

#1058

In the Matter of Arbitration Between:

OHIO DEPARTMENT OF HIGHWAY SAFETY
DIVISION OF HIGHWAY PATROL

and

FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.
BARGAINING UNIT 1

Re: 15-03-941108-0096-04-01 (Shasteen)

Hearing held June 9, 1995 in Columbus, Ohio

Award issued June 23, 1995

APPEARANCES

Union

Paul Cox, Esq., Chief Counsel
Communications Technician II Joan Shasteen,
Grievant

State

Sgt. Robert Young, Management Advocate
Rodney Sampson, OCB second chair
Ms. Anne Van Scoy, State Patrol

Arbitrator

Douglas E. Ray

I. BACKGROUND

Grievant is a Communications Technician II who has been with the State Patrol for 18 years. She performs dispatcher duties at the Jackson post where she is one of 4 dispatchers. Her shift is 7 AM to 3 PM.

The case involves a grievance protesting the denial of her request for 8 hours personal leave. On October 26, 1994, Grievant submitted a written request for 8 hours personal leave on October 28, 1994. She wished to use the leave to drive her youngest daughter to the Columbus airport

for her return to Air Force basic training in Texas. The daughter had come home for the funeral of her father, Grievant's ex-husband. The request was denied on the basis that another dispatcher (who worked the 11 PM shift) was already on compensatory time off that day. Grievant had made her request by telephone on Monday, October 24th, a day she was off work and had been out of the office for an on duty physical in Columbus on Tuesday of that week.

II. ISSUE

The parties stipulated the issue to be:

Was the Employer's denial of the grievant's request for personal leave on October 28, 1994, in compliance with the relevant provisions of the collective bargaining agreement between the parties? If not, what shall the remedy be?

III. COLLECTIVE BARGAINING AGREEMENT

Among the provisions of the collective bargaining agreement referred to by the parties and consulted by the arbitrator are sections of Article 45, Personal Leave, including:

Section 45.04, "Use of Personal Leave," which indicates that employees may use personal leave for a number of enumerated reasons including:

3. Family emergencies of a nature that require an employee's immediate attention;
4. Unusual family obligations which could not normally be conducted by an employee during hours other than normally scheduled work hours; and
8. Any other matter of a personal nature.

Section 45.05 "Notification and Approval of Use of Personal Leave," which states in part that:

Requests for personal leave shall be in writing and, when possible, shall be made forty-eight (48) hours in advance of the date or dates requested for use, unless the use is for an emergency situation. Personal leave shall not be unreasonably denied.

The Employer may restrict the number of concurrent leave requests granted at a work location based on work shifts. In determining which concurrent request(s) to approve the Employer may consider the nature of the employees personal need and the timing of the request(s).

IV. POSITIONS OF THE PARTIES

The parties made a number of detailed arguments at hearing. Their positions are only briefly summarized below.

A. The Union

The Union argues that the Employer did not comply with the contract and that the grievance should be sustained. The Union argues that Sections 45.03, 45.04 and 45.05 of the contract clearly require that the employer be flexible in granting personal leave and that Grievant's request fits exactly into the kind of personal need for which personal leave was designed. In the Union's view, helping a daughter deal with the death of her father is a clearly contemplated use.

The Union argues that personal leave is a right that "shall" be granted under the contract. The Union further asserts that management's reasons and arguments are not responsive. The Union points out that this is not a case of concurrent absences on the same work shift in that the other person who was off worked a different shift than did Grievant. Further, the Union argues that it is irrelevant whether Grievant ultimately arranged another means of transportation to the airport for her daughter. There was more involved than transportation and it was the denial that forced her to find other means. The Union argues that

management was well aware that this was an emotional issue for Grievant and that it was wrong to deny her the personal leave to which the Union believes she was entitled. The Union asks that the grievance be sustained and that Grievant be granted 8 hours compensatory time as an appropriate remedy.

B. The Employer

The Employer argues that the grievance should be denied. It argues that the Patrol is a law enforcement agency responsible for around the clock service. The right to determine who is off duty and when is important to maintaining this service. The Employer also argues that the denial of Grievant's request was not unreasonable under the contractual standard. There is no absolute right to personal leave when requested and the supervisor had to consider operational needs. The Employer argues that attempts were made to help Grievant with supervisors volunteering family members to take Grievant's daughter to the airport. The Employer also points out that Grievant has filed many requests for discretionary time off and that this is the only one that has been refused. The State further argues that Grievant told supervisors that she had made alternate arrangements for her daughter's transportation and told them that the leave was no longer needed. In these circumstances, asserts the Employer, the grievance should not be sustained.

In addition, the Employer argues that the Union is here trying to achieve a benefit it did not win in negotiations. It asserts that if this grievance is granted, every personal leave denial might go to arbitration, a result not intended in the contract. The Employer points to Arbitrator Dworkin's decision in Case 86-25 denying a grievance involving a personal leave denial and asserts that, as in that case, it did not act in an arbitrary or discriminatory manner and was motivated by the needs of efficient operation and utilization of the work force. In summary, the Employer asks that the grievance be denied.

V. DECISION AND ANALYSIS

At the outset, the argument made by the Employer looks reasonable. It asserts that there was an operational necessity for Grievant's presence due to the fact that another dispatcher had already been granted compensatory time off for the date in question and that, when management attempted to work with Grievant, she advised supervisors that the leave was no longer needed because she had made alternative arrangements for her daughter's transportation. Were these the facts found at hearing, the Employer would have a strong case. Article 45 does not create an absolute right to personal leave but states only that it shall not be "unreasonably" denied. Despite these arguments and despite the fact that a number of supervisors did show genuine concern for Grievant by trying to help her with transportation for her daughter, the arbitrator finds that

the denial was unreasonable as that term is used in Article 45. Consequently, the grievance must be sustained. The reasons for this ruling follow.

