

#1372

VOLUNTARY LABOR ARBITRATION PROCEEDING

IN THE MATTER OF ARBITRATION BETWEEN:

**OHIO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF THE OHIO
HIGHWAY PATROL,**

EMPLOYER,

-AND-

OHIO STATE TROOPERS ASSOCIATION, INC.,

UNION.

GRIEVANTS: DENNIS GORSKI AND TIMOTHY HALL
GRIEVANCE/OCB NO. 15-00-980112-0014-04-01
15-00-980121-0015-04-01

Arbitrator's Opinion and Award
Arbitrator: Dr. David M. Pincus
Date: JUNE 1, 1999

Appearances

For the Employer

Robert J. Young
Susan M. Rance
Heather Reese
R. Scott Borden
Carl Roark
Ken Woehrnyer

Lieutenant
Advocate
OCB Observer
Lieutenant
Sergeant
Captain

For the Union

Elaine Silveira
Herschel Sigall
Bob Stitt
Dennis Gorski
Timothy Hall

Legal Assistant
Counsel OSTA
OSTA President
Grievant/Trooper
Grievant/Trooper

I. INTRODUCTION

This is a proceeding under the grievance arbitration procedure in a collective bargaining agreement between the Ohio Department of Public Safety, Division of the Ohio Highway Patrol, (the "Employer") and the Ohio State Troopers, Inc. (the "Union"). An arbitration hearing was held on March 23, 1999. The parties had selected Dr. David M. Pincus as the Arbitrator. At the hearing, the parties were allowed to present and to introduce documents, testimony, and evidence. They also were allowed to examine and cross-examine witnesses. At the conclusion of the hearing, the parties were asked if they wished to provide post hearing briefs. Both parties supplied briefs in accordance with the guidelines established at the hearing.

II. PERTINENT CONTRACT PROVISIONS AND WORK RULES

APPLICABLE CONTRACT PROVISIONS

Article 43.04 - Vacation Leave

Vacation leave shall be taken only at times mutually agreed to by the Employer and the employee. The Employer may restrict the number of concurrent vacation leave requests at a work location based on work shifts.

APPLICABLE OHIO STATE PATROL POLICIES

Ohio State Patrol Policy 9-203.15 - Work Schedules; Bargaining Unit #1 Employees

(C) Weekend Requirements

Seventy percent (70%) of available troopers will be on duty on weekends and eighty percent (80%) of available troopers will be on

duty during the three summer holiday periods of Memorial Day, Independence Day and Labor Day. Facility commanders may schedule 80% of available troopers on duty on any weekend when special events make it necessary.

(D)(1) Definitions

Available Employees - bargaining unit employees routinely available to work. Not included in available employees are bargaining unit employees on leave, special assignment or extended sick leave.

Ohio State Patrol Policy 507.08 - Leave Requests

(A)(3) - General Leave Guidelines

At the post or facility level, commanders may consider the total number of employees per work shift group in addition to the maximums outlined in each classification, and may restrict the number of concurrent leaves on a work shift group, based upon operational requirements.

(C)(2) - Provisions for Specific Groups of Employees (Troopers)

A maximum of one trooper per work shift group may be on vacation or compensatory time per day at a post.

III. STIPULATED FACTS

At the arbitration hearing, the parties made the following factual stipulation :

In lieu of presenting the operative facts for the record for the Gorski case, it is agreed by and between the parties that any determination the

Arbitrator reaches on the validity of the Hall grievance will attach to the Hall (sic) [Gorski] grievance as well.

IV. STIPULATED ISSUE

Did the Employer's denial of the grievants' request for vacation leave on June 20, 21, and July 18, 1998, violate Article 43 of the labor agreement? If not, what shall the remedy be?

V. FACTUAL BACKGROUND

Trooper Dennis Gorski (Trooper Gorski) and Trooper Timothy Hall (Trooper Hall), are veterans of the Ohio State Highway Patrol who are assigned to the Lebanon, Ohio Post in Warren County, Ohio. Warren County is adjacent to Cincinnati, Ohio and is considered one of the fastest growing counties in Ohio. Interstates 71 and 75 run through it and large attraction areas such as Kings Island contribute to the increasingly growing traffic patterns that exist in the County.

