no 'mutually agreed' time for the vacation between the Employer and the grievants. The procedure establishing minimum staffing level guidelines does not conflict with the contract, and provides guidance and uniformity for commanders throughout the state." (Employer brief, pages 15 & 16).

ARBITRATOR'S FINDINGS AND OPINION:

The class action grievance presents no significant dispute as regard material facts. In both situations the request was submitted by a senior officer within the work group and shift, at

least six months prior to commencement of the requested vacation period, and was subsequently denied by reason of a trooper with less seniority being granted military leave. The F.O.P. has contended, in essence, that the fact that a junior member of the work group and shift, was granted leave for mandatory military duty, did not serve to warrant denial, or "cancellation" of the senior trooper's prior request for vacation leave. The F.O.P. contends that the contract language unconditionally grants to senior officers the preferential right to be accorded "seniority vacation leave requests" and that such requests must be granted ("shall be granted") in accordance with seniority within the classification, or work group at the Patrol Post or work station. The Union points out that the contract language does not provide that preferential requests for vacation leave yield to absences occasioned by a trooper being on military leave notwithstanding it is mandatory that military leave be granted.

In the grievance filed by Trooper Tincher, Patrol Post 48, District 1, it is alleged that:

"the military leave request was submitted by unit [trooper] with less seniority on 5/21/87, which conflicts with the six month priority."

The request for vacation leave filed by Trooper Tincher was denied "due to another officer taking military leave during that time." However, the F.O.P. asserts that pursuant to §43.04, paragraph 2, of the collective bargaining agreement, "a vacation [leave request] that is submitted at least six months prior to the vacation shall be granted first priority."

The second grievance was submitted by Trooper Heyman, Patrol Post 8, District 1, and asserts that the request for vacation leave submitted on August 15, 1987, was denied due to the fact that "another unit [trooper] was on military leave." The grievance asserts that "units on military leave should not be counted in the total of units of leave", and that therefore, the grievant was improperly, and in violation of the language of §43.04 denied his request for vacation leave.

In both instances the grievances were denied on the basis that the requests of the junior units [troopers] for military leave "had priority" over the prior requests of senior troopers for vacation leave.

In determining the issue presented, the Arbitrator is duty-bound to accord appropriate consideration to the evidence, the provisions of the collective bargaining agreement, and applicable state law. To the extent warranted, all provisions of the agreement and state law should be reconciled, and an effort made to harmonize the various provisions, including consideration of policies enunciated pursuant to the Employer's authority.

As of the time the collective bargaining agreement was negotiated and finalized, on April 24, 1986, there was in effect a provision of the State Administrative Code, effective January 10, 1982, which made it mandatory that state employees be granted "military leave of absence from their duties without loss of pay, for such time as they are in the military service on field training or active duty for a period not to exceed 31 days in any calendar year", (Ohio Admin. Code 123:1-34-04, Military Leave With Pay).

The parties recognized the requirements of the foregoing and set forth in their agreement language stating that qualified state employees "are entitled to a military leave of absence from their duties without loss of pay, for such time as they are in the military service on field training or active duty." (§52.02, Military Leave With Pay).

It is therefore clear from the foregoing background that qualified troopers employed by the State Highway Patrol "are entitled to military leave of absence from their duties without loss of pay", and that such language as appears both in the collective bargaining agreement, and the Ohio Administrative Code grants military leave to qualified state troopers irrespective of their rank, or seniority within the work group, or shift. In the judgment of the Arbitrator, and on the basis of the foregoing, military leave requests take precedence over other forms of leave, including vacation leave requests as set forth in the agreement.

By way of further background, subsequent to the signing of the collective bargaining agreement, and issuance of an Opinion and Award by Arbitrator Leach, which dealt with the issue of adjustment of schedules so as "to allow attendance at weekend military drills" the State Highway Patrol formulated, and issued a policy, and procedure dated October 24, 1986, which, in pertinent part was expressly designed,

"to provide control over the granting of vacation to division employees and to limit the granting of vacation, by itself or in conjunction with accumulated holiday, compensatory time and/or personal leave; in such a manner that the operational effectiveness of any office or facility will not be adversely affected."

