

**VOLUNTARY RIGHTS ARBITRATION  
CONSOLIDATED ARBITRATION PROCEEDING**

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**In the Matter of Arbitration Between:**

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

**EMPLOYER,**

**and**

**THE OHIO STATE TROOPER'S ASSOCIATION,**

**UNION.**

**GRIEVANT: PHILIP C. RALSTON  
GRIEVANCE NO.: OCB #15-00-980713-0086-04-01**

**GRIEVANT: MICHAEL G. ROTH  
GRIEVANCE NO.: OCB #15-00-980819-0127-04-01**

**GRIEVANT: GARY W. KIRK  
GRIEVANCE NO.: OCB #15-00-980914-0141-04-01**

**GRIEVANT: TREVA S. ADAMS  
GRIEVANCE NO.: OCB #15-00-980720-0109-04-01**

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**Arbitrator's Opinion and Award  
Arbitrator: Dr. David M. Pincus  
Date: November 23, 1999**

**Appearances**

**For the Employer  
S/Lt. Robert J. Young**

**For the Union  
Herschel M. Sigall  
Elaine N. Silveira  
Sgt. Robert K. Stitt**

## **I. Introduction**

This matter is before this Arbitrator pursuant to Article 20 of the Collective Bargaining Agreement ("Agreement") between the State of Ohio (the Employer) and the Ohio State Trooper's Association, Inc., Unit 1, (the Union) effective July 1, 1997 through June 30, 2000.

The parties have consolidated four grievances that would have otherwise been four separate arbitrations. They have submitted stipulations with respect to each grievance and have also submitted briefs outlining the facts and arguments for each grievance. This Arbitrator will therefore consider this record and address the merits of each grievance as outlined below.

### **A. Philip Ralston Grievance**

#### **1. Issue**

Was the Employer's denial of the grievant's request for personal leave on July 5, 1998 in compliance with the relevant provisions of the parties' Agreement? If so, what shall the remedy be?

#### **2. Pertinent Contract Provisions and OSP Policies**

##### **Contract Provisions**

##### **45.04 - Uses of Personal Leave**

Personal leave is intended to be used by an employee to address issues of a personal nature. Personal leave is not intended to be used by an employee in place of vacation leave.

##### **45.05 - Notification and Approval of Use of Personal Leave**

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 shall grant personal leave requests of eight (8) hours or less; except in employer-designated peak times during the year when operational needs preclude the use of personal leave, however, personal leave requests shall be approved during these peak times if the request is for a personal emergency which is documented. At non-peak times requests for personal leave of eight (8) hours or less received with at least forty-eight (48) hours notice shall not be unreasonably denied. Requests made less than 48 hours in advance of the anticipated time off may be given reasonable consideration.

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 timing of the request(s).

## **OSP Policies**

### **OSP Policy 507.08 - Leave Requests**

#### **B.4. - Personal Leave**

- a. Requests should be submitted in accordance with the appropriate bargaining unit agreement or upon giving reasonable notice, unless it is an emergency.
- b. Request of eight hours or less, submitted at least forty-eight hours in advance, shall normally be granted, except during peak traffic times designed by the Division, including the post commander, or designee.
- c. During peak traffic times, the post commander may take

into consideration the reasons associated with the personal leave requests in determining if non-emergency personal leave should be granted or denied.

- d. The "one employee per work shift group" concept shall not be considered as a factor in granting or denying personal leave requests. However, personal leave requests for non-emergency reasons may be denied based on legitimate minimum staffing demands per work shift group.

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.

### **3. Joint Stipulations**

1. The employee is a trooper assigned to the midnight shift which starts at 11:00 p.m. and ends at 7:00 a.m.
2. The shift consisted of one sergeant and five troopers.
3. Dispatching duties are handled at Turnpike Headquarters. There are no dispatchers at the Turnpike Patrol Posts.
4. On June 4, 1998, grievant requested eight hours of personal leave for July 5, 1998.
5. The Holiday Reporting Period began on July 3, 1998, and ended on July 5, 1998.
6. One trooper was already on approved leave for July 5, 1998.

