

#1808

THE STATE OF OHIO, OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF THE STATE HIGHWAY PATROL AND
OHIO STATE TROOPERS ASSOCIATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

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

-AND-

OHIO STATE TROOPERS ASSOCIATION, IUPA/AFL-CIO

GRIEVANT: JAMES F. ADAMS (CLASS ACTION)
GRIEVANCE NO: 15-00-040315-0028-07-15

ARBITRATOR'S OPINION AND AWARD
ARBITRATOR: DAVID M. PINCUS
DATE: March 16, 2005

APPEARANCES

For the Employer
Charles J. Linek III

Advocate

For the Union
Elaine Silveira

Advocate

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 (hereinafter referred to as the “Union”). The parties had selected Dr. David M. Pincus as the Arbitrator.

An arbitration hearing was not held in this instance based on a stipulation agreed to by the parties. The parties, more specifically, agreed to submit the disputed matter for a binding decision by the Arbitrator based solely on submitted briefs.

PERTINENT CONTRACT PROVISIONS

Article 2 – Effect of Agreement – Past Practice

This agreement is a final and complete agreement of all negotiated items that are in effect throughout the term of the Agreement. This Agreement may be amended only by written agreement between the Employer and the Union. No verbal statements shall supersede any provisions of this Agreement.

Fringe benefits and other rights granted by the Ohio Revised Code, which are not specifically provided for or abridged by this Agreement, shall be determined by those applicable statutes, regulations, rules or directives. The parties agree that they will negotiate any changes to wages, hours, and terms and conditions of employment, as may be required by law.

(Joint Exhibit 1, Pg. 1)

Article 20 – Grievance Procedure

20.08 Arbitration

5. Limitations of the Umpire

Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration.

The umpire shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall the umpire impose on either party a limitation or obligation not specifically required by the language of this Agreement.

(Joint Exhibit 1, Pgs. 20-21)

Article 26 – Hours of Work and Work Schedules

26.05 Double Backs

At any time when the starting times of shifts worked by a member are less than twenty (20) hours apart, the members will receive one and one-half (1½) times his/her hourly rate, including premium pay for the second shift worked except in local emergency situations. A shift worked immediately following a report-back will not be considered a double back for pay purposes under this Article.

(Joint Exhibit 1, Pg. 32)

Article 37 – Educational Incentive and Training

37.01 The Employer and the employees of the bargaining unit mutually recognize the benefit of continued education and training for professional growth and development. The Employer will provide basic and advanced training programs on a continuing basis based on needs and available funding.

37.02 In addition to the basic training provided at the Academy, advanced, specialized or individual training may be provided as needed. The reasons for training may include, but are not limited to, the overall improvement of skill and efficiency; changes in laws or duties and responsibilities' changes in equipment or technologies; and to qualify for positions of the greater responsibilities.

The work day for all training programs shall be from 8:00 AM to 5:00 PM, unless otherwise specified, with one (1) hour for lunch and time for breaks as the program

allows. Employees assigned to attend training programs will adopt the schedule of the program.

Employees required to participate in official duties or classes that extend beyond an eight (8) hour work day may be compensated according to the overtime provisions of this contract.

Staying or sleeping overnight at a particular location during a training program shall not give rise to the accumulation of overtime.

Travel time to and from training programs shall be considered as on-duty hours and compensated appropriately.

37.03 The Employer encourages those employees who wish to pursue further education and/or training in addition to programs provided by the Employer. Bargaining unit members may be permitted to trade shifts and/or days off with the other members in the same classification in order to attend non-departmental education or training programs. The trading of shifts and/or days off will be by mutual agreement of the involved employees and the Post Commander or equivalent supervisor. Approval for such trade shall not be unreasonably denied by the Post Commander or equivalent supervisor.

The Employer will reimburse members of the bargaining unit up to one hundred percent (100%) of their tuition fees for any training or education received at or on-line from an institution of higher education based on the following:

1. The education or training is received at an institution that is authorized by the Ohio Board of Regents or is accredited by the North Central Association of Colleges and Schools.

2. The employee submits certified proof of completion of the course and a receipt to his/her facility administrator showing the tuition involved has been paid.
3. The employee submits a written request to his/her facility administrator prior to the start of the course for which tuition reimbursement is sought, and receives approval for the request.
4. The contents of the seminar, workshop or conference taken must be job-related, increasing the employee's skills and/or knowledge relating to the present job or a higher-level position within the Division. The class or coursework undertaken must serve an educational purpose.

The Superintendent or his/her designee will retain final authority to approve or deny all such tuition reimbursement requests, based on sound management practices, including the availability of funds. If limitation of funding prevents all tuition reimbursement requests from being approved, bargaining unit members enrolled in a degree program will receive first consideration. If funding limitation further prevents all members enrolled in a degree program from being approved, the member who has been continuously enrolled in a specific degree program will receive first consideration.

Any such request for tuition reimbursement will not be unreasonably denied.

