CONTRACTUAL GRIEVANCE PROCEEDINGS
ARBITRATION OPINION AND AWARD

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| In The Matter of Arbitration<br>Between:<br><br>THE STATE OF OHIO<br>Department of Public Safety<br>State Highway Patrol<br><br>-and-<br><br>THE FRATERNAL ORDER OF POLICE<br>Ohio Labor Council, Inc<br>State Unit I | * | Case No. G87-1765<br><br>Grievance Nos. 234, 237 (4 parts) 239, 253, 255 & miscellaneous.<br><br>Decision Issued<br>November 9, 1988 |

APPEARANCES

FOR THE STATE

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| Lieutenant D. L. Anderson | Co-Advocate |
| N. Eugene Brundige | Co-Advocate |
| Peter Coccia | Labor Relations Coordinator |
| William Johnson | Administrative Assistant |
| Major T. W. Rice | Witness |
| Captain D. A. Mack | Witness |
| Lieutenant M. R. Everhart | Witness |
| Dr. R. M. Loar | Witness |

FOR THE FOP

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|---|---|
| Paul L. Cox | General Counsel |
| Ed Baker | Staff Representative |
| Cathy B. Perry | Legal Assistant |
| R. L. Greenwood | Grievant |
| S. K. Harrah | Grievant |
| E. E. McKibben | Grievant |
| J. F. Roberts | Grievant |
| D. H. Plunkett | Grievant |

ISSUES: Article 61 -- Overtime -- Multiple Grievances

Jonathan Dworkin, Arbitrator
P.O. Box 236
9461 Vermilion Road
Amherst, Ohio 44001

THE SUBMISSION

This controversy combines five separate grievances, similar to one another only because each relates in a uniquely individual way to the overtime distribution and equalization language of the Agreement. Article 61, the Overtime Clause, states in pertinent part:

ARTICLE 61 - OVERTIME

§61.01 Overtime and Compensatory Time

Because of the unique nature of the duties and emergency response obligations of the Division, management reserves the right to assign employees to work overtime as needed.

. . .

§61.03 Equalization of Overtime

The Employer shall rotate and equalize scheduled overtime opportunities among qualified employees. Such equalization should be complete within the July 1 - June 30 fiscal year. For purposes of this Article "equalization" shall be satisfied when employees are within ten (10) hours of each other. Those employees who are not equalized shall receive pay at the overtime rate. All overtime hours offered to employees but refused will be credited for purposes of equalization of overtime.

Good faith attempts will be made to equalize overtime by shift at any one installation. At the end of any measured equalization period, deviations by shift may be permitted, if caused by inability of the Post Commander to schedule overtime for cer-

tain shifts as the result of unavailability of overtime opportunities.

The principle that Management has authority to construct policies for assigning overtime and administering equalization forms the backdrop for each grievance. The corollary to the principle is that policies are invalid if they violate Article 61. The grievances all contend that the Employer has violated Article 61. Several demand monetary remedies on behalf of named grievants and all similarly affected members of the Bargaining Unit.

The dispute was presented to arbitration in Columbus, Ohio on January 8 and 25, 1988. The submission was extraordinarily broad. The parties requested an award on each grievance answering the question, "Was the Employer's policy and/or its application consistent with contractual overtime-equalization requirements?" At the outset of the hearing, the State added substance to the submission, requesting the Arbitrator to revise policies found not to be in compliance with the Agreement. The Union agreed to the expanded issue, thereby authorizing the Arbitrator to function both as an interest and rights referee.

The scope of the submission invited "medi-arb" -- a merger of mediation and arbitration in which the parties are encouraged to fashion their own remedies before relinquishing a dispute for the

imposition of a final and binding award by a neutral. The State and and the Union accepted the process and were able to offer marginally agreeable suggestions for resolving several (but not all) of the controversies. The awards which follow incorporate some of the products of mediation, but it is to be carefully observed that none of the grievances was settled or withdrawn. No memorandums of agreement were executed. All issues remained viable subjects of controversy when the hearings ended; the awards are those of the Arbitrator, not the parties.