#### **4. Case History**

The grievant, Philip C. Ralston, is a trooper assigned to the midnight (11:00 p.m. to 7:00 a.m.) shift at the Milan post. The midnight shift consisted of one sergeant and five troopers.

On July 4, 1998, the grievant requested eight hours of personal leave for July 5, 1998. That was a Sunday of the Fourth of July weekend, one of the three summer holiday periods. The Holiday Recording Period began on Friday, July 3, 1998, and ended Monday, July 5, 1998 at midnight. The grievant's request for time off was denied for operational reasons. As it turned out, one sergeant and four troopers were assigned to work the road on July 5. The grievant claims his personal leave was unreasonably denied.

#### **5. The Merits of the Grievance**

##### **The Employer's Position**

The Fourth of July holiday weekend is one of the Employer designated peak times. Under Section 45.05 of the parties' Agreement, the Employer is not obligated to grant personal leave requests in Employer-designated peak times unless a personal documented emergency exists. The grievant never indicated that a personal emergency existed.

In addition, Section 45.05 states that when a request for personal leave is made less than forty-eight hours in advance of the anticipated time off, the Employer *may* only give the request reasonable consideration. Because the grievant's request for personal time off was within forty-eight hours of the anticipated time off, the grievant had no right to expect that the time off would be granted. The Union also bears the burden in this case to demonstrate that the Employer's denial of the request for the grievant's

personal leave was unreasonable. No unreasonable denial can be proven here.

Finally, the granting of the grievant's request for leave would have required either the cancellation of approved compensatory leave for another trooper or that overtime be worked to provide adequate coverage. Since no claim existed that the grievant's request for personal time was for an emergency, the leave was properly denied.

### The Union's Position

The grievant's request for eight hours of personal time was unreasonably denied. He was working the midnight shift, which had one sergeant and five troopers. On July 5, 1998, only one trooper on permissive leave existed. Had the Employer granted the grievant's request, three troopers and one sergeant still would have been working the midnight shift that day. Historically, the midnight shift is not one of the busiest shifts. Three troopers and one sergeant is ample coverage for the midnight shift.

The grievant's failure to provide an excuse for his personal leave should not be a reason to deny it. An employee does not have to reveal the nature of the personal leave request. The Union believes that the Employer inappropriately drew negative inferences that the grievant's refusal to provide a reason for his leave was because he was trying to manipulate the vacation leave requirements by requesting personal leave time for the July fourth weekend. The Employer cannot demonstrate that intent.

After all of the facts and circumstances are considered, one simple fact remains: There was ample coverage for July 5, 1998, and the grievant's request for personal leave should have been granted.

## **6. The Arbitrator's Opinion and Award**

From the evidence submitted on the record, which consists of the parties' stipulations and the facts and arguments presented in their briefs regarding this grievance, including the pertinent contract language and relevant exhibits, it is this Arbitrator's opinion that the Employer's denial of the grievant's request for personal leave did not violate the terms of the parties' Agreement.

Section 45.05 of the Agreement specifically states that, "the Employer shall grant personal leave requests of eight (8) hours or less; ***except in Employer-designated peak times*** during the year when operational needs preclude the use of personal leave....". OSP Policy 9-203.15(C) expressly identifies Independence Day as one of the peak holiday periods. Indeed, the policy requires that at least eighty percent of available troopers be on duty during that holiday period.

The Fourth of July weekend therefore is an "Employer-designated peak time" as outlined under Section 45.05 of the Agreement. Although the language of Section 45.05 regarding Employer-designated peak times goes on to say "during the year when operational needs preclude the use of personal leave," this Arbitrator does not read that language as requiring in this context that the Employer need to establish that operational needs preclude the use of personal leave. This Arbitrator views this language as merely a declarative statement that Employer-designated peak times are those which normally result in operational needs precluding the use of personal leave. This Arbitrator's interpretation is consistent with OSP Policy 507.8(B)(4)(b), which in effect states that personal time does not have to be granted during peak traffic times designated by the division.