Approximately 58 state trooper patrol posts exist throughout Ohio. Although each post may borrow practices from each other, for the most part the patrol posts operate independently. Regional supervision of the posts is divided into districts, which can encompass numerous counties. For example, the southwest district in which the Warren County post is located is made up of ten counties. The districts are headed up by a district commander, but the post commander still retains primary authority for directing and establishing policy at the post level.

Scheduling officers to meet the needs of the motoring public is often a difficult and inexact science. At the Lebanon post, work schedules are divided into six month increments. The work schedule is first established,

then regular days off are determined. After the scheduled and regular days off are fixed, officers are then allowed to bid on vacation and may lock in their time off by seniority during a "window period."

Leave requests and vacation time are covered under the terms of the parties' negotiated agreement and by Ohio State Patrol (OSP) policy. For example, with respect to general leave guidelines, the time off granted for leaves depends on the post's operational requirements and the total number of employees per work shift group:

At the post or facility level, commanders may consider the total number of employees per work shift group in addition to the maximums outlined in each classification, and may restrict the number of concurrent leaves on a work shift group, based upon operational requirements.

With respect to vacation leave, Article 43.04 of the contract allows the Employer to restrict vacation leave requests at a post based on work shifts:

Vacation leave shall be taken only at times mutually agreed to by the Employer and the employee. The Employer may restrict the number of concurrent vacation leave requests at a work location based on work shifts.

In addition, OSP Policy 507.08 (C)(2) provides that, "a maximum of one trooper per work shift group may be on vacation or compensatory time per day at a post."

Especially problematic is scheduling time off on weekends when automobile traffic is at its greatest because of weekend activity and attractions in Warren County. In attempt to maintain a maximum level of coverage on weekends, OSP Policy 9-203.15 requires 70% of available

troopers to be on duty on weekends and 80% of them to be on duty during special weekends and certain holidays:

Seventy percent (70 %) of available troopers will be on duty on weekends and eighty percent (80 %) of available troopers will be on duty during the three summer holiday periods of Memorial Day, Independence Day and Labor Day. Facility commanders may schedule 80 % of available troopers on duty on any weekend when special events make it necessary.

According to the weekend policy, "available employees" includes, "bargaining unit employees routinely available to work. Not included in available employees are bargaining unit employees on leave, special assignment, or extended sick leave." As a matter of practice, "leave" has been interpreted to mean personal leave and vacation. Hence, patrol officers on personal leave and vacation typically are not included in the computation of available employees for weekend coverage.

Trooper Timothy Hall properly submitted a vacation request during the window period for June 16 through June 22, 1998. His request was denied for June 20 and June 21, 1998, which was a Saturday and Sunday. Hall's request was denied for those days because if granted, there would not have been 70% coverage at the Lebanon post for those days. Due to this denial, Trooper Hall was forced to leave his vacation early from Florida and to fly back on a one-way ticket to Lebanon to return to work. His family remained in Florida.

Also during the window period, Trooper Gorski submitted a vacation request for July 18, 1998. His request was denied because if it was granted, there would not have been 70% coverage at the Lebanon post for that day.

VI. THE MERITS OF THE CASE

The Union's Position

The Union argues that the Employer has violated Article 43.04 by denying the Grievants' vacation requests. The Employer's denial was based on the percentage of available manpower for weekends falling below the division policy of a recommended 70% coverage. The Union argues there was adequate coverage, four troopers, one dispatcher and one sergeant, on the assigned shifts in question on June 20 and 21. The Union also argues that management is not following division policy, based on its interpretation of computing this 70% manpower availability.

