

**David M. Pincus
Arbitrator
4026 Ellendale Road
Moreland Hills, Ohio 44022**

#1642

March 13, 2003

Mr. Mike Duco
Manager of Dispute Resolution
Office of Collective Bargaining
100 E. Broad Street, 18th Floor
Columbus, Ohio 43215

-and-

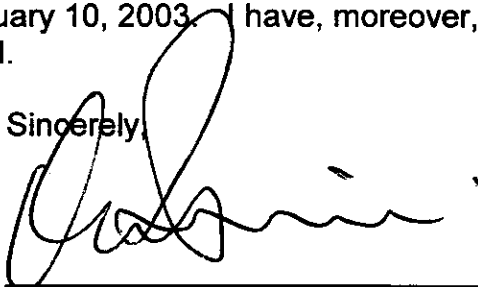
Mr. Herschel Sigall, Esq.
Ohio State Troopers Association
6161 Busch Blvd., Suite 130
Columbus, OH 43229

RE: The State of Ohio, Department of Public Safety, Division of the Ohio State
Highway Patrol and Ohio State Troopers Association
Grievant: Willie Smith, Jr.
Grievance No.: 15-00-20020410-0060-04-01

Dear Mike and Herschel:

Enclosed please find the Opinion and Award dealing with the above captioned matter. If you recall, the matter was undertaken without a hearing, and done solely on the basis of briefs. I received these briefs on January 10, 2003. I have, moreover, enclosed an Arbitrator's Invoice for services rendered.

Sincerely,



Dr. David M. Pincus
Arbitrator

STATE OF OHIO, DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF THE OHIO STATE HIGHWAY PATROL AND THE
OHIO STATE TROOPERS ASSOCIATION, IUPA, ALF-CIO

#1642

IN THE MATTER OF THE ARBITRATION BETWEEN:

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

-AND-

THE OHIO STATE TROOPERS ASSOCIATION, IUPA, AFL-CIO

GRIEVANT: WILLIE SMITH, JR.

GRIEVANCE NO.: 15-00-20020410-0060-04-01

ARBITRATOR'S OPINION AND AWARD
ARBITRATOR: DAVID M. PINCUS
DATE: MARCH 13, 2003

APPEARANCES

For the Employer

Renee L. Byers

Advocate

For the Union

Elaine N. Silveira

Advocate

Herschell M. Sigall

Advocate

Robert F. Cooper

Staff Representative

INTRODUCTION

This is a proceeding under Article 20 – Grievance Procedure, Section 20.07 – Grievance Procedure of the Agreement between the Ohio Department of Public Safety, Division of The State Highway Patrol (hereinafter referred to as the “Employer”) and the Ohio State Troopers Association, Inc. (hereinafter referred to as the “Union”) for the period July 1, 2000 to June 30, 2003 (Joint Exhibit 1). The parties selected Dr. David M. Pincus as the Arbitrator.

An arbitration hearing dealing with the disputed matter was never held. The parties, however, agreed to submit the matter on briefs for a binding decision by the Arbitrator (Joint Stipulations #2). They, moreover, agreed the disputed grievance was properly before the Arbitrator (Joint Stipulations #1).

PERTINENT CONTRACT PROVISIONS

ARTICLE 7 – NON-DISCRIMINATION

Neither party will discriminate for or against any member of the bargaining unit on the basis of age, sex, marital status, race, color, creed, national origin, religion, handicap, political affiliation, sexual preference, veteran status or for the purpose of evading the spirit of this Agreement; except for these positions which are necessarily exempted by bona fide occupational qualifications due to the uniqueness of the job, and in compliance with the existing laws of the United States, the State of Ohio, or Executive Orders of the State of Ohio.

The Employer and the Union hereby state a mutual commitment to affirmative action, as regards job opportunities within the agency covered by the contract.

(Joint Exhibit 1, Pg. 5-6)

ARTICLE 26 – HOURS OF WORK AND WORK SCHEDULES

26.01 Shift Assignments

Shift assignments will be made by the facility administrator on the basis of seniority. Schedules for troopers assigned to field locations will be bid by seniority, most senior first, at each facility. Troopers will bid upon two reasonably equal three month periods. After all troopers have bid, and prior to reviewing vacation requests submitted during the "window period," the post commander shall review the schedule and determine if any changes are needed based upon operational considerations. Operational considerations shall include, but shall not be limited to: the balance of experience per work shift group and special training. A bid period is two (2) reasonably equal three (3) month periods. The post commander may, per bid period, change a schedule for one (1) three (3) month period for up to four (4) troopers based upon operational considerations. No individual trooper will have their schedule changed for operational considerations more than once per twelve (12) month bid cycle with the first bid after ratification.

