

VOLUNTARY ARBITRATION PROCEEDINGS  
CASE NO. 15-03-940510-036-04-01 (UNIT 1-BRINCK, ET AL.)  
-and-  
15-03-940510-035-07-15 (UNIT 15-ALLARD, ET AL.)

THE STATE OF OHIO	:	
	:	
The Employer	:	
	:	
-and-	:	<u>OPINION AND AWARD</u>
	:	
THE FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC., UNIT	:	
1 and 15	:	
	:	
The Unions	:	

APPEARANCES BY BRIEF ONLY

For the Employer:

Sergeant Robert Young, Advocate

For the Union:

Kay Creameans, Counsel

MARVIN J. FELDMAN  
Attorney-Arbitrator  
1104 The Superior Building  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114  
216/781-6100

I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties and pursuant to stipulations thereto. A hearing in this matter was not conducted, the parties agreeing to a presentation by brief. The stipulations relevant to this matter were entered into by the parties and they may be fairly stated as follows:

"FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.  
and  
STATE OF OHIO,  
OHIO STATE HIGHWAY PATROL.

Case Nos. 15-03-040510-036-04-01 (Unit 1 - Brinck,  
et al.)

15-03-940510-035-07-15 (Unit 15 -  
Allard, et al.)

STIPULATIONS

1) The Fraternal Order of Police, Ohio Labor Council, Inc. (F.O.P.) is the exclusive representative of employees in bargaining units 1 and 15.

2) The State of Ohio and the F.O.P. are parties to two (2) collective bargaining agreements effective April 1, 1994 through March 31, 1997. The agreement covering the employees in Unit 1 is identified as Joint Exhibit 1. The agreement covering the employees in Unit 15 is identified as Joint Exhibit 2.

3) On or about April 22, 1994, former United States President Richard M. Nixon died.

4) On or about April 23, 1994, President William J. Clinton issued an Executive Order closing federal government departments and agencies on April 27, 1994. (Copy attached as Union Exhibit 1).

5) The Governor took no action to close state government upon receipt of the President's Executive Order.

6) The employees in Units 1 and 15 were not paid a holiday on April 27, 1994.

7) The employees in Units 1 and 15 filed two (2) class action grievances protesting the Employer's failure to pay them for a holiday on April 27, 1994. The class action grievance for Unit 1 is attached as Joint Exhibit 3. The class action grievance for Unit 15 is attached as Joint Exhibit 4.

8) Both grievances were denied resulting in the instant arbitration.

9) The parties have agreed to waive a hearing and to submit these grievances to Arbitrator Marvin Feldman for resolution on the stipulations, with attached exhibits, and briefs to be submitted April 29, 1996. Each party will serve the opposing party with a copy of its brief so that an exchange of briefs by the Arbitrator will not be necessary.

FOR THE STATE:

FOR THE FOP:

/s/Robert Young 3/27/96    /s/Kay Cremeans 3/27/96"

It was upon the facts, stipulations and briefs that this matter was heard and submitted and that this Opinion and Award was thereafter rendered.

## II. STATEMENT OF FACTS

Two grievances were filed, one for Unit 1 of the State Highway Patrol (troopers) and one for Unit 15 for the State Highway Patrol (sergeants). There is a separate contract of collective bargaining for each of these units, but for the sake of the grievances as filed in this matter, one contractual clause mimics the other. That article is Article 44 and it appeared as Article 44 in both agreements. Paragraph 44.01 revealed the following:

## "ARTICLE 44 - HOLIDAYS

### 44.01 List of Days

Members of the bargaining unit will have the following holidays:

1. New Year's Day - (first day in January)
2. Martin Luther King's Birthday - (third Monday in January)
3. President's Day - (third Monday in February)
4. Memorial Day - (last Monday in May)
5. Independence Day - (fourth of July)
6. Labor Day - (first Monday in September)
7. Columbus Day - (second Monday in October)
8. Veteran's Day - (eleventh of November)
9. Thanksgiving Day - (fourth Thursday in November)
10. Christmas Day - (twenty-five of December)
11. Any day declared by the Governor of the State of Ohio or the President of the United States." (Emphasis ours)

It appeared that at the time of the death of Richard Nixon, the President of the United States was William J. Clinton and he wrote a proclamation concerning the day of interment of Richard Nixon. In that proclamation the following language appeared:

"I do further appoint the date of interment to be a National Day of Mourning throughout the United States. I encourage the American people to assemble on that day in their respective places of worship to pay homage to the memory of President Nixon and to seek God's continued blessing on our land. I invite the people of the world who share our grief to join us in this solemn observance."  
(Emphasis ours)

It might be noted that in the proclamation as written, nothing concerning a holiday was indicated, stated or otherwise revealed. It might be further noted that the Executive Order relevant to that proclamation provided for the closing of government departments and

agencies on April 27, 1994. That Executive Order revealed the following:

"THE WHITE HOUSE  
Office of the Press Secretary  
For Immediate Release April 23, 1994

Executive Order

PROVIDING FOR THE CLOSING OF GOVERNMENT  
DEPARTMENTS  
AND AGENCIES ON APRIL 27, 1994

By the authority vested in me as President by the constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive departments, independent establishments, and other governmental agencies, including their field services, shall be closed on April 27, 1994, as a mark of respect for Richard Milhous Nixon, the thirty-seventh President of the United States. That day shall be considered as falling within the scope of 5. U.S.C. 6103(b), and of all statutes so far as they relate to the compensation and leave of employees of the United States. (Emphasis ours)

Sec. 2.: The first sentence of section 1 of this order shall not apply to those offices and installations, or parts thereof, in the Department of State, the Department of Defense, or other departments, independent establishments, and governmental agencies that the heads thereof determine should remain open for reasons of national security or defense or other public reasons.

