

OFFICE OF THE ARBITRATOR

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June 28, 2010

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In the Matter of the Arbitration Between:

OHIO STATE TROOPERS ASSOCIATION,	)	
	)	
And	)	OCB # 15-03-071221-0188-04-01
	)	
THE STATE OF OHIO, DEPT. OF PUBLIC	)	Wendy A. Carey, et al
SAFETY, DIVISION OF HIGHWAY PATROL	)	Dispatch Premium

APPEARANCES

For the Union:

Herschel M. Sigall, Esq.	Counsel
Elaine N. Silveira, Esq.	Asst. General Counsel
Cheryl Pratt	Dispatcher
Sharon Bradley	Dispatcher
Heidi Maloy	Dispatcher
Bob Cooper	
David Riley	
Larry Phillips	
Kyle Erdeljac	

For the Employer:

Lt. Kevin D. Miller	Management Representative
Marissa Hartley, Esq.	Labor Counsel
Sgt. Anne R. Ralston	Sergeant
Charles Linek	Staff Lieutenant

Arbitrator:

Virginia Wallace-Curry

## **INTRODUCTION**

The instant arbitration arose as a result of a grievance filed on December 19, 2007 by the State Troopers Association (the "Union") on behalf of Wendy Carey and other dispatchers (the "Grievants"), alleging that The Ohio Department of Public Safety, Division of Highway Patrol (the "Employer" or the "Division") violated Article 22.07 of the parties' 2006-2009 Collective Bargaining Agreement (the "Agreement") when it failed to pay the Dispatchers the Dispatch Premium when MARCS or CAD operations of one facility were bridged to another facility for operational considerations. When the parties were unable to resolve the matter, it was submitted to arbitration.

## **STATEMENT OF FACTS**

Prior to 2006, dispatching was accomplished by radio communication directed by Dispatchers located at each Trooper Location (Post). Because dispatching is a 24/7/365 operation, a dispatcher was required to be sitting at the desk at all times. The dispatch system was simple, and Troopers were called off the road to fill in for a Dispatcher on breaks, for lunch or when leave was required. However, in 2006, MARCS (Multi Agency Radio Communications System) and CAD (Computer Aided Dispatch) were introduced. With the introduction of the new system, Troopers could no longer fill in for Dispatchers, because the new system was more complicated and required special training. As a result, Dispatchers worked "mandated" overtime and scheduling leave was extremely difficult.

In addition, the Dispatchers were not evenly distributed over the 53 Posts. Some facilities had two Dispatchers working at the same time, yet at an adjacent facility nobody was assigned. Many facilities were often dispatching for just a couple of units.

In an attempt to alleviate these issues, the Division moved in a direction to consolidate individual dispatching facilities and employees into larger dispatch centers. A test project was undertaken in District Two and the CAD's at several posts were physically removed and placed at a dispatch center.

In addition to the consolidation of dispatching posts, the Division was able to utilize MARCS in alleviating the problem of continual coverage of the dispatch desk. MARCS offers the ability to transfer the operations of one Dispatcher's CAD to another Dispatcher's CAD just by "throwing a switch." Consequently, continual coverage at one CAD was not necessary, because the dispatching operations could be sent to another Dispatcher's CAD. As a result of these measures, working conditions improved for Dispatchers, and the number of grievances filed over mandatory overtime and leave requests dropped significantly.

During negotiations for the 2006-2009 Agreement, which occurred in 2007, the Union sought time and one-half pay for Dispatchers when they were required to take on the dispatching duties of another CAD. The negotiations ended in impasse and proceeded to Factfinding. Factfinder Harry Graham adopted the Union's position on pay for the transfer of one Dispatcher's assignment to another Dispatcher. The process of transfer was called "bridging." The Employer rejected the Factfinder's Report for various reasons, and the parties proceeded toward Conciliation.

During the pre-conciliation process, the Union agreed to reduce its proposal for time and one-half pay for Dispatchers receiving another CAD assignment. The Union accepted the Employer's proposal that compensation would be limited to a premium pay supplement of \$4.00 per hour for each hour worked when the dispatch operations at

one facility were transferred to another facility. The premium pay did not cover temporary transfers of less than 30 minutes, or for desk breaks or lunch time. No premium was paid to Dispatchers working at the Communications Center, unless more than two posts were bridged to one CAD for longer than 30 minutes.

Problems regarding when the \$4.00 premium was applicable arose when further consolidation was effectuated. For example, Bowling Green, Defiance and Toledo dispatch posts were consolidated into one facility, the Bowling Green Dispatch Center. Prior to this consolidation, the Toledo Dispatcher was paid the \$4.00 premium when the Bowling Green CAD was bridged to Toledo. However, when the CADs were physically consolidated into the same facility, the premium was no longer paid when the Bowling Green post was “patched” to the Toledo CAD.