The decision of the post commander to make a schedule change based upon operational considerations shall only be grievable to Step 2 with a review of the circumstances made by the Office of Field Operations. Dispatchers and Electronic Technicians will continue to bid on the basis of seniority only.

In accordance with this section, shift assignments will be permanent and not rotation of shifts will occur, except for the relief dispatcher, who shall continue on rotating schedule as in the past. The Employer shall have the right to change a member's schedule for operational considerations, including time off days, or scheduled work shift with seventy-two (72) hours notice, or less when exigent circumstances exist. Shifts shall be bid between forty (40) and thirty (30) days prior to the beginning of the new assignment. The normal work week shall be forty (40) hours.

The relief dispatcher shall be paid the regular shift differential [currently seventy cents (\$.70) per hour] for all hours.

26.02 Report-in and Commutation Time

Employees shall be at their work sites, report-in location or headquarters location promptly at their shift starting time. Any employee who must begin work at some location other than their actual location or report-in location shall have any additional travel time counted as hours worked.

(Joint Exhibit 1, Pg. 53-54)

ARTICLE 30 – TRANSFERS/PAYMENT FOR MOVING EXPENSES

30.01 Transfers

- A. Employees shall submit transfer requests to the Office of Human Resource Management (HRM) for both Patrol post and specialty positions. Those transfer requests shall be maintained in an active transfer file. When the Employer determines a position shall be filled by transfer, the active transfer file shall be used to fill the position. When the Employer creates a new position, to be filled by transfer, the position will be posted at all Highway Patrol facilities for a period of seven (7) calendar days. All personnel in the affected classification shall have the right to bid on the position. Selection of the person to fill the position shall be based on ability and seniority. In the event of a field opening, i.e., an opening at one of the fifty-eight (58) Patrol posts, seniority shall be the determining factor. If no bid is received and the employer determines the position must be filled, the most junior employee shall be transferred.

When position openings are created as the result of the impending graduation of a cadet class, the Employer shall post an "open bid" period for transfer requests.

The employer shall then receive and consider all transfer requests of incumbents prior to assigning cadets to positions. Transfer requests may list up to five posts.

There shall be no cadet assigned to a position if a member has properly submitted a transfer request for that position during the posted "open bid" period. The Employer is not otherwise required to honor a member's transfer request during this period.

B. Specialty Positions

The Employer shall have the right to transfer members out of any non-field position at its discretion pursuant to the following:

For the purpose of this agreement, a "non-field" position is defined as any position within the Academy, Office of Human Resource Management, Aviation, Planning and Analysis, Inspections and Standards, Executive Protection, Office of Investigative Services, Crash Reconstruction, Plain Clothes Investigator, CMV Trooper, Load Limit Trooper, or MVI Trooper. The Employer may involuntarily reassign members in non-field positions to a field or other non-field position. Any transfer initiated by the Employer for this purpose shall not result in the transferred employee having to relocate, unless the relocation is the result of the affected employee's transfer request. Any employee presently assigned to CMV Trooper, Load Limit Trooper, or MVI Trooper, on the effective date of this Agreement, shall only be transferred out of such position pursuant to paragraph A.

Any employee assigned to the Office of Investigative Services or as a plain clothes investigator as of April 1, 1994 shall only be transferred out of such position pursuant to paragraph A.

(Joint Exhibit 1, Pg. 59-60)

STIPULATED ISSUE

Did the Employer violate the Collective Bargaining Agreement by changing the Grievant's report-in location to the Hiram Post? If so, what shall the remedy be?

FACTUAL STIPULATIONS

1. This grievance is properly before the Arbitrator.
2. The parties agree to submit the case on briefs for a binding decision by the Arbitrator.
3. The Grievant is a trooper with the Highway Patrol.