The Employer's Position

The Employer argues there has been no violation of the contract. When establishing work schedules, management does factor in the percentages of available work force per weekends. The Employer also contends this was not the only factor in denying the Grievants' vacation requests. Warren County is the fastest growing county in population in vehicular traffic. Many tourists travel to Warren County to visit the amusement facilities and other tourist attractions. The County had experienced 36% of its fatal crashes for 1997 during the weekend periods. The post statistics have also shown that Saturday is the highest day of the week when most vehicle crashes are investigated. Based on these facts, the Employer argues that denial of vacation leave on the weekend was not unreasonably denied.

VII. THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony adduced at the hearing, and a complete review of the record, including pertinent contract provisions, it is this Arbitrator's opinion that the Employer violated Article 43.04 of the

contract, especially when analyzed within the totality of the applicable work rules and past practices. As such, the Union's grievance shall be sustained.

Trooper Hall's grievance over his denial of vacation time on Saturday and Sunday (June 20 and 21, 1998) raises an issue of the interplay between vacation scheduling and weekend minimum manning requirements.¹ A direct conflict appears to exist between how vacations can be restricted under Article 43.04 and how the weekend minimum manning is calculated under OSP Policy 9-203.15 to limit vacation time off on a weekend.

Article 43.04's language with respect to restricting the scheduling of vacation leave clearly and unequivocally is based on work shifts:

Vacation leave shall be taken only at times mutually agreed to by Employer and the employee. **The Employer may restrict** the number of concurrent vacation leave requests at a work station ***based on work shifts*** (emphasis added.)

OSP policy 9-203.15(C)'s language regarding the calculation of weekend minimum manning requirements is silent on work shifts. It is also silent about calculating minimum manning on a post-wide basis. The policy states only that, "Seventy percent (70%) of available troopers will be on duty on weekends . . ." In this Arbitrator's view, the plain wording of this language does not clearly compel a post-wide calculation of the weekend minimum manning requirements.

¹As noted in the stipulated facts, Trooper Hall's grievance is the controlling one here and all analysis relevant to his grievance will be equally applicable to Gorski's grievance. The Arbitrator's analysis will therefore analyze the resolution of the Union's grievance within the context of the facts applicable to Trooper Hall.

Thus lies the conflict: Article 43.04's limits on vacation is based only on work shifts whereas the Employer's calculation of weekend minimum manning under OSP Policy 9-203.15(C) that leads to a restriction of vacation time on a weekend is based on a post-wide basis. Trooper Hall's vacation crosses over Article 43.04's vacation language and OSP Policy 9-203.15(C)'s weekend minimum manning requirements because his time off is both vacation and time occurring on a weekend. The essence of Trooper Hall's grievance is whether his vacation time falling on a weekend can be further restricted by being part of a weekend minimum manning calculation under OSP Policy 9-203.15(C).

As admitted by Lieutenant R. Scott Borden, the Lebanon post commander, Trooper Hall's vacation was appropriately requested during the window period. In addition, as Borden admitted, Trooper Hall's vacation was in accordance with OSP Policy 507.08(C)(2) regarding vacation requests, in that a maximum of one trooper per work shift group can only be on vacation per day at a post. Borden conceded that Trooper Hall was the only trooper off on vacation on his shift--indeed, on all three shifts--on June 20 and 21. Trooper Hall's vacation request and scheduling therefore appears to be in accordance with Article 43.04 and the applicable OSP policies.

The question then becomes the applicability of OSP Policy 9-203.15(C)'s weekend minimum manning calculation to Trooper Hall's vacation time on Saturday and Sunday (June 20 and 21, 1998). Trooper Hall's vacation time on Saturday and Sunday was denied because his absence on his shift those days would have brought the Lebanon post's manning under the minimum manning stated in OSP Policy 9-203.15(C). But the minimum manning calculation of that OSP policy is of **available**

troopers. OSP Policy 9-203.15(D)(1) expressly excludes from the definition of available troopers those who are on leave.

Lieutenant Borden's testimony established that troopers on vacation leave are not included in the available employees computation of weekend minimum manning because of their vacation leave. Borden's testimony was corroborated by Sergeant Carl Roark, the assistant commander of the Lebanon post, in addition to Troopers Hall and Gorski.