The point is that, analytically, the clause “during the year when operational needs preclude the use of personal leave” in Section 45.05 is only a clarification of the preceding clause of Employer-designated peak times. It is not a requirement that triggers an analysis of operational needs under OSP Policy 9-203.15(C). This makes the Union’s analysis of the manning requirements on July 5, 1998, based upon an analysis of OSP Policy 9-203.5, inapplicable. This Arbitrator reads Section 45.05 as allowing the Employer to deny personal leave request for non-emergency reasons made within less than forty-eight hours during a peak holiday weekend such as the Fourth of July.

While the Union may be correct that no absolute requirement exists for a trooper to submit a reason for taking personal leave off, OSP Policy 507.08(B)(4)(c) states that during peak traffic times, the Post Commander may take into consideration the reasons associated with the personal leave requests of non-emergency personal leave. The Post Commander obviously cannot take into consideration a reason for non-emergency request that is not given. Neither can the Union complain that a non-emergency leave request without an explanation was not given reasonable consideration when no facts are provided to consider.

## **7. The Award**

The grievance is denied.

## **B. Michael G. Roth Grievance**

### **1. Issue**

Was the Employer's denial of the grievant's request for vacation leave on August 28 through August 31, 1998 a violation of the parties' Agreement? If so, what shall the remedy be?

### **2. Pertinent Contract Provisions and OSP Policies**

#### **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.

#### **OSP Policies**

##### **OSP 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 outlines 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.

### **3. Joint Stipulations**

1. The employee is a trooper assigned to the afternoon shift which starts at 3:00 p.m. and concludes at 11:00 p.m.
2. The shift consisted on one sergeant, five troopers, and one dispatcher.
3. Grievant submitted a vacation request on August 5, 1998, for August 25 - 31.
4. The request was denied for August 28, 1998, through August 31, 1998.
5. The request was made less than 21 days prior to the commencement of the requested leave.
6. Approval of leave would have left one trooper and a dispatcher out on each of the four days.
7. On each of the four days denied, a sergeant was on vacation, and a trooper was off on FMLA.

### **4. Case History**

The grievant, Michael Roth, is a trooper assigned to the 3:00 p.m. to 11:00 p.m. shift at the Mansfield post. That shift consisted of one sergeant, five troopers and one dispatcher.

On August 5, 1998, the grievant submitted a vacation request for August 25, 1998, through August 31, 1998. The request was denied for August 28, 1998, through August 31, 1998, because of a lack of manpower.

On each of the four days denied, there was a dispatcher working, a sergeant on vacation, and a trooper off on FMLA leave. Hence, on Friday, one trooper was on a regular time off and another was attending post-graduate training at the Academy. On Saturday, two troopers were on regular time off, one because of training at the Academy the previous five

days. On Sunday and Monday, two troopers were on regular time off. Approval of leave on any of the four days would have left only one trooper and a dispatcher on the shift.

The Union claims that in accordance with the Employer's past practice, a trooper and a dispatcher have been regularly assigned to a shift and thus the grievant's vacation from August 28 through August 31 need not have been denied.

## **5. The Merits of the Grievance**

### **The Employer's Position**

Section 43.04 of the Agreement states that requests made less than twenty-one days prior to the commencement of the vacation/leave shall be considered by the Employer but need not be approved, regardless of staffing needs. In this case, the grievant made his request on August 5, 1998, for vacation beginning August 25, 1998. The grievant therefore failed to meet the twenty-one day request period. The Employer is under no obligation to approve the vacation time off, regardless of the staffing needs.

The Employer does not have a regular practice of operating with one trooper and one dispatcher on the 3:00 p.m. to 11:00 p.m. shift. One employee has not always been allowed off per shift on permissive leave. Numerous times a unit has not been granted leave out of operational necessity.

In this case, if the last two days the grievant was attempting to take off were granted, that would have left only one trooper working the road. That trooper had just completed sixty days of field training with his coach and post-graduate training at the Academy. One of the conditions

mentioned that a Post Commander may consider in determining whether to grant or deny leave is crash experience. For the Post Commander to approve time off in this case, under the circumstances, would have been poor judgment.