## GRIEVANCE #234 - RADAR SCHOOL OVERTIME

Facts and Contentions: The grievance demands pay to equalize for overtime obtained by individuals selected to serve as radar instructors at the Highway Patrol Academy. Several weekends each year, the Patrol assigns Troopers from its "qualified" list to conduct radar classes at the Academy for local law-enforcement. The premium (overtime) wages earned by instructors are funded by a special federal grant; they do not derive from the same source as pay for normal overtime.

The Patrol's practice is to assign "qualified" instructors. The overtime is not counted in the equalization process. It is not

added to an instructor's accumulated overtime hours, nor do any posts assign compensatory overtime to those who are not chosen to conduct radar schooling. The policy has created discrepancies between overtime pay records and overtime equalization rosters. When a Trooper at the Granville, Ohio Post discovered the inconsistency, he initiated the following "class" grievance:

> **STATEMENT OF GRIEVANCE** . . . Upon checking the HP29 and HP29A forms for the Granville Patrol Post the grievant found 38 hours of SOT overtime that were worked by Tpr. Dunn and recorded on the HP29 but were not recorded on the HP29A and were not equalized as per the Labor [A]greement. The first incident occurred September 10th and 11th, 1986; the second on October 23rd and 24th. . . .
>
> **REMEDY REQUESTED:** That 38 hours of overtime pay be awarded to each Trooper at the Granville Post and any other Post in the State with similar conditions. File 00-9-500.20 Page 4 states Federal overtime is subject to equalization. . . .

The Union's position is straightforward. The Agreement requires the Employer to make good-faith attempts to equalize <u>all</u> overtime worked at a post. Radar instruction is counted as post overtime as demonstrated by the fact that the hours are recorded on post form HP29. Article 61 makes no exception for particular kinds of work; it does not exempt Academy assignments. In the Bargaining Unit's judgment, therefore, the State's practice constitutes a pat-

ent violation of both the language and negotiated intent of Article 61, §61.03.

A pivotal difference in the positions of the parties pertains to instructor qualifications. The Union contends that the State's list of instructors is artificial, discriminatory, and factually indefensible. According to the Union, every Ohio State Trooper is qualified to provide radar instruction.

The Bargaining Unit's main purpose when it proposed equalization language was to eliminate favoritism which, in its view, infected working conditions of Troopers at many posts. By creating a mathematical formula for overtime distribution, the Union hoped to eliminate the potential for disparate treatment. Overtime equalization was vigorously debated in negotiations. At first, the State rejected the language of the Union's proposal as well as the underlying concept. Eventually, due to a Fact-Finder's active assistance, the substance of the proposal was adopted. The Union contends that the Employer's exclusive list of radar instructors whose overtime is not subject to equalization flies in the face of its bargaining-table commitment. It recalls the pre-contract era when overtime could be distributed capriciously and creates the potential for the very discriminatory practices Article 61, §61.03 was supposed to eliminate.

The Employer takes strong exception to the Union's arguments. It maintains that, contrary to the Union's "unsupported" assertion,

every State Trooper is not a qualified radar instructor. Instructors have to be trained before they are capable of teaching others. The Patrol conducts classes for selected employees who volunteer for inclusion on the list; the selections are made in accordance with established criteria -- good understanding of the subject, strong instructional and communication skills. Although the training takes only two days, the Employer contends it is thorough and intensive. It calls attention to the fact that the named Grievant was neither trained nor qualified.

The Patrol urges that it has exercised utmost care to prevent discriminatory assignments of radar instructors. Since 1980 -- six years before the Collective Bargaining Agreement was adopted -- opportunities have been consciously equalized among qualified Troopers. Moreover, the State has made every effort to assure that all posts are fairly represented on the list of instructors.

"Normal" overtime is financed by federal funding for STEP (Selected Traffic Enforcement Program). STEP overtime is used to intercept and reduce highway hazards caused mainly by speeding and alcohol impairment. According to the Patrol, equalization of STEP overtime was all that was contemplated at the bargaining table; neither party was concerned with radar instruction. The State points out that combining STEP and radar-instructor overtime would be prohibitively costly and impracticable. It would call for additional

wage expenditure for last year of more than a half-million dollars. A prospective award requiring combined equalization in the future would erode the program intolerably. The State's post-hearing brief makes the following points:

> If it was decided it would be proper to equalize RADAR instructor overtime with STEP overtime from this point on, there would be many posts where it would be impossible to equalize 38-40 hours in a years' time, due to the severely limited amount of hours of STEP available to many posts this year, and due to an approximate reduction of 40% of funds. The alternative here would be to limit a RADAR instructor's participation to one course a year. This would severely detract from the maintenance of the instructor's ability, due to the necessity of frequency of performing in order to maintain the necessary level of performance. At those posts where there are enough hours to theoretically equalize the 38-40 hours, it would be necessary to severely curtail or eliminate the RADAR instructor's opportunity hours at the post level. Consequently, a trooper with perhaps the highest proficiency in speed enforcement at the post would be eliminated from enforcing the speed laws in the overtime program.