4. Prior to February 4, 2002, the Grievant's report-in location and post assignment was the Warren Patrol Post (Post 78).
5. Prior to February 10, 2002, Sgt. Joseph Dragovich's report-in location and post assignment was the Warren Patrol Post.
6. The Grievant sent a letter to the Superintendent of the Highway Patrol dated February 4, 2002, alleging personal and racial bias from post supervision, specifically Sgt. Joseph Dragovich.
7. The Grievant is an African-American Male and Sgt. Dragovich is a White Male.
8. On February 6, 2002, S/Lt. Rick Munk, Commander of the Administrative Investigation Unit, initiated an administrative investigation (02-1470) based on the allegations raised in the Grievant's February 4 letter.
9. On February 10, 2002, the report-in locations for the Grievant and Sgt. Dragovich were temporarily changed pending the outcome of administrative investigation 02-1470.
10. The Grievant was temporarily re-assigned to the Hiram Patrol Post (Post 91) and Sgt. Dragovich was temporarily re-assigned to the Lisbon Patrol Post (Post 15).
11. The Hiram Patrol Post is located on the Ohio Turnpike.
12. Patrol cars assigned to Turnpike Posts are equipped with a microwave communication system which has a very limited range off of the Turnpike.
13. Because the Turnpike Commission pays for mileage on these Patrol cars assigned to Turnpike Posts, their use off of the Turnpike is limited.
14. All Turnpike overtime is paid at time and one-half.
15. The extra-duty detail rate is \$29.00 per hour.
16. The Grievant's rate of pay from June 3, 2002 until June 29, 2002 was \$21.85/hour.
17. The Grievant's rate of pay since June 30, 2002 is \$22.72/hour
18. On March 7, 2002, A.I. #2002-1470 (Capt. W. Costas, Lt. W.G. Thompson and Sgt. J. Dragovich, subjects) was completed and submitted to HRM for review.
19. A.I. #2002-1470 was found to be non-chargeable.
20. On March 12, 2002, Sgt. Dragovich was returned to the Warren Patrol Post.

21. On April 10, 2002, the Grievant filed the instant grievance because he was not returned to the Warren Patrol Post.
22. On May 23, 2002, the Grievant submitted a "Request for Transfer" from the Hiram Post to the Warren Post.
23. On May 31, 2002, Lt. Zemelka (then Post Commander of the Hiram Post) responded to Grievant's transfer request by stating, "You have not been officially transferred to Post 91, it is just a temporary assignment."
24. The Grievant bid on the Warren schedule in accordance with Section 26.01 of the OSTA contract.
25. Sixteen (16) employees of the Warren Post filed a class action grievance on May 28, 2002 alleging that the Grievant's return to the Warren post would create a hostile and potentially life-threatening situation." This is grievance number 15-00-20020528-0089-04-01.
26. On May 29, 2002, S/Lt. Rick Munk, Commander of the Administrative Investigation Unit, initiated an informational administrative investigation (02-1840) based on the allegations raised in the grievance filed on May 28, 2002.
27. On October 28, 2002, OSTA withdrew grievance number 15-00-20020528-0089-04-01 based on the fact that the issue was not ripe because the Grievant had not been returned to the Warren Post.
28. Grievant came into compliance with HPFP on June 3, 2002, at which time he became eligible to work voluntary overtime assignments.
29. Since becoming eligible to work overtime, the Grievant has not been allowed to work any overtime or off-duty details from the Warren Patrol Post.
30. Since becoming eligible to work overtime, the Grievant has been allowed to work voluntary overtime and off-duty details at the Hiram Patrol Post.
31. Since November 20, 2002, Grievant has not been eligible to work overtime or off-duty details due to an off-duty injury.
32. From June 3 to November 20, ninety-seven (97) requests for voluntary overtime/off-duty details were received at the Warren Post. All of these requests were for Monday or Tuesday details.
33. The Grievant has no additional travel times to the Hiram Post.

34. The parties agree that all of the above facts are true and accurate, but reserve the right to argue their relevance to this case.

CASE HISTORY

On February 4, 2002, the Grievant's post assignment and report-in location was the Warren Post, Post 78. On this date, he authored and dispatched a letter to the Superintendent of the Highway Patrol, Colonel Kenneth L. Morchel. It stated in pertinent part:

Shortly after my reinstatement, yourself and Tpr. Tony D. Stephens attended the Annual Superintendents Citation Awards. Upon Tpr. Stephens's return, he gave me a message from you. He told me that you had assured him that I was welcomed back to the Patrol and that no one would hold any grudges against me. He went on to say that you were personally glad to see me back and wanted me to let you know if I had any problems. Since my return to P-78, I have been experiencing the same problems that led to my original termination. I have been told that nobody wants me at the post and I am continually subjected to unequal treatment and the constant victim of Sgt. Dragovich's personal and racial bias. In the past month or so, this environment has begun to have serious physical and mental consequences on myself.

