

**CONTRACTUAL
LABOR ARBITRATION PROCEEDINGS**

IN THE MATTER OF)	
ARBITRATION BETWEEN:)	
)	
STATE OF OHIO)	
DEPARTMENT OF PUBLIC SAFETY)	
OHIO STATE HIGHWAY PATROL)	
)	DECISION IN
)	REQUEST FOR
-AND-)	COMPENSATORY TIME
)	
)	(RACHAEL SUSAK-HEIL)
OHIO STATE TROOPERS)	
ASSOCIATION, INC.)	
UNITS 1 & 15)	

<u>CASE NO:</u>	DPS-2018-01763-01
<u>GRIEVANCE:</u>	The Grievance protests the denial of Compensatory Time as violating Article 27, Section 27.07 of the Collective Bargaining Agreement.
<u>HEARING(S):</u>	December 2, 2019; Columbus, Ohio
<u>AWARD:</u>	The Grievance is Denied.
<u>ARBITRATOR:</u>	David W. Stanton, Esq.

APPEARANCES

**FOR THE STATE OF OHIO
OHIO STATE HIGHWAY PATROL**

Michael W. Wood,
Labor Relations Officer III
James Thompson, Lieutenant
Eric Eilerman, OCB Policy Analyst
Lydia Frey, Dispatch Manager

**FOR THE OHIO STATE
TROOPERS ASSOCIATION**

Elaine N. Silveira, General
Counsel/Advocate
Kari Root, Vice President
Larry K. Phillips, Staff
Representative
Robert Cooper, Staff Representative
Rachael Susak-Heil, Grievant

ADMINISTRATION

By email correspondence on June 17, 2019 from Cassandra Richards, State of Ohio, Office of Collective Bargaining, Scheduling Administrator, the undersigned was notified of his mutual selection from the Parties' permanent panel to serve as Impartial Arbitrator to hear and decide the "Denial of Compensatory Time Grievance" of Dispatcher/Grievant, Rachael Susak-Heil then in dispute between these Parties. On December 2, 2019, at the Department of Administrative Services, 1602 West Broad Street, Columbus, Ohio, a transcribed Arbitration Proceeding was conducted wherein each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced; and, where, the Grievant appeared and testified in her own behalf. The Evidentiary Record of this Proceeding was subsequently closed upon the Arbitrator's receipt of each Party's Post-Hearing Brief, filed in accordance with the arrangements agreed to at the conclusion of the presentation of evidence and subsequently modified per agreement between the Parties. Accordingly, this matter is now ready for final disposition herein.

GRIEVANCE & QUESTION TO BE RESOLVED

The following Grievance, as set forth in Joint Exhibit 2, was filed on or about May 22, 2018 and contains the subject matter for disposition herein as follows:

Grievance No.:	DPS-2018-01763-01
Step:	Step 2
Status:	Open
Date Filed:	5/22/2018
Grievant:	Rachael Susak-Heil
Union:	Ohio State Troopers Association

Chapter: DPS2903
Primary Agency Contact: Krysten McElfresh
Grievance Type: Issue
Sub-Type: Union Leave
Grievant's Classification Title: Dispatcher

Statement of Grievance:

Grievant requested 5 Comp Time days. Dispatch Supervisor Slager denied the first day because it would leave only 1 Dispatcher on the Day Shift. The Grievant worked 10P to 6A. Dispatch Supervisor Slager has approved time off before when 1 Dispatcher was working a Shift. The Medina Post has work (sic) for a couple of years with only 1 Dispatcher per Shift and at one point none.

Resolution Requested:

To have her denied Comp Day granted or pay her double time for the day denied and no loss of Comp Time.

As set forth in the Joint Exhibits provided, the "Statement of Issue" is framed as follows:

Did the Employer violate Article 27, Section 27.07 of the Collective Bargaining Agreement, when the Employer denied the Grievant's request for Compensatory Time on June 29, 2018 and August 10, 2018?

If so, what shall the remedy be?

/s/ Elaine N. Silveira
/s/ Michael D. Wood

**CITED PROVISIONS OF THE
COLLECTIVE BARGAINING AGREEMENT**

The following provisions of the Collective Bargaining Agreement, Joint Exhibit-1, were cited and/or are deemed relevant herein as follows:

**ARTICLE 20
GRIEVANCE PROCEDURE**

20.08 Arbitration

4. Decisions of the Umpire

The Umpire shall render his/her decision as quickly as possible, but in any event, no later than forty-five (45) days after the conclusion of the Hearing, or submission of the closing briefs, unless the Parties agree otherwise. The Umpire shall submit an account for the fees and expenses of Arbitration. The Umpire's decision shall be submitted in writing and shall set forth the findings and conclusions with respect to the issue submitted to Arbitration.