### The Union's Position

The Employer has a well established practice of allowing one trooper to work with one dispatcher on the 3p shift. In fact, in 1998, such assignments were made on February 25, July 15, August 13, September 16, November 6, and December 2. In addition, on a 7a shift, such assignments were made on March 1, March 7, and December 9, 1998. On December 16, 1998, only one trooper was assigned to the 11p shift.

This past practice should control this issue. The number of times the Employer has assigned just one trooper and one dispatcher certainly indicates that it is possible for the post to operate under such conditions.

In this situation, the facts compelled the time off. No holiday period existed. No special events were occurring in Mansfield. Nothing was going on that would have created an assignment problem. The fact that a sergeant is on vacation when a trooper requests vacation has no bearing on the decision to grant or deny the trooper's request. Troopers do not perform the same duties as sergeants and they are in different bargaining units.

### **6. The Arbitrator's Opinion and Award**

From the evidence submitted on the record, which consists of the parties' stipulations and the facts and arguments presented in their briefs regarding this grievance, including the pertinent contract language and

relevant exhibits, it is this Arbitrator's opinion that the Employer's denial of the grievant's request for personal leave did not violate the terms of the parties' Agreement.

Section 43.04 of the Agreement, subsection C, specifically states that, "[vacation] requests made less than twenty-one (21) days prior to the commencement of the vacation leave shall be considered by the Employer, but need not be approved, regardless of staffing needs."

The grievant's vacation request was made on August 5, 1998. The request was for time off between August 25 through August 31, 1998. The grievant therefore did not submit his request within the twenty-one day time period. As such, his request need not be approved, regardless of the staffing needs. This express language makes the Union's analysis of the staffing needs during that period of time moot.

With respect to the Union's allegation of a practice of allowing an assignment of one trooper and one dispatcher on the 3p shift, the record does show a pattern of at least six **individual** times that such an assignment was made. These incidents occurred on February 25, July 15, August 13, September 16, November 6, and December 2. Those individual dates are not successive. They represent isolated occurrences of where a dispatcher and a trooper were assigned to the 3p shift.

Here, the grievant is requesting that such a one-dispatcher/one-trooper assignment be made from August 28 through August 31, 1998, over a period of four days. No such practice of **successive** days with such an assignment has been demonstrated. In this Arbitrator's view, granting a trooper a day off wherein the 3p shift is covered by only one dispatcher is much different than doing so for a block of four days. With every successive day that such a minimum shift assignment exists, the

Employer's calculated risk of not being able to service the public becomes greater. The individual scheduling practice of one dispatcher/one trooper does not translate into a general scheduling practice of such an assignment.

## **7. The Award**

The grievance is denied.

### **C. The Treva S. Adams Grievance**

#### **1. Issue**

Was the Employer's denial of the grievant's request for vacation leave on July 23 through July 27, 1998 a violation of the parties' Agreement? If so, what shall the remedy be?

#### **2. Pertinent Contract Provisions and OSP Policies**

##### **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.

##### **OSP Policies**

##### **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 outlines in each classification, and may restrict the

number of concurrent leaves on a work shift group, based upon operational requirements. (emphasis added).

(C)(4) - Provisions for Specific Groups of Employees (Dispatchers)

a. Normally, one radio dispatcher or communications technician assigned to a post or a district headquarters communications center may be on vacation or compensatory leave at any one time. If twenty-four hour coverage is not maintained after this leave is granted, voluntary or mandatory desk overtime assignments to other dispatchers is a satisfactory alternative to placing a sworn officer on desk.

b. More than one radio dispatcher, communications technician or cadet candidate may be on leave at any one time at a facility, provided adequate 24-hour radio coverage is maintained by other normally assigned communications technicians, radio dispatchers and cadet candidates.