The Employer denied the premium pursuant to Article 22.07, which states in part:

Whenever MARCS or CAD operations of one Highway Patrol **Facility** are bridged to another Highway Patrol **Facility** for operational considerations, the Dispatcher performing the dispatching duties shall receive a “Dispatch Premium” four dollars (\$4.00) per hour for all hours that the bridging occurs. (Emphasis added.)

The Employer argued that it was following the plain language of the Agreement. The Union filed the instant grievance alleging that the Employer violated the Agreement by not paying Dispatchers the premium when one CAD was bridged to another and the Dispatcher was required to perform the work of another post assignment.

### **ISSUE**

Did the Employer violate Article 22.07 when it denied the Dispatch Premium to dispatcher when the MARCS or CAD operations of one Highway Patrol Facility were bridged to another Highway Patrol Facility? If so, what shall the remedy be?

## **PERTINENT CONTRACT PROVISIONS**

### ARTICLE 22 – HIGHWAY PATROL DISPATCHERS

#### **22.07 Bridged Dispatchers**

1. Whenever MARCS or CAD operations of one Highway Patrol **Facility** are bridged to another Highway Patrol **Facility** for operational considerations, the Dispatcher performing the dispatching duties shall receive a “Dispatch Premium” four dollars (\$4.00) per hour for all hours that the bridging occurs.
2. No premium shall be paid to bridge facilities for the purpose of facilitating dispatcher meal and/or desk breaks.
3. No premium shall be paid to dispatchers working at the Communication Center unless more than two (2) posts are bridged to one (1) CAD for a duration longer than thirty (30) minutes.
4. The most senior dispatcher on duty will be offered the opportunity to work the bridged CAD. If the most senior dispatcher declines, the least senior dispatcher on duty will be required to work the bridged CAD.

## **POSITIONS OF THE PARTIES**

### **Union’s Position**

The Union contends that the Employer violated Article 22.97 when it failed to pay the premium pay to Dispatchers who were required to work the assignment of another Dispatcher’s CAD. It argues that the premium pay was negotiated to compensate Dispatchers for the increased work created by bridging the assignment of one Dispatcher to another. The premium pay was a minor disincentive to usage of “bridging,” as it could eliminate paying for a second Dispatcher by electing to have Dispatcher A throw the switch at the cost of \$4.00 per hour. However, the Employer found a way to undermine and abandon its contractual obligation to compensate Dispatcher B for the increased workload created when Dispatcher A transferred her

Troopers to Dispatcher B. The Employer decided to consolidate Dispatcher locations and change the emphasis of the contractual language from increased workload to location of work performed.

Dispatcher "A" still dispatched for the same Trooper who reported daily to Post A. She/he dealt with the law enforcement community of Post "A" just as before. To make it even more "just as before," the Employer picked up the desk and CAD of Dispatcher A and physically moved it lock, stock and barrel to the room occupied by Dispatcher B at Post B. Now when Dispatcher A was unavailable for work, the switch on Dispatcher A's CAD was thrown and all of the dispatch work of Dispatcher A appeared on Dispatcher B's monitor or monitors, just as before. Except now, the Employer declared there was no requirement to pay the \$4.00 per hour premium pay because the Employer was no longer "bridging;" it was "patching." The term "patching" was created by the Employer and then relied upon as justification to unilaterally abrogate the negotiated terms of the Agreement.

The Union recognizes that the Agreement does not prohibit the creation of a combined super Post. It has occurred in two instances. Dayton and Canton patrol posts are "super posts." The Eaton patrol post's operations were merged with the Dayton patrol post and Eaton ceased to exist. The Akron and Massillon patrol post operations merged to create the Canton patrol post and both Akron and Massillon ceased to exist. The Troopers and Dispatchers were absorbed by the new super Post. The Troopers are all "posted" to one Post; all work out of one Post and all Dispatchers work out of one Post. There is no transfer or bridging involved in dispatching for the new Post. No premium pay has ever been requested.

While the Employer seems to believe that the term “Facility” is different from “Post,” the Union believes that the terms are interchangeable. A post is a facility and a facility may be a post. “Facility” appears in the Agreement 55 times and “Post” appears 32 times. The issue has always been about the nature of the work performed, not where it is performed. Yet, the Employer does not dispute that where Dispatcher A is still at a facility other than that of Dispatcher B, the premium applies; but it denies the premium pay when the work of one post is transferred to another. The Union asserts that the illogic of the Employer’s position is overpowering.

Moving Dispatcher A, her chair, desk, computer, CAD and desk pad to another site does not defeat the clear and obvious intent of the “bridging” language. Dispatcher B, in undertaking the duties of Dispatcher A while maintaining her own workload, is to be compensated at the very modest rate of \$4.00 per hour beyond her regular pay.