Decision: The determinant issue is not what it purports to be. This case is only peripherally about overtime distribution; the main subject is qualifications. The opening sentence of §61.03 states clearly that only qualified employees are eligible for overtime equalization. It provides, "The Employer shall rotate and

equalize scheduled overtime opportunities among qualified employees." According to the State, the representative Grievant was not qualified to teach radar classes. If the contention is correct, none of the members of the class represented were qualified either; it is unlikely that individuals on the list of instructors are grievants.

The State's position is a risky one if all Troopers are qualified radar instructors. In such event, there would be but two possibilities: either there was no meeting of the minds on radar instructor overtime or extra work performed by instructors must be merged with STEP overtime at each post for equalization purposes. Section 61.03 makes no distinction between STEP overtime and teaching overtime.

Having identified the problem, the Arbitrator finds himself unable to solve it. The submissions on instructor qualifications were long on arguments but short on hard facts. The record does not provide necessary resources for a meaningful decision on whether the training and training-selection factors are essential or capricious; and a decision on that question is crucial to a determination of whether or not the Patrol's policy is in violation of Article 61, §61.03.

It should be obvious to both parties that the current policy is unsatisfactory. There is no specific language for applying over-

time equalization rules to radar school. The probability is that the parties did not consider the matter until this grievance was initiated. Clearly, they did not discuss it at the bargaining table although they engaged in prolonged discussions of the Union's proposal. Nevertheless, the negotiated principle of rotating and equalizing overtime opportunities cannot be ignored. The Arbitrator finds, therefore, that the policy either should conform to the overall equalization requirement or radar-instructor opportunities should not be assigned to members of the Bargaining Unit.

The Patrol's contention that it is not feasible to merge STEP and radar-school overtime is convincing. But an alternative does exist. Radar instruction has been a mixed assignment, shared by "qualified" Troopers and supervisors. Accordingly, the award will amend the policy, requiring the Patrol to merge STEP and radar-instructor overtime on post equalization rosters, or stop assigning radar-instructor overtime to the Bargaining Unit. The award is not intended to deprive the Unit of opportunities for premium pay indefinitely; it is meant to foster negotiations between the parties leading to a more appropriate solution.

The Union's demand for a monetary remedy will be denied. Since the qualification issue has not been resolved, a remedy would be premised entirely on arbitral speculation.

## GRIEVANCE #237

Grievance #237 is a four-part class action. Parts 1 and 3 challenge the Patrol's policies for equalizing overtime of employees on long-term disability leave and short-term sick leave. Part 2 protests the policy of charging overtime refusals against Troopers who are on vacation. Part 4 requests an award barring the Patrol from charging overtime refusals when the time offered is separated from an employee's regular shift.

### Grievance #237 Part 1 - Disability Leave

Grievant, a Trooper assigned to Post 88 in Lebanon, Ohio was injured in the performance of her duty. She was disabled for five months -- September 27, 1986 to March 1, 1987. In order to ensure the integrity of overtime equalization, the Employer credited her with thirty-one hours of overtime refused during her time off.

The Union contends that charging Grievant for refusing overtime she was incapable of working constituted a gross inequity in conflict with the purposes of Article 61, §61.03. In its view, the available hours should have been saved and offered to Grievant when she returned to duty. Alternatively, the Union maintains that she

should have been compensated for the difference (within the contractually specified ten-hour margin) between her on-duty overtime hours worked or voluntarily declined and the hours credited to the Trooper highest on the roster.

