

OPINION AND AWARD

IN THE MATTER OF ARBITRATION

BETWEEN

THE OHIO STATE TROOPERS ASSOCIATION

AND

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

Grievance #: DPS-2017-02467-01

Grievant: Brandi Trelka

Date of Hearing: March 4, 2019

Place of Hearing: Gahanna, Ohio

Arbitrator: Sherrie Passmore

Date of Award: April 30, 2019

APPEARANCES

Advocate for the State: Michael D. Wood, Labor Relations Officer

Advocates for OSTA: Elaine N. Silveira, Esq., Jeremy Mendenhall,
Larry Phillips, & Kari Root

INTRODUCTION

This arbitration arises pursuant to the collective bargaining agreement (“Agreement”) between the parties, The Ohio Department of Public Safety, Division of State Highway Patrol (“Employer”) and The Ohio State Troopers Association (“Union”). Sherrie Passmore was appointed as the Arbitrator under the authority of the Agreement.

A hearing was held on March 4, 2019. Both Parties were represented by advocates who had a full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make arguments. Post-hearing briefs were timely filed electronically on or before April 3, 2019.

JOINT STATEMENT OF ISSUE

Did the Employer violate Article 27.03 when the Employer did not offer the Grievant the opportunity to work overtime and offered it to a less senior employee? If so, what shall the remedy be?

RELEVANT PROVISION OF THE AGREEMENT

Section 27.03 – Overtime Assignments

It is understood and agreed that determining the need for overtime, scheduling overtime, and requiring overtime are solely the rights of the Employer. The Employer will not change an employee’s schedule or scheduled shift starting time solely to avoid the payment of overtime without the employee’s consent, with the exception of dispatchers whose schedules may be changed as outlined in Article 22.

Mandatory overtime, assigned by the Employer, shall be assigned as equitably as practical and shall first be assigned to members in the classification that routinely perform the required task at the facility. In the event of multiple overtime assignments, reverse seniority shall be used.

Good faith attempts will be made to equalize overtime opportunities at any one installation.

BACKGROUND

The Grievant, Brandi Trelka, is an Ohio State Highway Patrol Dispatcher at the Jackson Post.

Dispatcher Traci Malone, who is also assigned to the Jackson Post, was scheduled to work the 6 a.m. shift on June 13, 2017. At 12:41 p.m. on June 12, 2017, she called off sick for the next day by contacting her supervisor, Dispatcher Supervisor (DS) Saunders.

DS Saunders checked the schedule to determine which dispatchers were off on the 13th in order to fill the vacancy. He noticed that Dispatcher Patrick Weaver, who was currently on shift, was scheduled time off that day. He approached Dispatcher Weaver and asked him if he would like to fill Malone's shift and earn overtime. Dispatcher Weaver declined. Weaver is the Dispatcher with the most seniority at the Jackson Post.

Later that day, Dispatcher Cynthia Campbell heard about the overtime opportunity on the 13th when she arrived for her assigned shift. She asked DS Saunders if she could fill the shift and he granted her request. Dispatcher Campbell has less seniority than the Grievant.

POSITIONS OF THE PARTIES

Position of the Union

The Union' position is that the Grievant should have been offered the overtime opportunity on June 13, prior to Dispatcher Campbell because Grievant had more seniority. Seniority is the cornerstone of the collective bargaining agreement and should have been given deference in assigning the overtime.

Under Article 27.03, seniority is a factor in the assignment of mandatory overtime. It requires that opportunities to work the mandatory overtime be offered by seniority and if no one agrees to work the overtime, reverse seniority is utilized. There is a direct nexus between this language and the use of seniority for overtime opportunities. An overtime opportunity roster kept by seniority date is considered when assigning mandatory overtime. The Union questions why the same process would not also be used for voluntary overtime.

In further support of it's position, the Union argues that the Employer admitted the assignment was handled incorrectly and that the overtime should have been offered to the Grievant. It also notes that the Employer had eighteen (18) hours' notice to fill the vacancy. That was more than enough time to contact the Grievant and offer her the eight (8) hours of overtime.

Position of the Employer

The Employer's position is that equalization is principal in offering overtime, not seniority. Article 27.03 is silent regarding the assignment of overtime in instances other than mandatory overtime.

Under Article 4, Management Rights, the Employer has the right to make rules and regulations. The Employer exercised this right by establishing policies governing overtime. These policies make a distinction between scheduled and unscheduled overtime. Scheduled overtime involves overtime where the Employer has a minimum of 72 hours to plan and schedule in advance whereas unscheduled overtime is considered overtime which occurs due to unforeseen circumstances. The Employer's overtime policy, OSP-500.20, provides guidance for scheduled overtime, including equalizing voluntary overtime opportunities. The overtime opportunity in the instant case was unforeseen, therefore, is considered unscheduled and not governed by equalization.

DISCUSSION

This grievance alleges a violation of the Article 27.03 which concerns overtime. Because this case is a matter of contract interpretation, the burden of proving the violation is on the Union. The Union did not carry that burden.

The Union alleges the contract provision was violated because the Employer offered a voluntary overtime opportunity to a less senior dispatcher before offering it to the Grievant. There is no contract language that supports the Union's position. Article 27.03 is silent regarding the role of seniority in offering voluntary overtime opportunities. The only requirement in the provision regarding seniority concerns mandatory overtime. It provides that overtime be mandated by reverse seniority.

Although Article 27.03 does not require that seniority be the deciding factor in scheduling overtime opportunities, it does require good faith attempts to equalize those opportunities. To that end, the Employer's overtime policy provides procedures for doing

so, which include the consideration of seniority for scheduled overtime opportunities. Whether those procedures were applicable, followed, or satisfy the contractual equalization requirement is not relevant in this case. There was no allegation nor any evidence presented that the equalization requirement under Article 27.03 was violated.

AWARD

For the reasons stated above, the grievance is denied.

A handwritten signature in black ink, reading "Sherrie J. Passmore". The signature is written in a cursive, flowing style.

Sherrie J. Passmore
Arbitrator

April 30, 2019