On the twenty-sixth of January, Capt. William Costas and Lt. William Thompson issued me a written directive. This directive eliminated the last line of defense for me. You see Sgt. Dragovich made it very clear my first day back that he did not want me back at the post. Since **FIGHT** or **FLIGHT** is not nor will it ever be an option for me, this directive is sure to result in deadly consequences for myself as soon as Sgt. Dragovich test these new grounds. I requested to have you directly involved on a couple of occasions. These requests fell on deaf ears. It has become very clear to me that you are the only person in the patrol that is interested in my well being. I am now asking that you please step into this most volatile situation. I am convinced that my **LIVELIHOOD** and **LIFE** are in grave danger each and every time that I step into P-78.

Please attend to this matter as soon as possible.

(Joint Exhibit 3)

These serious allegations caused the Employer to initiate several related actions. On February 6, 2002, the Employer initiated an administrative investigation regarding the

Grievant's allegations of personal and racial bias (Joint Exhibit 4). Also, on February 10, 2002, to ensure the safety of all involved employees, the Employer changed the report-in locations for both the Grievant and Sergeant Dragovich. The Grievant was told to report to the Hiram Post, while Sergeant Dragovich was told to report to the Lisbon Post.

On March 7, 2002, the above-mentioned administrative investigation was completed and submitted to Human Resources. It contained the following conclusion:

The investigation involved 29 interviews and the review of counseling letters and information on Inter Office Communications. During the interviews, not one person felt that they were subjected to unequal treatment or that race was an issue. When interviewed, Captain Costas and Lieutenant Thompson stated they had no knowledge of unequal treatment or racial bias with Post personnel. Information gathered from interviews and review of IOC's and written counselings authored by Sergeant Dragovich indicates that Sergeant Dragovich treats everyone at the Post equally and fairly. There was no evidence to support that the complainant was treated unequally or that racial bias was involved.

(Joint Exhibit 4, Pg. 1)

The previously mentioned investigation caused a change in Sergeant Dragovich's report on location. His location was changed back to the Warren Post on March 12, 2002. The Grievant's work location, however, was not altered. He remained at the Hiram Post.

On April 10, 2002, the Grievant protested the Employer's inaction by filing a grievance. The Grievance Facts Section stated in pertinent part:

The company is in violation of the Articles listed above. All issues revolve around me being forced to work out of P-91. From the start, I was told that this violation had the Union's blessing. If that is true, it does not validate the violations. I do not wish to waive any time constraints once this process gets going. I would like to be present at all steps hearing (sic) on this matter.

(Joint Exhibit 2A)

On May 23, 2002, the Grievant initiated a Request for Transfer request (Joint Exhibit 8). He requested a transfer from Post 91 (Hiram) to Post 78 (Warren). As justification the Grievant maintained:

I am supposed (sic) to be at 78 not 91. OSHP is in violation of contract and knowingly discriminating in the process.

(Joint Exhibit 8)

On May 31, 2002, Lieutenant R.J. Zamelka responded to the Grievant's Request for Transfer (Joint Exhibit 8). He noted:

Request for transfer – You have not been officially transferred to Post 91, it is just a temporarily (sic) assignment.

(Joint Exhibit 9)

A collateral class action grievance was filed on May 28, 2002. The Grievance Facts section contained the following allegations:

On May 16, 2002, I became aware that Tpr. Willie Smith, Jr. Unit 293 now assigned to Hiram Post 91 filed a grievance which would allow him to return to the Warren Post 78. I feel vehemently along with other co-workers that this would again create a hostile and potentially life-threatening situation to myself and other facility employees.

(Joint Exhibit 5)

The class action grievance was eventually withdrawn on October 28, 2002 (Joint Exhibit 7).

The disputed matter was processed through the various stages of the grievance procedure. Neither party raised procedural nor substantive arbitrability issues. As such, the grievance is properly before the Arbitrator.