The Patrol maintains that the first alternative offered by the Union is unworkable and the second is demonstrably unfair to the Employer. Banking overtime hours to allow an injured employee to catch up after s/he resumes active employment may be possible in some instances, but there is no assurance that a disabled employee will return to duty during the fiscal year, or in time to work the banked hours before the end of the fiscal year. Additionally, the Patrol argues:

> Also, if the employee's hours were "banked" and they were required to work all those hours in a "catch-up" fashion, it could result in an undue burden on the employee. Additionally, this would place other employees in a "hold status" until this employee could be equalized

Decision: The arguments on both sides of the issue are compelling. It would be unreasonable to require the Employer to pay an employee for all overtime hours missed during his/her long-term disability. Banking overtime hours for an employee on such disability may or may not be feasible depending on the length of absence.

At the same time, it is clearly inequitable for a disabled Trooper to be charged with overtime refusals during the period when s/he is not scheduled to work and could not possibly accept overtime assignments.

The Arbitrator presumes that the parties intended to bring about reasonable and equitable results when they negotiated Article 61, §61.03. However, neither the Patrol's policy nor the remedies requested by the Union conform to that intent. The circumstances demand a policy change. Accordingly, the Arbitrator will revise the policy, incorporating the perceived needs and expressed contractual interpretations of both parties to the extent possible.

Grievance 237, Part 2 - Vacations

Two Troopers of the Lebanon, Ohio Post were credited with overtime refusals while on vacation. The identical issue was decided by Arbitrator Harry J. Dworkin in Case No. G86-0128 (July 28, 1987). Pursuant to Article 20, §20.07, Paragraph 5 of the Agreement, that award and its underlying contractual interpretation were "final and binding" upon the parties. Accordingly, the award will be incorporated as the award in this dispute.

Grievance 237, Part 3 - Sick Leave and Emergencies

A Trooper required dental surgery and took one week of sick leave. Upon returning to work, he discovered that he had been credited with overtime refused. The Union's position is that Article 61, §61.03 does not contemplate crediting overtime to employees on sick leave any more than it sanctions refusals credited during an employee's vacation.

The Employer argues that it has done its best to accommodate employees on sick leave. The current policy permits an employee to work overtime "around" his/her anticipated sick leave. To award a blanket restriction on the Employer's right to calculate overtime refusals for employees who may be ill for an indefinite period of time would unduly burden the system. The Patrol points out that an employee could be ill for a month or longer and gain a "penalty payment" because, upon returning to work, his/her overtime hours would be artificially lower than those of other employees at the post.

The issues raised by this grievance were thoroughly explored in the "medi-arb" process. The award will expand and, in some respects, amend the current policy. It is the Arbitrator's belief that the policy will come close to meeting the Union's desires without unduly burdening the Employer.

Grievance #237 Part 4 - "Split-Shift" Overtime Opportunities

This portion of the grievance protests the occasional practice of some posts of assigning STEP overtime for demonstrably inconvenient periods unconnected to an employee's regular shift, and then crediting refusals if the employee declines the "opportunity." For example, a post may offer 10:00 p.m. to 2:00 a.m. overtime to an employee whose regular shift begins at 6:00 a.m. Accepting the offer would require the employee to report to work at 10:00 p.m., work four hours, and then remain idle four hours waiting for the start of his/her shift.

The arguments of the Union and the Employer on this issue were thoroughly considered and resolved by this Arbitrator's award in grievance No. 175. The decision, which will be incorporated as the award in this dispute, affirmed the Patrol's right to schedule overtime as needed, but confined the right by requiring a balance of scheduling needs and privileges of employment. While the policy is facially permissible, it cannot be exercised unreasonably, arbitrarily, or in disregard of Troopers' right to expect that overtime will be offered at reasonable times, consistent with their normal shifts.

## GRIEVANCE #239 - STATE-WIDE OVERTIME

The Issue. Originally, the question raised by this grievance was whether or not the Patrol was required to include Ohio State Fair assignments in equalizing post overtime. During the course of the hearing, it was expanded by mutual agreement to include overtime assignments for Buckeye Boys' State and Buckeye Girls' State. All three functions create substantial opportunities for overtime. Candidates for the assignments are selected state-wide from among volunteers who meet physical-fitness qualifications. The Patrol attempts to involve every post in the projects and, at the same time, it is cautious not to reduce the workforce of any post to an extent that will interfere with the primary mission.