The Employer has negotiated in questionable good faith. The Employer insists that consolidation of Dispatchers was discussed and known by the Union prior to the 2006-2009 contract negotiations. The Union disagrees. Elaine Silveira, the Union’s chief negotiator, testified that she recalls that it was not until the 2006-2009 Agreement was ratified that the Employer first discussed consolidation of Dispatchers.

The Employer must be held to the contract it negotiated. The contract is favorable enough without an attempt to unilaterally negate negotiated benefits. Every hour transferred, whether bridged or patched is a cost savings of approximately \$12.00 per hour, based on an average Dispatcher wage of \$16.00 per hour. The Employer has the ability to ascertain every hour of transferred dispatching.

The Union requests that the grievance be sustained and Dispatchers be made whole for all hours in which they accepted bridged work from another CAD.

### **Employer's Position**

The Employer asserts that it did not violate Article 22.07 of the Agreement when it denied premium pay to Dispatchers who received work from another Dispatcher working in the same facility.

The Union was well aware of the Employer's intentions of consolidating dispatch operations prior to entering into negotiations for the 2006-2009 Agreement. The Employer had already engaged in a pilot project in District Two, which, at the very least, should have put the Union on notice.

The Union and the Employer do not agree on why the Dispatcher premium is paid. The Union simply believes that the additional workload requires additional compensation. The Employer has not and will not concede that Dispatchers should receive or have received premium pay for the increased workload.

The Employer agreed to the additional payment because it was significantly less than what the fact-finder issued in his award. The time and one half that was recommended by Dr. Graham would have placed a huge financial burden on the State and is the reason the State rejected his report. Additionally, the Employer and the Union knew that the Division was moving toward consolidation and that the premium pay would be significantly reduced when dispatching services were combined. Finally, the Employer acknowledged that there was some stress involved for Dispatchers not being familiar with the area, Troopers assigned to the local post, police departments, hospitals, and wrecker services. This lack of "familiarity" was why the Employer agreed



to a pay premium for a bridge from facility to facility, but not for a patch that occurs within the same facility. When dispatching for a facility that is not normally handled by the Center, employees are not familiar with the intricacies of the area and Troopers. This problem resolved itself when a Center routinely handles an area and the Troopers that work it.

The Union's argument about increased workload is only partially true. Does the patched CAD have more Troopers than if it were not patched? The answer is absolutely. Adding anything to what you currently have is an increase. However, just because you have additional units, does not mean you are overworked. Everyday around the state of Ohio, metropolitan posts have more Troopers working than two of our rural posts combined. It makes absolutely no sense to pay a patched dispatcher \$4.00 per hour more because they are handling two posts when they are dispatching for fewer Troopers than the Dispatcher handling the adjacent metropolitan post. Three Dispatchers from three separate facilities testified but did not talk about unmanageable workloads or the inability to handle the additional Troopers. The reason for this is because Management has addressed workloads within each Center and has determined the acceptable staffing levels based on local operations.

The Union's argument adds language to the Agreement. The Union stated that a Dispatcher would receive premium pay when one *workstation* was bridged to another *workstation*. The word *workstation* does not appear in the Agreement. The mutually agreed upon language specifically refers to bridging from one *facility* to another *facility*. The language was drafted by the Union and if the Union meant workstation, it should have proposed the word workstation.

Additionally, in the arbitration hearing, the Union attempted to argue the verbiage of MARCS or CAD operations. It characterized the dispatching function to mean Trooper operations. The Union continually referred to the operations of the Troopers at the different posts and how their operations were bridged. The simple fact is that Troopers do not have the four screen workstation or anything similar to what a dispatcher has at a facility. They have a mobile data terminal (laptop computer) that accepts e-mail messages from the CAD. They do not have a GPS mapping system like Dispatchers. They do not have a Motorola MARCS screen that allows them to patch multiple frequencies and departments. Troopers cannot and do not dispatch from their cars.

When MARCS and CAD terminals were removed from the facilities and were consolidated at the dispatch centers, MARCS and CAD operations no longer existed at the vacant facility. If one applies the Union's logic that the word "operations" is referring to Trooper operations, then anytime a Dispatcher dispatches for a Trooper not specifically assigned to the dispatch center, the Dispatcher would be entitled to the dispatch premium. Using the Bowling Green Center as an example, that would mean that the only time the Employer would not pay a dispatch premium would be when dispatching for Bowling Green troopers. The dispatch premium would need to be paid for all hours when dispatching for Toledo and Defiance Troopers.