The Umpire's decision shall be final and binding upon the Employer, Union and the Employee(s) involved, provided such decisions conform with the law of Ohio and do not exceed the jurisdiction or authority of the Umpire as set forth in this Article. The Grievance Procedure shall be the exclusive method of resolving Grievances.

The Parties may request that the Umpire, on a case-by-case basis, retain jurisdiction of a specific case. In that, the Parties are using a permanent Umpire, questions or clarifications of awards will normally be submitted to that Umpire without the necessity of a further Grievance or action. This statement, however, does not limit the ability of either Party to exercise any other legal options they may possess.

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.

ARTICLE 27 OVERTIME

Granting of Compensatory Time Off

Compensatory time off shall be granted subject to the operational needs of the facility. If the compensatory time off is denied based on operational needs, then the employee shall

have the requested amount of time off converted to cash payment at the employee's current regular rate of pay. Compensatory time off shall not be unreasonably denied in accordance with FLSA standards.

FACTUAL BACKGROUND

The operative facts which gave rise to the filing of this Grievance, challenging the Employer's denial of the Grievant's requests for Compensatory Time, are except where otherwise indicated, essentially straightforward and undisputed. The State of Ohio, Department of Administrative Services, Division of the Ohio State Police, hereinafter referred to as the "State" and/or the "Employer", is party to a Collective Bargaining Agreement, Joint Exhibit-1, with the Ohio State Troopers Association, Inc., Units 1 and 15 wherein the Parties have memorialized the terms and conditions of Employment for those Employees recognized in Article 5, titled "Union Recognition and Security". Article 4, titled "Management Rights", acknowledges the Employer's contractual and inherent rights and the Union's acknowledgement thereof, among others, "...in regard to the operation of its work and business and the direction of its workforce...". Additionally, Article 27, titled "Overtime", at Section 27.07, titled "Granting of Compensatory Time Off", indicates: "Compensatory Time off shall be granted subject to the operational needs of the facility....Compensatory time off shall not be unreasonably denied in accordance with FLSA standards".

The instant matter involves a contractual dispute between the Ohio State Highway Patrol and the Ohio State Troopers Association concerning the Grievant's request for Compensatory Time to parlay said time off to accommodate an extended period of time for which, according to the Grievant, she was looking to expand certain days off into a "mini vacation". Dispatcher Rachael Susak-Heil was assigned to the Medina Post and worked the "Midnight Shift" – 10:00

P.M. to 6:00 A.M. She submitted two (2) Compensatory Time leave requests well in advance of the requested date(s). The first such request was submitted on May 1, 2018 for Compensatory Time for the 10:00 P.M. to 6:00 A.M. Shift on June 29, 2018. The second request was submitted on May 18, 2018 for August 10, 2018 for the 10:00 P.M. to 6:00 A.M. Shift and both requests were contingent to leave requests that were previously approved.

The May 1, 2018 request was denied by her Supervisor - Dina L. Slager - on May 8, 2018 indicating, "Dispatcher Krall is on CU 6/29." As the record demonstrates, the June 29, 2018 date would have been in the middle of one (1) mini vacation since the Grievant was on previously approved time off on June 27 and 28 and her Compensatory Time off request for June 30 and July 1 were also previously approved. As such, she was seeking to be off a continuous "block" of time, i.e., a "mini Vacation". Joint Exhibit 5 demonstrates the August 10, 2018 request was also in the middle of a so called "mini vacation" wherein the Grievant's Compensatory Time off request(s) were previously approved for August 5, 6 and 7 and she was approved for time off on August 8 and 9, as well as, August 11, which had been previously approved.

As the Record indicates, the August 10 date was denied on May 25, 2018 wherein the reason for the denial was indicated as follows: "leave request not approved based on current leave policy. Dispatcher Krall is on approved leave for 2:00 p.m. shift. Suggestions have been made to attempt to accommodate the request." The Record demonstrates attempts were made to trade Shifts with co-workers (HP-30); unfortunately, said efforts proved unsuccessful, either due to scheduling conflicts or the unwillingness of her co-workers to effectuate the Shift change. The Union asserts the fact these Compensatory Time requests - the Grievant's attempts to effectuate a week off from work - fell in the middle of the time off previously approved, rendered these denials especially unreasonable and, as it asserts, in violation of Article 27. The Union bases its

claim on the evidence it submitted wherein, as it suggests, numerous times existed where one Dispatcher worked alone on the Midnight Shift; and, on numerous occasions two Dispatchers were allowed off on permissive leave so long as they were not on the same Shift. On the two (2) dates the Grievant requested, she would have been the second Dispatcher off on permissive leave. For the June 29, 2018 date, there would have been only one Dispatcher for four (4) hours rather than eight (8). It insists inconsistent application of the Media Dispatch Center rules regarding permissive leave make these denials unreasonable and as such in violation of Article 27.