Overtime derived from State Fair and Boys' and Girls' State is not credited on post rosters for overtime-equalization purposes. The Union contends that this policy conflicts with Article 61, §61.03. It notes that the Agreement does not exempt state-wide overtime from its requirements. The remedy demanded by the Union is that the rosters be re-calculated to include State Fair, Boys' State, and Girls' State overtime and that employees found to be more than ten hours below the highest individual on each post equalization roster as of June 30, 1986 and 1987 be compensated accordingly.

The State's response mirrors its answer to grievance No. 234 pertaining to radar-instructor overtime. It contends that the cost of including state-wide assignments in post overtime calculations would be prohibitive. Moreover, it is unlikely that most posts would have enough STEP hours available to make up the difference.

The Arbitrator has reviewed relevant contractual language, the Fact-finder's recommendations, and notes taken during bargaining. He finds no indication whatsoever that the negotiators considered state-wide overtime in their deliberations. Their positions focused almost entirely on distribution and equalization of STEP overtime. Nevertheless, it is apparent that the Union's objective was to create a situation in which all overtime would be offered fairly and impersonally. If favoritism existed before the Contract, it was to be prohibited afterwards. This objective was accepted by the State's negotiating team, and the uncontrolled assignments to the activities at issue represent a philosophical departure from what was adopted. The Arbitrator agrees that merging the overtime with STEP opportunities at each post would be prohibitive. Accordingly, he has fashioned a new policy designed to assure that state-wide overtime will be distributed as equitably as possible and that the Union will have legitimate grievance rights if distributions are inequitable.

## GRIEVANCE #253 - DISPATCHER VACATIONS

The question of whether or not the Patrol legitimately can credit overtime refusals during a Trooper's vacation has been addressed twice -- in grievance #237 and the decision by Arbitrator Harry J. Dworkin in G86-0128. This grievance differs in that it applies to Dispatchers' vacations rather than Troopers'. The State calls attention to the fact that Dispatchers work rotating shifts and their vacations create overtime opportunities for the other members of their classification at the post. If they are permitted to "fall out" of rotation during their vacation periods, they will necessarily create penalty payments which are neither warranted nor envisioned by Article 61, §61.03. In its brief, the Employer demonstrates what it considers to be the fallacy of the Union's position by the following example:

> If dispatchers were not considered to work overtime while on vacation, and therefore "fell out" of the rotation while on leave, the employer could be faced with paying the "penalty" called for in 61.03 if other dispatchers remained ahead at the end of the equalization period. As an example, a senior dispatcher might take the last three weeks of June off on vacation. This could easily lead to 40 opportunity hours for each of the remaining dispatchers. Consequently, the employer would be liable for thirty hours of pay, at the overtime rate, through no fault of its own, and due to the conscious action of the employee receiving the windfall benefit.

The Arbitrator finds no contractual justification for treating Dispatchers differently than Troopers relative to overtime and vacations. The problems expressed by the Employer are of its own making, caused by its decision to hire a limited number of Dispatchers at each Post and place them on rotating shifts. While the decision is undoubtedly a sound one, productive of economy and efficiency, it does not justify a unilateral reduction of negotiated rights. The negotiated rights of the entire Unit were defined by Arbitrator Harry J. Dworkin in Grievance No. G86-0128. Nothing in the Agreement provides a resource for the determination that Dispatchers are not entitled to the same benefits as Troopers. The award in this grievance will be substantively the same as the award in Grievance No. 237.

GRIEVANCE #255 - OVERTIME ON DAYS OFF DURING VACATION

Issue and Arguments: This is not a class action and the remedy granted will apply only to the named Grievant.

Grievant is a Communications Technician assigned to Post 14, Wilmington, Ohio. In July, 1987, he took vacation for a period in excess of one week. According to Article 43 of the Agreement, his

vacation allotment was calculated in workhours, not in weeks. If he had more than one year and less than six years of service, his entitlement was eighty hours. The length of the Employee's time off was extended by military leave, and he was away from his job a total of fifty days.

During Grievant's vacation, his turn for an overtime assignment came up on one of his unscheduled days. He declined the offer and was credited with an overtime refusal. In the Union's judgment, the credit was unauthorized. It repudiated the decision in Grievance Number G86-0128 which held unequivocally that overtime refusals cannot be charged against an employee on vacation. It is to be noted that the prior decision has been applied to Dispatchers and (by implication) Communications Technicians by the preceding award in Grievance No. 253.