THE MERITS OF THE CASE

The Union's Position

The Union argued the Grievant's transfer was a clear violation of Article 30. This provision states a transfer can only be effectuated when a Trooper submits a transfer request. Here, a "temporary" assignment was effectuated unilaterally by the Employer to allow an investigation of a dispute exposed by the Grievant. The Grievant, however, never requested a transfer to the Hiram Post, which caused the illegal "temporary" transfer by the Employer. The Employer does not have the contractual authority to arbitrarily assign employees to work locations without their consent.

The Employer, itself, acknowledged the legitimacy of the Grievant's claim. The Grievant submitted a Request for Transfer back to his original assignment (Joint Exhibit 8). Lieutenant Zemelka noted the Grievant did not have to transfer to the Warren Post because he had never been officially transferred to the Hiram Post (Joint Exhibit 9).

Other documents suggest the Grievant has never severed his formal relationship with the Warren Post. He is listed on the Warren Post's Personnel Bulletin Board (Joint Exhibit 14), and is designated on the Voluntary Overtime Opportunity Roster Worksheet (Joint Exhibit 11(B)).

An interpretation in the Employer's favor could render Article 30 moot and irrelevant; an outcome unanticipated by the parties. The Employer's unilateral action amounts to a "penalty transfer." Article 30 provides bargaining unit members to work at a post of their choosing. Here, the Grievant never chose to be transferred to the Hiram Post. Article 30, more specifically, was never promulgated to deal with troubled supervision or to alleviate tension at any particular work location.

The Employer has yet to articulate why the Grievant is still stationed at the Hiram Post. The Step 2 Grievance response (Joint Exhibit 2 (B)) alluded to "other matters." These "other matters" have never been fully articulated and explained.

The class action grievance (Joint Exhibit 5) has no bearing on the Employer's decision. It was filed almost five months after the "temporary" re-assignment. The Employer, moreover, has never stated the class action grievance served as justification for the re-assignment. Employees do not have to get along to work together. In fact, the Employer acknowledged in the Step 2 response (Joint Exhibit 2(A)) to the class action grievance "there is not currently an unsafe working condition."

The Employer violated Article 7 by treating the Grievant differently than Sergeant Dragovich. Both employees were ostensibly "temporarily reassigned" as a consequence of allegations raised by the Grievant. The reassignment was to last for the duration of the investigation, which was completed on March 7, 2002. Yet, the white

employee, Sergeant Dragovich, was returned to the Warren Post on March 12, 2002, while the black employee, the Grievant, has yet to be returned approximately one year after the initial decision to re-assign. Clearly, this decision, in terms of duration, cannot be deemed as temporary.

The Union requested a remedy consisting of two specific components. First, the Grievant should be compensated for all hours worked at the Hiram Post at the time and a half rate. To restore the Grievant to the Warren Post, without monetary compensation, would not properly compensate the Grievant for this blatant contractual breach. After all, the Grievant was required to work at an undesired location because of an illegal unilateral action.

Second, the Employer's action deprived the Grievant of off-duty overtime details arising at the Warren Post. For the period June 3, 2002 to November 20, 2002 ninety-seven requests for voluntary overtime/off-duty details were tendered at the Warren Post. All of these requests were for Monday or Tuesday details (Joint Stipulation 32). Obviously, the Grievant could not have worked all of these details. He could have, however, worked as many off-duty details at the Warren Post as Troopers Bim Shaw and James Quinlan. They each worked eleven off-duty details during the period in question.

The Employer's Position

The Employer, in response to the Grievant's allegations, did not violate the Agreement (Joint Exhibit 1) when it changed his report-in location to the Hiram Post. Section 26.02 sanctions moves of this sort, and only requires that an employee be compensated for additional travel time. Nothing in this provision, moreover, limits the

Employer's decision to change a report-in location to a particular duration. The Grievant was not compensated in this instance because he never realized any additional travel time.

The decision to change the report-in location was not arbitrary, but was initiated in good faith. The Grievant's letter characterized his situation as life threatening, and accused Sergeant Dragovich as being the perpetrator of these potentially dangerous circumstances. By temporarily changing the protagonists' report-in locations, but not formally transferring them, the Employer ensured the Grievant's and other post employees' safety.

The Employer challenged the Union's overtime request analysis. The period of time at issue is June 3, 2002 through November 20, 2002. This time period is limited by a number of considerations. The Grievant only became eligible for voluntary overtime on June 3, 2002, once he complied with certain fitness standards. His eligibility, however, for voluntary overtime terminated on November 20, 2002 when he realized an off-duty injury.