As the record demonstrates, the Employer insists the denial of the Compensatory Time request(s) made by the Grievant were strictly due to the “operational needs” of the Post. Dispatch Manager, Lydia Frey, testified the Medina Dispatch Center had recently taken over the dispatching responsibilities of the Elyria Post in addition to the responsibilities of its own Post. Dispatch Supervisor Dina Slager issued an “Interoffice Communication” (IOC) to the Dispatch Center's assigned Dispatchers outlining standards wherein two (2) Dispatchers would need to be on Shift during the “busiest times” and leave would only be granted for one Dispatcher per day. She characterized the "busiest times" - 10:00 P.M. Shift beginning Thursday through the Midnight Shift Saturday.

Moreover, the Employer insists it has to abide by the Fair Labor Standards Act of 1938, Section 207(o)(2)(B)(5) which sets forth the following:

5. An Employee of a public agency which is a State, political subdivision of a State, or an Interstate Governmental Agency –

A. who has accrued compensatory time off authorized to be provided under Paragraph (1); and,

(B) who has requested the use of such compensatory time, shall be permitted by the Employee's Employer to use such time within a reasonable period after making the

request if the use of compensatory time does not unduly disrupt the operations of the public agency.

On May 22, 2018, the Grievance regarding the denial of the June 28, 2018 Compensatory Time request was submitted by OSTA Staff representative Bob Cooper, citing a violation of Section 27.07 of the Collective Bargaining Agreement. At the Step 2 Hearing conducted on July 27, 2018, the Union requested to amend that Grievance to add an additional Compensatory Time request denial. The Employer agreed to amend such to include August 10, 2018 Compensatory Time off request which was denied by Supervisor Slager on May 24, 2018.

When the Parties' efforts to resolve these matters through the course the negotiated Grievance Procedure proved unsuccessful, the "Denial of Compensatory Time Grievance" of Rachael Susak-Heil was appealed to Arbitration hereunder.

CONTENTIONS OF THE PARTIES

UNION CONTENTIONS

The Union contends Compensatory Time is indeed a sacred contractual benefit; one that allows Employees payment for hours worked taken in time off rather than monetarily. It emphasizes the Sixth Circuit in *Beck v. City of Cleveland* held an employer cannot deny a timely compensatory leave request solely for financial reasons. The payment of overtime to honor a compensatory time request does not qualify as being unduly disruptive. The Grievant in this matter attempted to trade Shifts with co-workers in order to obtain the requested days off; however, either co-workers were unable to assist her based on their own schedules, or they chose not to. Prior Arbitration decisions over the denial of Vacation Leave are instructive and relevant herein. Arbitrator Alan Miles-Ruben held the provision of mutual agreement did not give the Department *carte blanche* to refuse Vacation requests for any reason, or for no reason at all. He

indicated implied in the contract is the obligation to deal fairly and in good faith with respect to the implementation of the contractual provisions so as not to deprive the other Party of the benefit it struck. In this matter, the Employer simply did not deal fairly and in good faith when it denied the Grievant's Compensatory Time request(s).

The evidence of record indicates numerous inconsistencies with such leave requests. Moreover, Arbitrator Eugene Brundige examined the issue of Vacation denial in 2002 wherein he held, "if the first phase of Article 43.04 where it says vacation leave shall be taken only at times mutually agreed to by the Employer and the Employee stood alone, he would agree with the Employer." However, such does not stand alone. He went on to hold, "in the present context, this obligation requires the Department to act reasonably rather than arbitrarily and uniformly rather than discriminatorily". He found the Employer had been inconsistent in its supervisory coverage with respect to Holidays. Moreover, the record demonstrates on some days it was okay for two (2) Dispatchers on different Shifts to be on permissive leave, or whether it was okay for one (1) Dispatcher to work alone, the record is full of examples of leave request inconsistencies.