**3. Joint Stipulations**

1. The employee is a dispatcher assigned to day shift which starts at 8:00 a.m. and concludes at 4:00 p.m.
2. The shift consists of one sergeant, four troopers, and one dispatcher.
3. The grievant submitted a leave request on June 22, 1998, during the window period.
4. The leave request was denied.
5. Grievant was the only dispatcher to request time off during that time frame.



#### **4. Case History**

The grievant, Treva S. Adams, is a dispatcher assigned to the 8:00 a.m. to 4:00 p.m. shift at the Hamilton post. Her shift consists of one sergeant, four troopers, and one dispatcher. She submitted a vacation request for July 23 through July 27, 1998.

The grievant's request was denied for July 23 and July 24 by the Post Commander. He cited a lack of manpower as a reason for the denial.

Apparently, one trooper was on vacation, another trooper was on disability, and various troopers were on their regularly scheduled time off during the week. If the Employer had granted the grievant's time off on July 23 or July 24, a two hour block on each day would have been created wherein the post would have been without a dispatcher and no trooper would be working the road.

There are, however, four dispatchers at the Hamilton post, including the grievant. None of the other three dispatchers were on vacation or personal time. In addition, a cadet dispatcher indicated that he would be willing to change his schedule to accommodate the grievant's request on July 23. July 24 would have been the only problem day with respect to the two hour block of unassigned time. The Union claims that it was unreasonable for the Employer to deny the grievant her vacation time because it could have filled it with overtime.

#### **5. The Merits of the Grievance**

##### **The Employer's Position**

During the week the grievant requested vacation, the post staffing levels were at a minimum. The Butler County Fair was occurring which contributed to increased traffic in the area and the need for troopers on the

road. One trooper assigned day shift was on vacation, another trooper was on disability, and various troopers were on their regularly scheduled time off during the week requested by the grievant. Two of the troopers work on the traffic and drug intervention team. Another trooper is a canine handler. Those troopers were on special assignment and are not part of the available troopers who work regular traffic duties.

If the Employer had granted time off to the grievant on July 23 and 24, a two hour block would have occurred on each day between 2:00 p.m. and 4:00 p.m. where the post would be without a dispatcher and no trooper would have been working the road. That trooper working the road would have been required to quit patrolling the road to sit the desk.

Assigning dispatchers on overtime was not a solution. Ordering an employee who is already off on permissive leave or a regular day off to work mandatory overtime would just shift the problem of time-off to another employee. In addition, the grievant was offered some options so that her leave could be approved, but she determined not to pursue them. The Post Commander was therefore within his discretion under the circumstances not to approve her vacation leave request.

#### The Union's Position

OSP Policy 507.08(C)(4)(a) specifically allows one dispatcher to a post to be on vacation at any one time. No other dispatchers were scheduled off between July 23 and July 27, 1998. The grievant therefore was well within her right to take the vacation time off.

In addition, the OSP Policy states that if twenty-four hour coverage cannot be maintained after the grievant would have been given her time off, voluntary or mandatory desk overtime assignments would have been a

satisfactory alternative to solve the problem. Based on the facts and circumstances, only four hours of time were at issue. Those hours were at the end of the grievant's shift and another dispatcher could have easily been called in to work an extra two hours early.

In addition, a cadet dispatcher was willing to change his shift to cover July 23. That would have left July 24 to be accommodated and the Employer could have dealt with that situation merely by posting overtime to cover the desk on July 24. This was not a burdensome situation that the Employer could not accommodate.

## **6. The Arbitrator's Opinion and Award**

From the evidence submitted on the record, which consists of the parties' stipulations and the facts and arguments presented in their briefs regarding this grievance, including the pertinent contract language and relevant exhibits, it is this Arbitrator's opinion that the Employer's denial of the grievant's request for personal leave violated the terms of the parties' Agreement.

OSP Policy 507.08(C)(4)(a) expressly states that one radio dispatcher assigned to a post may be on vacation at any one time. The grievant indisputably would have been the only dispatcher on vacation between July 23 and July 27, 1998. The grievant therefore appears to have had a legitimate right to the time off during that period of time.