The Employer's arguments in this case are the same as in Grievance No. 253, but with an added dimension. Substantial reliance is placed on the current policy which excludes regular days off from vacation, regardless of whether they fall at the start, finish, or in the middle of a vacation period. The Patrol notes that vacations frequently occur in late spring and early summer and leave virtually no room for the Employer to offer catch-up overtime. "Consequently," the Patrol argues, "management would have to pay . . . the overtime 'penalty' through no fault of its own."

Decision: The Arbitrator has researched this problem in an attempt to determine if a similar case has arisen in either the public or private employment sector. No published decision on the subject was found, and it is probable that the Employer's position is a novel one. There are, however, numerous published opinions which analyze the general intent behind vacation allowances as the creation of a reciprocal benefit. The advantage for the employee is obvious -- paid time off. But there is also a benefit derived by the employer, which was clearly articulated by Arbitrator Marlin Volz in a 1966 private-sector decision:

> Vacations are for the mutual benefit of employees and employers. The employee who returns to work after a period of rest and relaxation and who has had some free time with his family and to tend to personal affairs is a more valuable man to his employer.
>
> . . .
>
> A vacation is also one of the economic attractions which a Company offers to its employees to remain on the payroll or to become employees. While a vacation may be regarded as earned or deferred compensation, it may also be considered as an investment by the Company in promoting the longevity of service of its employees and a more productive working force. Therefore, it cannot be said that the employees would necessarily receive in some other form of compensation the estimated value of paid vacations. [Dover Corp., 48 LA 965, 969.]

The Arbitrator agrees entirely with the rationale in Dover Corp. He believes that implicit recognition of the mutual benefit pervades any negotiations over vacations and forms part of the contracting intent unless an agreement clearly states otherwise. An assignment of overtime in the midst of a vacation period constitutes an erosion of such bargaining intent. An overtime assignment primarily contemplates that work will be performed; it is not a subterfuge for assessing an overtime refusal for equalization purposes. An overtime refusal is effectively a penalty for declining to work.

The grievance is well taken. Although vacations are contractually specified as hours rather than weeks, the hours allotted by Article 43, §43.01 conform to forty-hour work-weeks. Upon completion of one year's service, an employee earns eighty hours. The entitlement increases by forty-hour segments -- one hundred twenty hours for six years of service, one hundred sixty hours for thirteen years, and two hundred hours for twenty-five or more years. It is clear to the Arbitrator that the negotiators did not intend to permit the Employer to break into an employee's vacation segment with a work assignment.

It should be noted that the Employer has a contractual alternative to protect itself against the June 30 "penalty." It has the vested right to schedule vacations according to its needs. Article 43, §43.04 of the Agreement provides in part:

> 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 Section further provides that vacation priority is to be granted for leave requests "received at least six (6) months, but no more than one (1) year, prior to commencement of the requested vacation leave period." Certainly, six months is adequate for the Employer to schedule in a manner that does not bring it to the brink of a penalty overtime payment.

The grievance will be sustained. However, the parties should carefully observe that the award will be limited to days off falling between vacation days. It will not change the Patrol's policy relative to days off at either end of a vacation period.

## ALLEGED NON-COMPLIANCE WITH PRIOR AWARD

During the hearing, the Union contended that the State has not complied with the award in Grievance No. G86-0128, holding that the Employer cannot charge overtime refusals against Troopers on vacation. The Patrol vigorously objected, contending that the Arbitra-

tor lacked jurisdiction to consider the complaint. In its brief, the Patrol exhaustively analyzed the jurisdictional question, providing numerous citations and arguments.

The Arbitrator finds it unnecessary to explore the State's position. Arbitral authority under the Agreement is vested by a formal grievance or a mutual stipulation. Neither exists on this issue. Therefore, the complaint will be dismissed without prejudice to the Union's right to seek a remedy through proper channels.

## RETENTION OF JURISDICTION

As stated, these awards derive in part from mediatory discussions conducted during the arbitral hearings. They may or may not conform in every respect to the tacit agreements achieved in that process. Therefore, the Arbitrator will retain limited jurisdiction for a limited period of time to permit either party to reconvene the hearing for clarifications or corrections of the awards. The reserved jurisdiction will expire in two weeks if neither party gives prior notice of its intention to invoke it.