Hence, by definition, OSP Policy 9-203.15(D)(1) excludes Trooper Hall's vacation on Saturday and Sunday from the weekend minimum manning calculation. Trooper Hall's vacation is controlled by the expressed vacation leave language of Article 43.04 which determines restrictions of leave based on work shifts. Trooper Hall's vacation therefore was appropriately scheduled and should have been allowed, even if it extended into a weekend, because the specific language of Article 43.04 defined in the context of a work shift trumps the more general application the Employer gave to the weekend minimum manning calculation (70%) of OSP 9-203.15(C).

In any event, the Employer's argument that the general weekend minimum manning language of OSP Policy 9-203.15(C) is calculated on a post-wide basis is unsupported by the language of the OSP policies. OSP Policy 507.08(A)(3), general leave guidelines, analyzes the availability of leave time off per work shift group:

At the post or facility level, commanders may consider the total number of employees **per work shift group** in addition to the maximums outlined in each classification, and may restrict the number of concurrent leaves on a **work shift group**, based on operational requirements (emphasis added).

In addition, as conceded by post commander Borden, the weekend minimum manning calculation of OSP Policy 9-203.15(C) was applied at the Lebanon post on a per shift basis before he took command. Borden's testimony was corroborated by Trooper Hall, a veteran of the Lebanon post for eleven years, and Trooper Gorski, a sixteen year veteran at the Lebanon post, who both testified that the weekend minimum manning language was analyzed on a per shift basis. Assistant Commander Roark, who was at the Dayton post before arriving at the Lebanon post approximately eight months ago, also indicated weekend minimum manning requirements were determined on a per shift basis at the Dayton post.

Although District Commander Ken Woehrnyer alleged the ten county posts under his jurisdiction calculated the weekend minimum manning percentage on a post-wide basis, he admitted on cross examination that the schedules made out by each post were "based on the necessities of each shift." Despite Woehrnyer's adamant insistence that the weekend minimum manning requirements were primarily calculated on a post-wide basis, he hedged his answers to his cross examination questions on this issue several times, citing "other considerations" that were part of the final determination of the number of people assigned to a post on a shift on any given weekend.

So while this Arbitrator acknowledges that plausible inferences could potentially be made that OSP 9-203.15(C) requires the weekend minimum manning percentage to be calculated on a post-wide basis, such inferences are unsupported by probative facts here. For purposes of resolving Trooper Hall's grievance, the vacation language of Article 43.04 that allows a restriction of vacations based on a per shift manning analysis trumps any

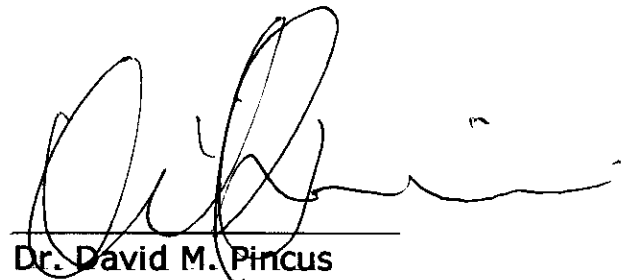
potential further restriction resulting from a post-wide calculation of weekend minimum manning under OSP Policy 9-203.15(C).

VIII. ARBITRATOR'S AWARD

The grievance is sustained. The Employer's right to restrict vacation leave requests under Article 43.04 is "based on work shifts." Restrictions of time off on weekends based on the weekend minimum manning requirements under OSP 9-203.15(C) must similarly result from a calculation based on work shifts to be consistent with the controlling terms of Article 43.04.

Finally, in accordance with OSP Policy 9-203.15(D)(1), the definitions to be applied under OSP Policy 9-203.15(C) to determine how the weekend minimum manning will be calculated, troopers on an appropriately approved vacation pursuant to Article 43.04 are not deemed available.

June 1, 1999
Moreland Hills, Ohio



Dr. David M. Pincus
Arbitrator

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