OSP Policy 507.08(A)(3) also requires in this same context that the Post Commander may consider the total number of employees on the shift in each classification and restrict the number of leaves on a work shift group based on operational requirements. Even had this discretion been evoked, the record establishes that the worst case scenario was that four

hours of dispatching time would not have been filled during the grievant's vacation request. Those four hours, in this Arbitrator's opinion, could have been accommodated in accordance with OSP Policy 507.08(C)(4)(a), which addresses the use of overtime to accomplish this result.

Indeed, as noted by the Employer, as of August 28, 1999, 2,549 hours of desk overtime had been paid to accommodate vacation requests. The Employer admits 2,549 hours is modest because it does not include compensatory time, which most of the dispatchers and law enforcement officers take instead of being paid cash for the overtime.

In addition, a cadet offered to work on July 23, which would have reduced the assignment problem to two hours on July 24. Those two hours came at the end of the grievant's shift between 2:00 and 4:00 p.m., which could have easily been picked up by the next shift on an overtime basis. Other than alleging that overtime is not a reasonable solution, the Employer never gave compelling grounds for why the two to four hours of assignment time could not have been filled so that the grievant could have taken vacation during that time.

## **7. The Award**

The Union's grievance is sustained. The grievant is entitled to a cash payment for two days of vacation without deleting the payment from her accumulated vacation.

## **D. The Grievance of Gary W. Kirk**

### **1. Issue**

Whether the Employer's denial of the grievant's request for compensatory time on September 6, 1998 was in violation of the parties' Agreement? If so, what shall the remedy be?

### **2. Pertinent Contract Provisions and OSP Policies**

#### **Contract Provisions**

##### **27.06 - Requests for Compensatory Time Off**

Requests for compensatory time off must be submitted in writing in advance of the anticipated time off. Such requests shall be given reasonable consideration. Requests made within 24 hours in advance of the anticipated time off may be given reasonable consideration.

##### **27.07 - Granting of Compensatory Time Off**

Compensatory time off shall be granted subject to the operational needs of the facility.

#### **OSP Policies**

##### **OSP Policy 507.08 - Leave Requests**

##### **(B) Specific Leave and Compensatory Time Guidelines**

##### **3. Compensatory Time Make-up**

Requests shall generally be considered in the same fashion as vacation leave requests. However, vacation leave requests submitted more than twenty-one days in advance shall have standing over concurrent compensatory time

requests, regardless of the submission date or the seniority of the employees involved.

**OSP 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.

**OSP 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 outlines 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.

### **3. Stipulated Issues**

1. The employee is a trooper assigned to day shift which starts at 7:00 a.m. and concludes at 3:00 p.m.
2. The shift consists of one sergeant, four troopers, and one dispatcher.
3. On September 5, 1998, the grievant submitted a request for 8 hours of compensatory time for September 6, 1998.
4. The requested day off was Sunday of a Holiday Reporting Period.
5. No other troopers on day shift were on approved leave on September 6, 1998.

### **4. Case History**

The grievant, Gary W. Kirk, is a trooper assigned to the 7:00 a.m. to 3:00 p.m. shift at the Ironton post. That shift consists of one sergeant, four troopers, and a dispatcher.

On September 5, 1998, after reporting for his shift, the grievant requested eight hours of compensatory for the next day, September 6. The requested day off was the Sunday of the Labor Day weekend, one of the busiest weekends of the year.

The Labor Day Weekend Holiday Reporting Period began on Friday, September 4, and ended Monday, September 7. On each of these four days, a sergeant and a dispatcher were working the grievant's shift. On Friday, three troopers were working, one on time off. On Saturday, two troopers worked the whole shift, the grievant worked four hours, and

another trooper was on vacation. On both Sunday and Monday, four troopers were working the day shift.

On the day the grievant requested off, only one trooper was off. The Union thus argues that the Employer unreasonably denied the grievant's request because no other troopers on approved vacation leave existed so that his compensatory time could have been granted in accordance with OSP Policy 507.08(B)(3).