37.04 The Employer will offer the tuition, seminar and conference fund. The fund will make available \$75,000 in fiscal year 2004, \$75,000 in fiscal year 2005, and \$100,000 in fiscal year 2006, for fees and expenses for attendance at seminars, workshops, conferences and for tuition reimbursement. Subject to the limitations of the fund, each employee shall be eligible for an amount not to exceed thirty-five hundred (\$3,500) dollars for tuition reimbursement of which a total of two thousand (\$2,000) dollars may

be used for seminars, workshops or conferences. Seminars, workshops and conferences must be job related unless otherwise approved by management. In order to receive reimbursement the employee must successfully pass the job related coursework or otherwise approved course, if pass/fail, or a "C" or better, if grades are given.

37.05 Secondary Education Benefits for Dependent Children

Pursuant to Section 3333.26 of the Ohio Revised Code, any resident of this State who is under twenty-six (26) years of age, or under thirty (30) years of age if he or she has been honorably discharged from the armed services of the United States, and who is the child of an Ohio Highway Patrol Trooper, killed in the line of duty, and who is admitted to any State university or college, shall not be required to pay any tuition or any student fee for up to four (4) academic years of education which shall be at the undergraduate level. Provision of this section purporting to bind State universities and colleges, shall not be arbitrable.

(Joint Exhibit 1, Pg. 38-40)

FACTUAL STIPULATIONS

1. This grievance is properly before the Arbitrator.
2. The parties agree to submit this case for a binding decision by the Arbitrator on briefs.
3. The relevant language in the contract is Section 26.05 and Article 37.
4. This grievance is a class action grievance involving Troopers and Sergeants.
5. As part of its training regime, the Employer conducts an "In-Service" school for every sworn officer once a year.

6. For the 2004 In-Service, the Employer instituted a three-day training schedule. The first day of training began at 3 p.m. at the Ohio Peace Officer Training Academy's Emergency Vehicle Operations Course and concluded by 11:00 p.m. The second day of training began at 8 a.m. at the Ohio State Highway Patrol Academy. The third day began at 8 a.m. at the Ohio State Highway Patrol Academy.
7. The third day of training consisted of firearms qualification, Taser recertification and Officer Preparedness.
8. Officers were not disciplined for not completing the driving exercises correctly on the first day of training.
9. No testing took place on the second day of in-service.

ISSUE

Did the Employer violate Article 26.05 of The Collective Bargaining Agreement by denying the Grievant double back pay? If so, what shall the remedy be?

CASE HISTORY

The facts, for the most part, are not in dispute. James A. Adams, the Grievant, and other similarly situated members of a class, filed a grievance on March 12, 2004, which alleged a violation of Article 26.05. This provision deals with Double Back pay "when the starting times of shifts worked by a member are less than twenty (20) hours apart."

Per established policy, Troopers and Sergeants are required to attend In-Service School on a yearly basis. The particular in-service session in dispute took place over a three (3) day period, and involved three (3) segments.

On March 1, 2004, the Grievant reported to the Ohio Police Officers Training Academy (OPOTA) at 3:00 p.m. A lecture was conducted consisting of vehicle dynamics, vehicle maintenance, defensive driving, and performance driving. The classroom portion of the day was completed at approximately 6:00 p.m. An application

portion followed, which consisted on driving of a high speed track and exercises on the skill pad.

On March 2, 2004, the second day of training commenced at 8:00 a.m., at The Ohio State Highway Patrol Academy. Thus, the starting time between the two shifts was less than twenty (20) hours apart. This session was solely dedicated to classroom training. Some of the topics discussed during the course of the day included in pertinent part: Homeland Security, drug interdiction, ethics, search and seizure, commercial vehicle violations, and crashes.

The third session took place on March 3, 2004. Troopers and Sergeants were given firearms qualifications, Taser recertification and other preparedness exercises.

On March 12, 2004, the Grievant filed a grievance which formally protested the non-payment of eight (8) hours of Double Back pay per his interpretation of Article 26.05 (Joint Exhibit 2).

The parties were unable to resolve the disputed matter. Neither side raised substantive nor procedural arbitrability concerns. As such, the grievance is properly before the Arbitrator.

THE MERITS OF THE CASE

The Union's Position

The Union opines that the Employer violated Article 26.05 by not paying the Grievant Double Back payment for the second day of attendance at the In-Service held on March 2, 2004. This Article necessitates payment when the starting times of shifts worked are less than twenty (20) hours apart. Here, the scheduling indicates sixteen

(16) hours between the shifts triggering the payment of time and one-half the members' regular rate of pay.

The language in dispute is clear and unambiguous. The proposed interpretation complies with language negotiated by the parties. Article 26.05, moreover, does not contain any exception regarding Double Back payment in scheduled training settings. In fact, the application appears relatively broad as exposed in the reference to "any time a member's starting time..."

Contract language articulated in Article 37 further supports the Union's argument. This series of training provisions fail to specifically exclude Double Back payment during training.

The parties, however, have negotiated other specific exclusions contained in the Agreement (Joint Exhibit 1). Without a similar specific exclusion regarding Double Back payment, the clear language of Article 26.05 binds the parties' contractual relationship.