The State Highway Patrol is authorized to draft, and promulgate rules and policies applicable to its operations, and which do not conflict with any specific provisions, terms and conditions, as set forth in the agreement. Pursuant to 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: [the collective bargaining agreement lists 14 specific areas recognized as being within the rights and authority of management]".

An examination of the Divisional Policy governing minimum staffing requirements, dated October 24, 1986, requires the conclusion that the policy is well within management's recognized authority, and that the policy does not conflict with other terms and conditions of employment as set forth in the agreement. The policy appears reasonably designed to implement the express language of §43.04 which recognizes that,

"the Employer may establish minimum staffing levels for a Patrol Post or work station which could restrict the number of concurrent vacation leave requests that may be granted for the Post or work station."

In order to maintain minimum staffing requirements at each Patrol Post the policy promulgated on October 24, 1986, restricts the number of troopers who may be permitted to leave at the same time on the basis of the troopers assigned to each post. The total number of troopers assigned, as set forth in the policy range from 7 to 31; the corresponding number of troopers who are permitted to leave at the same time range from 1 to 4. The policy states further that:

"At those facilities where two or three troopers are permitted to be on leave at the same time, only one trooper from each work shift group will be permitted leave at any one time. Supervisors shall not be considered a part of this leave allotment."

The Arbitrator finds no inconsistency, or conflict, between the portions of the Policy governing the granting of requests for vacation leave, and the terms of the contract insofar as they apply to the instant dispute. The Arbitrator notes, however, that he is not here passing judgment as regards the entire Policy, which is quite extensive, and applies to a variety of situations. In event an application of portions of the policy other than those that are here dealt with may be in dispute, such matters would have to be determined on a case-by-case basis, and a determination made as to whether the application of the policy, or its language are in conflict with the terms and conditions that appear in the collective bargaining agreement. The Arbitrator's decision in the instant case is confined to the issue as to whether the cancellation of a prior request of a senior member of the work unit, and shift, by reason of granting of a mandatory request for military leave to a junior officer, violated the agreement. The Arbitrator is persuaded that the decision in the respects indicated was consistent with both the Ohio Administrative Code, and the collective bargaining agreement, and no conflict resulted. Military leaves, irrespective of the rank of the officer, are mandatory, and take precedence over other forms of leave consistent with the maintenance of minimum staffing requirements deemed by the Employer as necessary to carry out the

functions, and responsibilities imposed on the State Highway Patrol. The Arbitrator observes, however, that the State Highway Patrol is duty-bound to act reasonably in implementing its policy, and to avoid unwarranted, or arbitrary denials of prior requests for vacation leave. Wherever possible adjustments should be made so as to accomodate the requests in both situations; however, the Arbitrator is not warranted in imposing overtime requirements upon the Employer in order to accomodate both requests. Pursuant to the instructions issued by the Personnel Commander on April 8, 1987:

"This points out the necessity for post commanders who have employees active in military organizations to maintain liaison with the employee's military commanding officer. It is incumbent for affected post commanders to become specifically familiar with the commanding officer, so that no confusion arises as to who to contact to discuss making up of weekend drills.

Through our contacts with various military commands, it is apparent that most drill and training schedules are made up well in advance. Affected commanders should maintain communications with their employee's military commander, to secure their training schedule well in advance of the actual dates."

The Arbitrator is in agreement with statement of the Employer that:

"Obviously, the language addressing minimum staffing levels in Section 43.04 acknowledges the fact the Employer retains the right and responsibility to provide at least minimum levels of services to the motoring public of the State." (Employer brief, page 13).