## AWARDS

### GRIEVANCE #234

Unless and until the parties negotiate a method for equalizing overtime connected with radar instruction, the activity shall not be performed by members of the Bargaining Unit. Alternatively, if the State persists in using represented Troopers for the activity, it shall merge STEP and radar-instructor overtime on Post equalization rosters.

This award shall be effective forthwith, but shall not be retroactive. It is not intended to deprive the Unit of opportunities for premium pay indefinitely; it is meant to foster negotiations between the parties leading to a more appropriate solution.

The Union's demand for monetary relief is denied.

### GRIEVANCE #237 - LONG-TERM DISABILITY

The Employer is directed to adopt and implement the following policy in lieu of its existing policy pertaining to long-term disability and overtime equalization:

> An individual on disability leave shall not be charged with declinations of overtime opportunities. However,

when s/he returns from leave, s/he shall be credited with the lowest number of overtime hours reflected on the post roster or the number of hours credited to him/her when the leave commenced, whichever is the higher.

The Employer shall comply with this policy from the date of the occurrence protested by the grievance. Compliance shall be either by equalization payment or deduction of refusal hours from the current fiscal year's overtime rosters.

GRIEVANCE #237 - OVERTIME CHARGED DURING VACATIONS

In accordance with the award in Case No. G86-0128, individuals on vacation may volunteer for and work overtime. In such event, they will be credited for hours worked. Employees cannot be charged for overtime declined during their vacation periods, however, unless they affirmatively accept overtime assignments and subsequently refuse to work them.

The State shall make the aggrieved employees whole.

GRIEVANCE #237 - SICK LEAVE AND EMERGENCIES

Employees on sick leave shall not be charged with overtime refusals during the term of their leaves. Overtime hours shall be banked and appropriate make-up opportunities will be offered to the employees upon their returns to duty.

Employees who create overtime opportunities because of sick leave near the end of the fiscal year shall not receive compen-

sation for missed opportunities because of the leave. Instead the Employer shall have the right to make necessary corrections in the subsequent fiscal year. Any employee taking sick leave after March 15 whose leave creates overtime opportunities for others shall receive the benefit of those opportunities on the overtime roster for the next fiscal year. For example, an employee whose sick leave in April creates sixteen hours of overtime and who receives no make-up opportunities prior to June 30 will begin on the July 1 roster with a minus balance of sixteen hours. The negative hours must be made up with overtime opportunities prior to June 30 of the next year, or they will be compensated in accordance with Article 61, §61.03.

If an individual scheduled for overtime is unable to carry out the assignment due to accident or emergency which prevents him/her from working, s/he shall not be charged with overtime refused. The hours will be saved and make-up opportunities will be provided in accordance with the preceding paragraph.

As used in this policy, "sick leave" contemplates no more than two continuous weeks of leave. If sick leave is for more than two weeks, the employee's rights shall be the same as if s/he were on long-term disability.

GRIEVANCE #237 - "SPLIT-SHIFT" OVERTIME

The State's policy shall conform to the following limitations expressed by the award in Grievance No. 175:

> The Employer has vested authority to schedule overtime. The employees have a competing right to expect that overtime will be offered at reasonable times, consistent with their usual work require-

ments. Scheduling which wholly ignores this right of employees is arbitrary and does not create "opportunities" for which refusals may be credited on the equalization roster.

When the Employer's mission conflicts with reasonable employee convenience relative to overtime, the mission takes priority so long as the scheduling decision is not arbitrary, capricious, and/or discriminatory.

As in Grievance No. 175, the protest in this dispute does not establish a violation of the foregoing restrictions. Accordingly, no monetary relief is granted.

GRIEVANCE #239 - STATE-WIDE OVERTIME

Overtime for Ohio State Fair, Buckeye Boys' State, and Buckeye Girls' State assignments shall be merged and recorded on a state-wide roster at each Post. The roster shall be maintained separate and apart from the Post STEP overtime roster. State-wide overtime shall be equalized at each Post. The roster shall contain the name and seniority date of every qualified Trooper in the Bargaining Unit who volunteers for state-wide assignment. No individual at a Post shall be assigned state-wide overtime opportunities twice until everyone on the roster has served or declined to serve once; none shall serve three times until all have had two opportunities; etc.