The Employer had several valid justifications for having the Grievant apply to work overtime and extra-duty details from the Hiram Post rather than the Warren Post. If the Grievant's fear was genuine, then the Employer was obliged to protect him under all circumstances. Allowing the Grievant to work voluntary overtime and extra-duty details at the Warren Post would have exposed him to the same fearful circumstances which required his re-assignment.

The Employer also limited the Grievant's voluntary overtime and extra-duty opportunities to his report-in location because of operational considerations. Once the

Grievant was assigned to the Hiram Post, which is on the Ohio Turnpike, he became subject to the Post's working conditions. All cars at this post are maintained through the Turnpike Commission. As a consequence, the Commission pays for all mileage and maintenance on these vehicles. Communication equipment is limited per use requirements. With the responsibilities primarily turnpike specific, microwave communication systems are used, which are designed with these limitations in mind.

As a Turnpike Trooper, the Grievant would have used a Warren Post's vehicle to perform voluntary overtime and extra duty assignments at that post. Thus, dangers raised originally by the Grievant would have led to needless exposure.

Section 27.03 O.S.P. Policy 500.18, Extra Duty Patrol Services, require "good faith" attempts to equalize overtime opportunities. Neither policy nor the Agreement (Joint Exhibit 1) guarantee overtime equalization between posts. As such, quite often, different posts realize differing opportunity levels.

During the pertinent timeframe, the Grievant suffered no loss in terms of extra-duty details while at the Hiram Post. The Grievant received eleven (11) opportunities, while the highest number of realized opportunities by another Trooper was twelve (12).

From June 3, 2002 to November 20, 2002, the extra-duty opportunities at the Warren Post were more diverse than those realized at the Hiram Post. Here, the opportunities in question ranged from six (6) to thirty-six (36). With this outcome, it becomes quite difficult to determine how many of these opportunities would have been offered the Grievant, had he been at the Warren Post.

Fewer potential extra-duty opportunities at the Hiram Post do not necessarily convert to lesser overall compensation. The rate of pay for extra-duty work at the Hiram

Post exceeds the rate utilized at the Warren Post by \$5.00 per hour. Any analysis would have to consider rate of pay and opportunities to determine the propriety of the Union's demands.

O.S.P. 500.18 (c) (6) would further limit the Grievant's extra-duty opportunities. It requires that "an employee shall not work more than two consecutive work weeks (14 consecutive calendar days) without observing at least one day in a non-duty status. During the five and one-half months of eligibility, the Grievant, per this policy, could not have worked all of the Monday/Tuesday extra-duty opportunities. As such, this allegation is highly speculative, and therefore, non-compensable.

Generally, the Union's remedy arguments are flawed because the Grievant failed to suffer any actual loss by having his report-in location changed to the Hiram Post. He retained his full-time employee status and was scheduled for a minimum of forty (40) hours per week. Benefit levels, as well, were not modified, and he did not realize additional driving time. Of utmost import, since becoming eligible for overtime on June 3, 2002, the Grievant was placed on the Hiram Post's overtime roster. He took advantage of this placement by accepting overtime opportunities.

The Grievant's request for time and a half compensation is a demand for punitive damages not supported by the record. The Agreement (Joint Exhibit 1) fails to acknowledge punitive damage relief for contractual breaches of the sort contemplated. As such, any award contemplating a punitive component would violate Section 20.08 (5). An arbitrator would be imposing a punitive damage obligation on the Employer not required by the Agreement (Joint Exhibit 1).

The Employer's actions were not motivated by circumstances of malice, which negates the need for any punitive damages. The entire episode and resultant investigation were triggered by concerns raised by the Grievant in his February 7th letter (Joint Exhibit 4) to the Superintendent of the Highway Patrol. The investigation failed to support the Grievant's allegations causing the return of Sergeant Dragovich to the Warren Post. Since the triggering event, the Grievant has failed to inform the Employer whether his fearful perceptions had lessened or ceased. As such, his report-in location has not been changed back to the Warren Post.

THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony provided in the parties' briefs, including joint stipulations and pertinent contract language, it is the opinion of the Arbitrator that the Employer did not violate the Agreement (Joint Exhibit 1) when it changed the Grievant's report-in location to the Hiram Post. The duration, however, of this change in location was excessive and unreasonable under the circumstances.