The Union's position is problematic in light of what transpires when the Communication Center is involved. Management's intent is clearly established in the language regarding the Communication Center. Section 22.07 specifically requires more than 2 posts be bridged to one CAD for premium pay to be applicable. (The CAD

that is bridged to the Communication Center must come from another facility.) The Union creates its own disparate treatment case if its logic is applied. Based on the current Agreement, every Dispatcher in the state when patched with an additional post would receive premium pay; however, those working at the Columbus Communication Center would be required to handle three posts before receiving any additional premium pay. If the intent was to pay Dispatchers for their additional workload, why would the Union agree to dump more Troopers on the Communication Center Dispatchers without additional compensation? What is the difference between the Columbus Communication Center and the consolidated centers that dispatch for anywhere between two and six posts. The Employer believes there is no difference.

Should the Union prevail, the Employer would be faced with an extreme financial liability for back-pay and additional salary increases. Everything the Employer gained through consolidation will have been lost. The Employer will have no choice but to constrict leave policies to mandate the coverage at each CAD workstation to avoid patching and the financial burden of dispatch premium pay. Morale will quickly deteriorate.

However, the issues of intent, employee workload, consolidation and financial burden are not relevant to the core issue, which is about the contract language. The language of Section 220.7 is clear and unambiguous. According to the plain meaning rule, when the language is clear, there is no reason to resort to interpretation. The meaning is to be derived entirely from the language used. Elkouri & Elkouri, *How Arbitration Works*, at 435 (6<sup>th</sup> ed. 2003). The mutually agreed language specifically

requires MARCS or CAD operations to be bridged from one **facility** to another **facility** for premium pay to apply.

The Union's attempt to substitute **workstation** for the word **facility** completely changes the meaning of the negotiated language. When each of the parties has a different understanding of what is intended by certain contract language, the party whose understanding is in accord with the ordinary meaning of that language is entitled to prevail." *Id. at 449*. In interpreting the above contract language, the Union witness had to use other language to explain her interpretation of Section 22.07. The Management witness testified that the language means exactly what it says. Therefore, Management's interpretation must prevail. The Union is attempting to gain through arbitration that which it could not get at the negotiation table in two separate rounds of negotiations.

Even if the language is found to be ambiguous, the Union's interpretation of the language "MARCS or CAD operations" to mean "trooper operations" and "Highway Patrol Facility" to mean "workstation" must be also be rejected, because it creates a different and separate standard at dispatch centers around the State. The Union's interpretation would apply to some dispatch center but not others like the super-posts of Dayton and Canton.

For all these reasons, the Employer requests that the grievance be denied.

### DISCUSSION

In the opinion of the Arbitrator, the grievance must be denied. The language of Article 22.07 is clear and unambiguous. It states in pertinent part:

Whenever MARCS or CAD operations of one Highway Patrol **Facility** are bridged to another Highway Patrol **Facility** for operational considerations,

the Dispatcher performing the dispatching duties shall receive a "Dispatch Premium" four dollars (\$4.00) per hour for all hours that the bridging occurs. (Emphasis added.)

Whatever the intent of either party in negotiating the premium pay, this is the language on which the parties settled. The language is not vague and does not require interpretation. The only role the Arbitrator can play in this instance is to apply the language to the facts. Premium pay applies only when CAD operations are transferred from one facility to another. When dispatch operations of several posts are combined into one facility, no premium applies when a Dispatcher at that facility must accept the CAD operations from another Dispatcher at the same facility.

Although the Union would like for the language to apply when the MARCS and CAD operations are transferred from one workstation to another, that is not what the language says. During the course of contract negotiations, many proposals are exchanged and language is modified. The final language on which the parties agree is the best evidence of the parties' intent. The Union was unable to negotiate language into the 2006-2009 or the 2009-2012 Agreement that would award Dispatchers premium pay when they receive the work from another Dispatcher's CAD, regardless of location, and the Arbitrator cannot award that language in arbitration.

Furthermore, the Union was unable to prove that the Employer did not negotiate in good faith. The Employer did not hide its intent to consolidate dispatcher operations. Both parties agree that, at the time of the 2006-2009 negotiations, there was a test project underway in District Two consolidating

Dispatchers. This test project put the Union on notice that Employer was moving toward consolidating Dispatchers from several posts into one facility. In addition, there is language in Article 22.07 that acknowledges that the premium pay does not apply to Dispatchers at the Communication Center when CAD operations of one Dispatcher are transferred to another CAD within the Communication Center. Premium pay applies only when two CADs are transferred for more than 30 minutes. The Union cannot claim surprise at the Employer's consolidation efforts and any accusations of bad faith bargaining are misplaced.

**AWARD**

For all the reasons discussed above, the grievance is denied in its entirety.

*Virginia Wallace-Curry*

Virginia Wallace-Curry, Arbitrator

June 28, 2010  
Cuyahoga County, Ohio