## **5. The Merits of the Grievance**

### **The Employer's Position**

The eighty percent requirement under OSP Policy 9-203.15(C) is merely a minimum requirement. That policy is not violated if more than eighty percent of the troopers are working.

In addition, if the compensatory time request is submitted within twenty-four hours of the time to be taken off, reasonable consideration "may" only be given. This creates a lesser expectation that a request made less than twenty-four hours in advance will be granted. The "may" language is permissive and thus no guarantees exist. Compensatory time off is thus governed by Section 27.07 of the Agreement which says that it is granted subject to the operational needs of the facility. If the Commander determines that the operational needs of the facility warrant it, a denial of the compensatory time then his judgment should be sustained.

### **The Union's Position**

The Employer unreasonably denied the grievant's request. No operational needs existed on September 6 to deny the grievant's request for compensatory time off. Even under the eighty percent requirement in OSP



Policy 9-203.15(C), three troopers, one sergeant and one dispatcher existed on the 3p shift on September 6. This was ample coverage to grant the grievant's request for compensatory time.

#### **6. The Arbitrator's Opinion and Award**

From the evidence submitted on the record, which consists of the parties' stipulations and the facts and arguments presented in their briefs regarding this grievance, including the pertinent contract language and relevant exhibits, it is this Arbitrator's opinion that the Employer's denial of the grievant's request for personal leave violated the terms of the parties' Agreement.

OSP Policy 507.08(B)(3) specifically states that requests for compensatory time are generally to be considered in the same fashion as vacation leave requests. In this context, OSP Policy 9-203.15 covers vacation requests during the Labor Day Weekend. Under that language, eighty percent of available troopers will be on duty during the Labor Day Weekend. But not included in the definition of available employees for calculating the eighty percent are bargaining unit employees on leave, special assignment or extended sick leave. As noted by this Arbitrator in another award dealing with the interpretation of this language, the parties' past practice includes vacation time in the definition of leave. (State of Ohio and the OSP, Gorski and Hall, Grievance Number 15-00-980112-0014-04-01).

The mathematical calculation is therefore simple. Five troopers, one sergeant and four troopers, were assigned to the day shift on September 6, 1998. The grievant was included in this calculation. One trooper was on

time off, but under OSP Policy 9-203.15(C), he is considered as an available employee.

Hence, eighty percent of five available troopers is four troopers. This means that the Commander is justified in denying the grievant's request for compensatory time if fewer than four available troopers existed on the shift.

Three troopers and one sergeant and one dispatcher were indisputably working on the shift on September 6. The other trooper on time off was considered available. Three troopers and a sergeant therefore were available to work on September 6. As a result, the grievant's request for compensatory time off did not violate the terms of the Agreement or OSP Policy. He was therefore entitled to the time off.

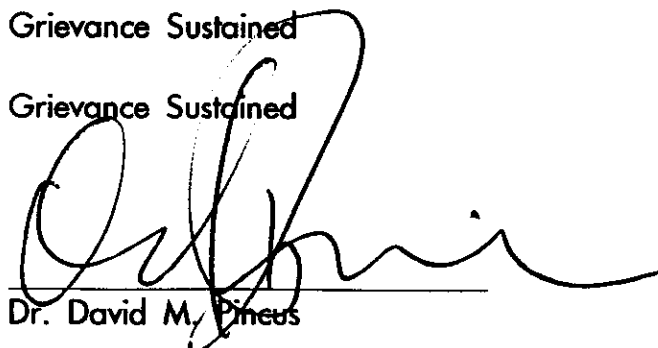
### **7. Award**

The grievance is sustained. The grievant is entitled to be paid eight hours compensatory time without a deduction in his accumulated compensatory time.

### **II. Arbitration Summary**

- |                       |                     |
|-----------------------|---------------------|
| 1. Phillip C. Ralston | Grievance Denied    |
| 2. Michael G. Roth    | Grievance Denied    |
| 3. Treva S. Adams     | Grievance Sustained |
| 4. Gary W. Kirk       | Grievance Sustained |

November 23, 1999  
Moreland Hills, Ohio

  
Dr. David M. Pincus