1. Grievant's request seems to involve just the type of need that personal leave was designed to meet. Taking one's youngest daughter to the airport to return to Air Force basic training is, at the very least, an "unusual family obligation" under Section 45.04, item 4. Where that daughter is still emotionally upset over the death of her father and that week's funeral, the situation may even be one of the "family emergencies" covered in item 3 of Section 45.04. In both situations, there is more going on than the need for a ride to the airport. A mother's presence can be an important source of support in such emotionally difficult and unique circumstances. A visit to any airport demonstrates that leave-taking is an emotional experience for many. Where tragedy has struck, the need for support is even greater.

Too, the arbitrator finds that Grievant did her best to comply with all requirements. While her written request was submitted Wednesday for the requested Friday absence, she had called in twice on Monday to insure her request was passed on because she knew her Tuesday assignment would keep her out of the office. Thus, management testimony at one point that there was less than 24 hours notice is just not accurate.

2. The arbitrator finds that the evidence of operational need was not as strong as management's arguments asserted it was. Grievant was already scheduled to be away from the dispatcher's desk for 4 hours of her scheduled 8 hour shift on October 26. There was no testimony as to any particular hardship that providing 4 hours coverage would provide. The other dispatcher scheduled to be off on leave worked the 11 PM shift and did not overlap with Grievant. Even as to that person, witnesses could not testify as to whether that shift was covered by troopers or with an overtime assignment from another shift. Further, from testimony, it did not appear that granting this leave would have been inconsistent with Administrative Policy 9-507.08, the Patrol's internal guidelines for granting permissive leave requests. There was no testimony that October 26 involved what the guidelines refer to as peak traffic times.

3. It may be that this leave denial was based on miscommunication. The Employer's position in denying the grievance and at hearing was that Grievant had indicated she had made alternate arrangements and no longer needed the leave. This was not the picture painted at hearing by sworn testimony and it may be that Lt. Rensi's refusal to reconsider the denial was based on erroneous information that had been transmitted to him.

The testimony at hearing was not to the effect that Grievant had withdrawn her request for leave. Sgt. Perry, the assistant post commander, for example, testified that

she had told him she had "stand-by arrangements" when he discussed the matter with her. There is a big difference between arranging a "stand-by" plan to get her daughter to the airport if leave was denied and actually withdrawing her request. There was no testimony that anyone in management asked Grievant whether she was withdrawing her request. Further, even if adequate transportation to the airport was available, such transportation does not meet the emotional needs of a parent and daughter parting under very trying circumstances. It would not be reasonable to assume that Grievant no longer needed the leave unless she had directly communicated that desire. There was no proof at hearing that she did. Finally, a close look at the stand by arrangements should not have led management to believe she no longer needed leave. Under her stand by arrangement, an off duty Trooper who owned a plane flew the daughter to the airport with Grievant paying for fuel. Arranging private plane transportation in place of a parent's two hour drive is an extraordinary adjustment, not a simple solution.

4. Grievant clearly communicated the extent of her problem to management. On Tuesday, she rode to Columbus with Staff Lt. Phillips who could tell she was very concerned over the matter and offered the help of a family member. He conveyed to the Post Commander how emotional Grievant was over this issue. On Wednesday, when she became upset over the denial, the Post Commander sent Sgt. Perry to act as intermediary. He, too, learned how much the leave

meant to her. Also on Wednesday, she spoke to Captain Freeman who approached her on the matter. Although not necessary to this decision, the arbitrator notes testimony that all three of these supervisors indicated to Grievant that the Post Commander might well reconsider. He did not, perhaps due to possible miscommunications as to whether she continued to want leave.

5. The arbitrator notes, too, that Grievant testified without contradiction that she had taken only 2 hours personal leave (for a funeral) in her 18 years of service. Although she admitted that she was paid for the time accrued instead, as provided by contract, the failure to take previous personal leave means that Grievant has not been the kind of employee for whom every little matter is treated as a personal leave crisis to the detriment of work scheduling. When such an employee asks for personal leave and provides extraordinary reasons, the circumstances of this case make it unreasonable to deny the requested leave where, as here, there is no direct evidence that her absence would have hampered operations.

6. The Employer expresses a justifiable concern that every leave denial could result in arbitration if arbitrators take it upon themselves to overrule management's staffing decisions. This arbitrator is well aware of the Employer's responsibilities and its management rights under Article 4 and does not intend to encourage arbitration of all leave denials. Nonetheless, Section 45.05 provides that

personal leave "shall not be unreasonably denied." The arbitrator finds that it was unreasonable to deny Grievant's request under the unique circumstances of this case.

A final issue submitted to the arbitrator was "what shall the remedy be?" in the event that a contract violation was found. Because the arbitrator is not familiar with the parties' practices in cases such as this nor with the awards of other arbitrators under this contract, the arbitrator will remand the issue to the parties in the hopes that they can reach agreement on the matter. If they cannot, the arbitrator requests that each party submit, by July 28, two copies of a position statement on remedy with any supporting documents or cases involving other arbitrators' interpretations of this contract or its predecessors. The arbitrator will then provide the extra copy to the opposing party.

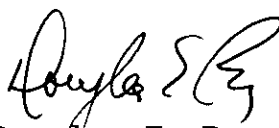
VI. AWARD

The grievance is sustained.

The issue of remedy is remanded to the parties. The arbitrator will retain jurisdiction over the remedial aspects of the case and will determine the appropriate remedy if the parties are not able to resolve the matter by July 28, 1995.

Respectfully submitted,

June 23, 1995


Douglas E. Ray
Arbitrator