Other articles reinforce the application of the proposed interpretation. Article 2 serves as a zipper clause which contractually codifies the Agreement (Joint Exhibit 1) as final and complete. The parties, moreover, agree that it can only be amended by a written agreement. With the previously discussed clear and unambiguous language contained in Article 26.05, the Employer cannot impose a practice or custom dealing with payment of Double Back pay during training circumstances.

An alternative ruling by the Arbitrator would violate Article 20.08 (5). He does not have the power "to add to, subtract from or modify any of the terms of this Agreement..." Adding an exception to Article 26.05 would impose a limitation not specifically negotiated by the parties.

Prior arbitration awards regarding the disputed language are viewed as irrelevant. These awards were decided erroneously. Rulings were based on matters outside the four corners of the Agreement (Joint Exhibit 1).

The Employer's Position

The Employer argues that Article 26.05 was not violated. As such, the payment in question need not be distributed.

The language contained in Article 37 supercedes the language in Article 26.05 regarding Double Backs for training. Article 37 contains language governing attendance at training programs, scheduling and compensation issues. Since Article 37 fails to acknowledge Double Back payments for training programs, members are not eligible for this benefit while attending training programs.

Article 37 also articulates a specific compensation system for members attending training programs without referencing Double Back, while Article 26.05 contains general language dealing with Double Back payment. It, therefore, appears obvious that the language of Article 37 should be given precedence when training payments are in dispute. Otherwise, the parties would have codified Double Back pay in Article 37, and included a specific reference for Double Back for training situations in Article 26.05. Neither Article specifically references this benefit. The Union never provided any testimony or evidence that it had tendered any proposal during any prior negotiation cycle in support of the presented interpretation. The Union is merely attempting to garner a benefit through the arbitration process, which it failed to seek or was unable to obtain during prior contract negotiations.

THE ARBITRATOR'S OPINION AND AWARD

From the arguments articulated in the parties' briefs, stipulated facts and submitted documents, it is this Arbitrator's opinion that the Employer did not violate Article 26.05. Double Back pay, in this instance, is unwarranted.

A few preliminary comments are in order. Unlike other arbitrations involving this issue, the Union, in its brief and submitted documents, solely relies on a contract interpretation analysis regarding the disputed matter. The brief is virtually silent on any dispute surrounding the "training" versus "testing" issue typically associated with an Article 37 case. The grievance (Joint Exhibit 2) and the Union's proposed issue, as articulated in its submission, deal with potential violations of Article 26.05 and the conditions set forth in this Article. As such, the Arbitrator must assume that all three (3) stages of the In-Service training held on March 1, 2004 through March 3, 2004 are viewed by the parties as per se training exercises, and that prior distinctions are not in dispute. Nothing in the record rebuts this presumption.

The Arbitrator, thus, is left to determine the application of Article 26.05 within an Article 37 setting. The Arbitrator finds that the Grievant, and the class of employees in question, are not entitled to Double Back pay pursuant to Article 26.05 when attending training sessions. As such, training programs are governed exclusively by Article 37 of the Agreement (Joint Exhibit 1) and the terms and conditions negotiated by the parties.

Article 26 is labeled Hours of Work and Work Schedules and deals with permanent shift and scheduling arrangements. As such, the Double Back benefit contained in Article 26.05 only applies to these situations, and cannot be generalized to continued education and training for professional growth and development. A specific

benefit of this sort needs to be negotiated, if desired, and cannot be gained through the arbitration process. Nothing in the record, nor the Agreement (Joint Exhibit 1), rebuts the parties' clear intent as enunciated in Article 26.05. This provision does not apply to training situations.

This finding is further reinforced when one analyzes the contents of Article 37. Again, this provision is specifically applicable to training programs and must, therefore, prevail over Article 26, which deals with work schedules. The parties have negotiated specific terms and conditions of employment, which govern such assignments. These terms and conditions, moreover, represent clear departures from terms and conditions negotiated dealing with regular shifts.

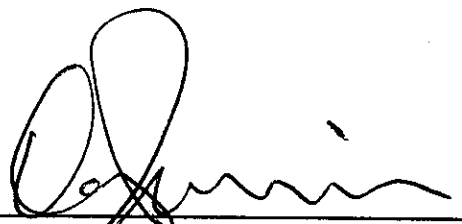
Double Back pay is not one of the articulated benefits negotiated by the parties in Article 37. The parties, therefore, never intended to provide Double Back compensation for attendance at training programs.

An alternative ruling would result in a direct violation of Article 20.08. It would cause the Arbitrator to impose an obligation "not specifically required by the language of this Agreement." Neither party would wish for the Arbitrator to fashion a ruling outside the scope of his authority. To do so would result in the fashioning of my own brand of industrial jurisprudence; an unanticipated nor desirous outcome.

AWARD

The grievance(s) is denied.

March 16, 2005
Moreland Hills, Ohio



Dr. David M. Pincus
Arbitrator