**OCB AWARD NUMBER: 2085**

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| **SUBJECT:** | **ARB SUMMARY # 2085** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20071221-0188-04-01** |
| **DEPARTMENT:** | Ohio Department of Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Virginia Wallace-Curry |
| **GRIEVANT NAME:** | Wendy Carey, et al |
| **MANAGEMENT ADVOCATE:** | Lt. Kevin D. Miller |
| **2ND CHAIR:** | Marissa Hartley |
| **UNION ADVOCATE:** | Herschel M. Sigall |
| **ARBITRATION DATE:** | April 22, 2010 |
| **DECISION DATE:** | June 28, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 22.07 |
| **OCB RESEARCH CODES:** | 115.201—Hours of Work; 114.724—Premium Pay;114.01—Compensation-In General; 115.501—Overtime-InGeneral |
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**HOLDING: Grievance DENIED. The Arbitrator held that the language of Article 22.07 is clear and unambiguous. The language is not vague and does not require interpretation.**

Prior to 2006, Dispatchers operated radio communication at each post. Troopers were called off the road to fill in for a Dispatcher on break, for lunch or when leave was required. In 2006, a new system (CAD) was implemented for Dispatchers. Troopers could no longer fill in for Dispatchers, because the new system was more complicated and required special training. As a result, Dispatcher worked “mandated” overtime and scheduling leave was extremely difficult. The Employer decided to consolidate facilities into larger dispatch centers. 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, the Union sought time and one-half pay for Dispatchers when they were required to take on the dispatching duties of another CAD. 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. When facilities were consolidated, the Employer did not pay the premium when CADs where physically in the same facility and merely “patched” together.

The Union arguedthat the Employer violated Article 22.[0]7 when it failed to pay the premium pay to Dispatchers who were required to work the assignment of another Dispatcher’s CAD. The Employer found a way to undermine and abandon its contractual obligation to compensate Dispatcher for the increased workload created when another Dispatcher transferred Troopers to another Dispatcher. The Employer decided to consolidate Dispatcher locations and change the emphasis of the contractual language from increased workload to location of work performed. The Employer declared that there was no requirement to pay the $4.00 per hour premium pay because the Employee 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 argued that the terms “Facility” and “Post” are used interchangeably, so premium should be paid when the work of one post is transferred to that of another, regardless of location. The Employer negotiated in questionable good faith because the Union was not informed of the consolidation until after negotiations. The Union requested that the grievance be sustained and Dispatchers be made whole for all hours in which they accepted bridged work from another CAD.

The Employer arguedthat 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. With the consolidation of centers, the Employer knew that there would be some lack of “familiarity” with the area. 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. The Union’s argument adds language to the Agreement by arguing that premium pay should be given when one workstation is bridged to another. However, the word workstation does not appear in the Agreement. Management’s intent was clearly established in the language regarding the Communication Center. The language of Section 22.07 is clear and unambiguous. The mutually agreed language specifically required MARCS or CAD operations to be bridged from one facility to another facility for premium pay to apply. For these reasons, the Employer requested that the grievance be denied

The Arbitratordenied the grievance. The language of Article 22.07 is clear and unambiguous. The language is not vague and does not require interpretation. Premium pay is only due when one facility is bridged to another facility. 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. The Union was unable to prove that the Employer did not negotiate in good faith. When negotiations began, there was already a test project underway for consolidating Dispatchers. The Union cannot claim surprise at the Employer’s consolidation efforts and any accusations of bad faith bargaining are misplaced.