WILLIAM J. CLINTON

THE WHITE HOUSE  
April 23, 1994.

NOTE: All federal offices including federal courts are closed except those deemed to be essential. State and local governments may determine which state and local offices shall remain open."

5 USC 6103 at paragraph (b) contained language which revealed the type of payroll adjustment for any holiday that was proclaimed by the President. Rules were set up by that particular United States Code Section to provide for certain overtime and holiday and days off. The Governor of the State of Ohio did not close any offices and the employees of the State of Ohio continued work as usual on that day. It might be noted that in a re-read of the White House Executive Order, the following did appear:

"THE WHITE HOUSE  
April 23, 1994.

NOTE: All federal offices including federal courts are closed except those deemed to be essential. State and local governments may determine which state and local offices shall remain open."

After all of those items were published, and after the State of Ohio refused to pay for the date of April 27, the bargaining units, both unit 1 and unit 15 filed the same protest. That protest revealed the following:

"ARTICLE AND SECTION NUMBER OF CONTRACT VIOLATION  
ARTICLE 44, Sections 44.01, 44.02, 44.03  
STATEMENT OF GRIEVANCE (GIVE TIMES, DATES, WHO, WHAT, WHEN, WHERE, WHY, HOW), BE SPECIFIC.  
PRESIDENT CLINTON DECLARED APRIL 27, 1994 A  
HOLIDAY WITHIN THE SCOPE OF 5 USC 6103(g)"

The remedy sought revealed the following:

"REMEDY REQUESTED: That everyone so affected receive compensation or compensatory time in unit 15 (unit 1) for the holiday."

In denying the matter at Step 4, the Chief of Operations of the Ohio Department of Administrative Services revealed the following:

"The Office of Collective Bargaining has reviewed the above cited grievance. You allege that Management is in violation of Section 44.01, 44.02 and 44.03 by not allowing a holiday due to the passing of former President Nixon. You are requesting that all Police Officers receive holiday pay for the day in question.

Section 38.01 provides that in addition to the specific days or dates listed 'any day declared by the Governor of the State of Ohio or the President of the United States' may also be declared as a holiday by the Governor or the President. It is further the position of the State that President Clinton declared only 'a day of respect.' Nowhere in his Executive Order did he use the term 'holiday.' For that reason the Governor did not direct the closure of State offices.

We find no violation of the Contract. Your grievance is denied."

The contention of the union is that even though the word "holiday" was not used in the proclamation, nonetheless the Federal Code at 5 USC 6103 was directed to be used as the pay schedule, at least by the Federal Government for the day of mourning that President Clinton set aside in his proclamation. That US Code section at 6103 does use the word "holiday" and since there was a direction to holiday pay by the President in the Executive Order, the union concluded that the President meant a holiday was proclaimed even though the proclamation merely stated that a day of mourning was proclaimed. The union has also indicated and stated that the language of Article 44 is clear and unambiguous and in no need of interpretation. The union has also concluded that the case they provided granting such payment clearly

establishes the right of the grievants in this particular matter to receive holiday pay.

It was upon those facts that this matter rose to arbitration for Opinion and Award.

### III. OPINION AND DISCUSSION

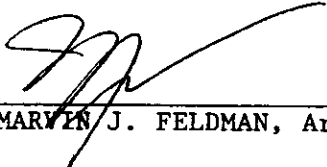
In the proclamation that was enunciated by President Clinton, the President indicated and stated in clear and unambiguous language that the day of interment of the former President Nixon was to be declared a day of mourning. An Executive Order was also issued and in that Executive Order it was stated that the day shall be considered as falling within the scope of 5 USC 6103 (b) and of all statutes so far as they relate to the compensation and leave of employees of the United States. That Executive Order, among other things, set up which Federal Statute should be used to compensate the employees of the Federal Government for being allowed to take off the day as a national day of mourning. Merely because the United States Code 6103 (b) refers to a holiday, does not mean that the day of mourning is a holiday. It means that the pay schedule for the taking off of a day of mourning shall be that pay schedule which is stated in clear and unambiguous language under US Code Section 6103 (b). Neither the proclamation nor the Executive Order established a holiday. The proclamation creates a day of mourning and the Executive Order creates a method of payment. There is nothing more or nothing less.

The contract of collective bargaining clearly established that

under Article 44 that a holiday is any day declared by the Governor of the State of Ohio or the President of the United States. Certainly the Governor of the State of Ohio did not declare April 27 as a holiday because all state offices were open and working. The President of the United States did not declare April 27 to be a holiday, merely a day of mourning. With that language, it is difficult indeed to declare that President Nixon's interment day was a holiday. Simply put, a day of mourning is not a holiday. A holiday is a holiday when so declared. The clear and unambiguous language of the proclamation and Executive Order deny the creation of a holiday for that date and I so hold. For all of these reasons, the grievances must be denied.

IV. AWARD

Grievances denied.

  
MARVIN J. FELDMAN, Arbitrator

Made and entered  
this 9th day of  
May, 1996.