The Arbitrator concludes that military leave requirements take precedence over other leaves, including vacations, and such

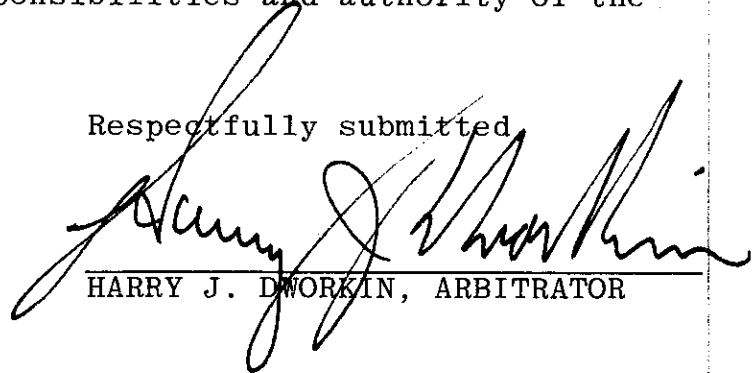
conclusion is not in conflict with other specific provisions of the agreement. §43.04 recognizes that in considering the granting of vacation leaves, the Employer "may establish minimum staffing levels for a Patrol Post or work station which could restrict the number of concurrent vacation leave requests which may be granted for that post or work station." The foregoing language recognizes that the maintenance of a "minimum staffing level" may restrict the vacation leaves granted to officers within a work group, or shift. The absence of a junior officer by reason of military activity would reasonably affect the minimum staffing level, and therefore, would warrant restriction of the "concurrent vacation leaves" even though filed prior to the request for military leave.

The second paragraph of §43.04 must be construed in pari materia with the previous section, and, subject to the language that precedes it, the Employer is duty-bound to grant "seniority vacation leave requests" with preference to employees with the greatest seniority. The Employer is obligated to recognize seniority preference in granting vacation leaves subject, however, to the over-riding requirements of minimum staffing levels, and absences due to military leave. It should be noted that the request of senior officers for vacation leave, as set forth in this opinion, are subject to "minimum staffing levels", thereby indicating that requests of senior officers for vacation leaves cannot be denied for reasons that do not conform to the concept of "minimum staffing levels", and for reasons that are unwarranted. In light of all of the relevant factors the Arbitrator concludes

that the Employer was fully warranted, and justified in according consideration to absences due to military leave in determining minimum manpower requirements, and whether vacation leave requests in excess of those specified by the policy be granted. The Arbitrator concludes that there has been no violation of §43.04, by reason of the denial of the grievants' requests for leave inasmuch as the granting of such requests, in view of the fact that a member of each work group and shift was on military leave, would have decreased the complement of the work force below the minimum staffing level. Pursuant to the intent expressed in the language of §43.04, the granting of vacation leaves is subject to the exercise of sound judgment and discretion on the part of the Post Commander, with consideration accorded to the operational needs, and "minimum staffing levels" of the Employer. There does not appear to be any discretion as regards the granting, or denial of requests for military leave which, in the judgment of the Arbitrator, take precedence over other types of leave. Such conclusion is mandated by both law, and the agreement; the granting of vacation leave is subject to the operational needs of the Employer, including minimum staffing levels. The Employer's policy, or guidelines for minimum staffing levels was not violative of any terms and conditions of employment, including the provisions governing requests for vacation leave. For the foregoing reasons, the class action grievance is denied; the requests of senior members of the work group, and shift were denied solely for the reason that officers at each Post were subsequently granted military leave requests, and, to have granted

the grievants' requests for vacation leave during periods that overlapped the military leave requests would have resulted in the personnel assigned to the respective shifts being below the minimum staffing levels as established by Divisional Policy. The Arbitrator finds that the Policy was well within the authority of management, consistent with the Ohio Administrative Code, and is reasonably related to the responsibilities and authority of the State Highway Patrol.

Respectfully submitted,



HARRY J. DWORKIN, ARBITRATOR

A W A R D

I.

The denial of the requests of the grievants for vacation leave was well within the judgment and discretion of the Employer, and was not violative of the collective bargaining agreement;

II.

The denial of the senior troopers' requests for vacation leave was due solely to the fact that another member of each work group and shift was on military leave of absence, which takes precedence over vacation leaves;

III.

The Employer was warranted in establishing a Policy designed to maintain minimum staffing levels thereby limiting the number of concurrent absences.

AWARD SIGNED, ISSUED, AND DATED AT CLEVELAND, CUYAHOGA COUNTY, OHIO, THIS 24th DAY OF FEBRUARY, 1988


HARRY J. DWORBIN, ARBITRATOR