Section 26.02 – Report-in and Communication Time clearly anticipates such a charge. It states in pertinent part:

...Any employee who must begin work at some location other than their location or report-in location shall have any additional travel time counted as hours worked.

(Joint Exhibit 1, Pg. 54)

Here, the parties have acknowledged the possibility of having Troopers begin work at some location other than their normal report-in location. Nothing in the Agreement

(Joint Exhibit 1) clearly precludes this administrative action if circumstances require such a change. The Grievant did not realize any additional travel time once his report-in location was changed to the Hiram Post, and thus, he was not paid "any additional travel time."

The Employer, however, needs to be placed on notice that future application of Section 26.02 needs to be confined narrowly. The unique circumstances facing the Employer and the Grievant in this instance justified application of the disputed section. After all, the Grievant triggered the Employer's response with his allegations, which caused the changes to ensure the Grievant's safety and the propriety of the undertaken investigation. A pattern of arbitrarily applying Section 26.02 as a way of subverting Sections 26.01 and 30.01 would not be tolerated by the Arbitrator.

Sections 26.01 and 30.01 were not violated when the Grievant's report-in location was changed. The Grievant's shift assignment was not changed when his report-in location was changed. Also, the Employer's decision to change his report-in location in no way violated Section 30.01, which deals with transfer requests. The Grievant was never transferred from the Warren Post, and was viewed as a formal member of the Warren Post at the time of the dispute and thereafter. The Employer's action cannot be viewed as a "penalty" transfer when it is sanctioned by Section 26.01.

Having ruled that the Agreement (Joint Exhibit 1) was not violated does not relieve the Employer of other reasonable obligations. The Employer should have changed the Grievant's report-in location to the Warren Post at the time of Sergeant Dragovich's return. The investigation was complete and the findings failed to support the Grievant's allegations. Both individuals should have been returned to the Warren

Post and the matter settled. By requiring the Grievant to continue to report to the Hiram Post, the Employer unreasonably applied the clear and unambiguous rights articulated in Section 26.02.

The Grievant requested "time and a half for all hours worked" at the Hiram Post. This request is equivalent to a motion for "punitive damages." A motion not supported by the record nor the terms of the Agreement (Joint Exhibit 1).

Again, Section 26.02 sanctions the charge in question. As such, the Grievant cannot assert that he was "wronged" by the Employer's action. The Employer, moreover, acted reasonably in response to the Grievant's own allegations and was not motivated by malice. Within these circumstances, a punitive award, one very few arbitrators have been willing to assess, seems unjustified.

What remains is a finding dealing with the voluntary overtime/extra-duty assignments remedy request. This relief in damages, as well, is not granted by the Arbitrator. The Union was never able to prove any actual or direct losses engendered by the change in report-in location. The accepted period for analysis purposed is June 3, 2002 to November 20, 2002, at all other times the Grievant was ineligible to work overtime. During this timeframe, the Grievant received eleven (11) extra-duty opportunities at the Hiram Post. He was paid at a rate 17% greater than the rate paid for any opportunity at the Warren Post. Thus, it becomes virtually impossible to determine whether a greater number of extra-duty opportunities at the Warren Post could have offset the rate of pay disparity.

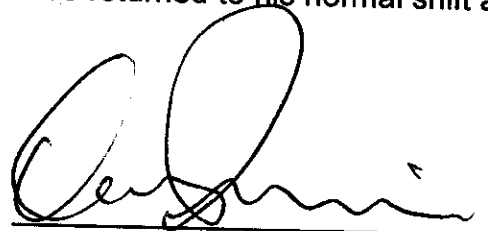
Arguments dealing with "missed" extra-duty opportunities are also too speculative to support the requested remedy. O.S.P. 500.18 (c) (6) limits the amount

of extra-duty an employee may work within the relevant timeframe. The Grievant was eligible to work fifty (50) Mondays and Tuesdays, but these opportunities would have been lessened by limitations noted in the applicable policy. Also, since June 3, 2002, the Grievant had realized overtime opportunities at the Hiram Post, which would substantially mitigate any "missed" opportunities at the Warren Post.

AWARD

The Employer did not violate the Agreement, (Joint Exhibit 1) but is required to return the Grievant to the Warren Post. He shall be returned to his normal shift and work assignment at the Warren Post.

March 13, 2003
Moreland Hills, Ohio


Dr. David M. Pincus
Arbitrator