The State shall make every reasonable effort to distribute state-wide overtime opportunities equally to all persons on the state-wide roster. The roster shall be active continually from year to year. It shall not be subject to the June 30 cutoff applicable to STEP overtime under §61.03 of the Agreement.

An "opportunity" is defined as an assignment to one-half session (ten days) at the Ohio State Fair, or a full session at Buckeye Boys' State, or a full session at Buckeye Girls' State.

A person who declines an opportunity shall be considered to have served unless the declination is caused by the individual's legitimate sick leave or disability leave.

Persons on the roster shall be selected for opportunities in accordance with their equalization entitlements and, if entitlements of two or more individuals are equal, seniority shall govern. New entries on the state-wide roster shall enter with the highest number of service opportunities then currently recorded on the Post state-wide overtime roster. Consequently, their positions shall be the lowest level of eligibility at their Posts.

The state-wide roster shall record opportunities retroactive to January 1, 1987, which means that all those who have received opportunities since January 1, 1987 shall be credited with the service(s) for equalization purposes. There shall be no exception to this provision. Overtime credit shall be assessed for all opportunities subsequent to January 1, 1987 regardless of the reason for an individual's selection for state-wide overtime.

If a Trooper is transferred from one Post to another, s/he shall carry his/her position on the state-wide roster intact. This does not alter the provision that a Trooper coming onto the roster for the first time, either as a new hire, a new volunteer, or one who became qualified after having been disqualified in the past enters the roster with the highest number of opportunities recorded on the state-wide roster at the Post.

GRIEVANCE #253 - DISPATCHER OVERTIME CHARGED DURING VACATIONS

In accordance with the award in Case No. G86-0128, Dispatchers on vacation may volunteer for and work overtime. In such event, they will be credited for hours worked. They cannot be charged for overtime declined during their vacation periods, however, unless they affirmatively accept overtime assignments and subsequently refuse to work them.

The State shall make the aggrieved employees whole.

GRIEVANCE #255 - OVERTIME ON DAYS OFF DURING VACATION

The grievance is sustained to the extent that it protests credited overtime refusal(s) for unscheduled days between Grievant's vacation days. For the purpose of overtime equalization, a vacation includes all days encompassed within the vacation period. The decision in Grievance Nos. G86-0128, 237, and 253 apply to unscheduled days between vacation days. This award does not apply, however, to unscheduled days occurring at either end of a vacation period.

The named Grievant shall be made whole for losses occasioned by the improper overtime-refusal credit.

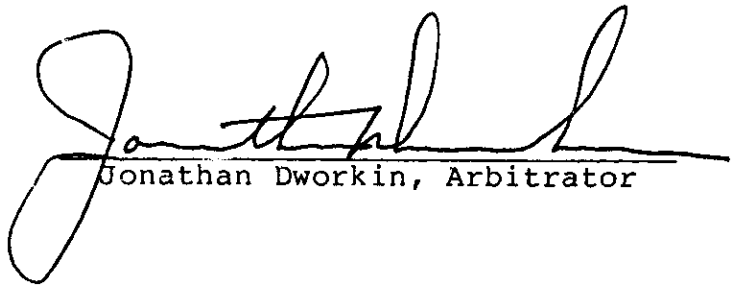
ALLEGED NON-COMPLIANCE WITH PRIOR AWARD

The Arbitrator lacks jurisdiction of the complaint. Accordingly, it is hereby dismissed without an award on the merits and without intended prejudice to the Union's right to seek redress through proper channels.

RETENTION OF JURISDICTION

The Arbitrator hereby reserves limited jurisdiction of the grievances presented, for clarification and/or corrections of all or any of the awards rendered. Either party may invoke the retained jurisdiction by appropriate notice to the other party and the Arbitrator of its intention to do so. If no such notice is given within two weeks from the date of these awards, the jurisdictional reservation shall expire and each award shall be final and binding "as is," in accordance with Article 20, §20.07, Paragraph 5 of the Agreement.

Decisions Issued:
November 9, 1988



Jonathan Dworkin, Arbitrator