It emphasizes the Wooster Dispatch Center, which Dispatch Supervisor Slager, also supervises, where on Friday, August 10, 2018, two (2) Dispatchers on different Shifts were on approved permissive leave. Dispatch Manager, Lydia Frey, testified "the busiest times are going to be your weekends or your Friday nights where you get to do a lot more. You know, traffic, people going home for the weekends, etc." However, despite that assertion, Dispatch Supervisor Slager approved two (2) Dispatchers off on the same Friday. With respect to the Medina Dispatch Center, Dispatch Supervisor Slager also approved permissive leave for two (2)

Dispatchers during a busy time on Saturday June 2, 2018, the Grievant and Dispatcher Raugh were granted permissive leave.

For the June 29, 2018 date request, the 10:00 P.M. Shift comes in the day before on the schedule - the Grievant started her shift on June 28, 2018 at 10:00 P.M. and ended her shift at 6:00 A.M. on June 29, 2018. There were three (3) Dispatchers scheduled to work 10:00 P.M. to 2:00 A.M. – the Grievant and Dispatchers Wojton and Knapp, respectively. Dispatcher Wojton's schedule was changed with more than fourteen (14) days notice in accordance with the Collective Bargaining Agreement. Had the Grievant's Compensatory Time request been approved, Dispatcher Knapp would have been by herself for only four (4) hours, from 2:00 A.M. to 6 A.M. Additionally, on Friday, July 6, 2018, the Midnight Shift could operate with one Dispatcher for eight (8) hours according to Joint Exhibit 4. On this day, the Grievant was the only Dispatcher scheduled and she did not have the benefit of an additional Dispatcher from 10:00 P.M to 2:00 A.M. as was present on June 28 through June 29, 2018.

The schedule for the Medina Dispatch Center was explained by Union Vice President Dispatcher Kari Root wherein she examined that schedule and identified how many Dispatchers were on each Shift and the occasions when one Dispatcher worked by themselves on a Thursday and/or Friday night. It also indicates when two (2) Dispatchers were on permissive leave on the same day. The Union acknowledges there were some transposition errors with respect to dates; however, the icons as utilized, are indeed correct. Each page represents one pay period in the six-month schedule. Ten (10) of the fourteen (14) pages had notations where either a Midnight Dispatcher worked alone and/or two (2) Dispatchers were off on permissive leave. Such clearly demonstrates inconsistencies at the Medina Dispatch Center with respect to time off.

The Union asserts Compensatory Time requests are not to be unreasonably denied pursuant to FLSA standards. The Grievant's two (2) Compensatory Time requests were in fact unreasonably denied based on the evidentiary record. Each was submitted more than one (1) month in advance affording the Employer sufficient time to post overtime if such was deemed necessary. Such overtime was only necessary if it was in fact vital two (2) Dispatchers worked the Midnight Shift. The evidence of record simply does not disclose two (2) Dispatchers on the midnight shift was vital. The requests made by the Grievant were indeed unreasonably denied warranting granting of the Grievance.

For these reasons, the Union asserts the Employer violated Article 27 when it unreasonably denied the Grievant's Compensatory Time leave request(s) entitling her to time and one-half for the eight hours (8) of Compensatory Time she was denied. She was paid for sixteen (16) hours she did in fact work.

EMPLOYER CONTENTIONS

The Employer contends the reason for the denial of the Compensatory Time request(s) of the Grievant was strictly due to operational needs of the Post. Dispatch Manager, Lydia Frey, testified the Medina Dispatch Center had recently taken over the Dispatch responsibilities of the Elyria Post in addition to its own responsibilities. Medina Dispatch Supervisor, Dina Slager, issued an Interoffice Communication to the Center's assigned Dispatchers outlining new standards wherein two (2) Dispatchers would need to be on a given Shift during the busiest times and leave would be granted for only one (1) Dispatcher per day. Dispatch Manager Frey indicated the "busiest times" were the Shifts beginning on Thursday at 10:00 P.M. running through the Saturday Midnight Shift.

Moreover, in addition to leave denials being for operational needs, it has to abide by the Fair Labor Standards Act, as well as, the Collective Bargaining Agreement. To address the Union's reliance on *Beck v. City of Cleveland*, which held, the Employer cannot deny, compensatory leave solely for financial reasons, dealt with a denial of Compensatory Time requests due to the City having to pay overtime to substitute Officers. The Court concluded the payment of overtime to honor an Officer's request for Compensatory Time does not qualify as unduly disruptive under Section 207(o)(5) of the Fair Labor Standards Act of 1938.

The Union failed to provide any evidence the Employer denied the Grievant's Compensatory Time request(s) due to this reasoning set forth in *Beck*. The Employer provided sufficient evidence; however, the request was denied solely due to operational reasons. Staffing standards for the "busiest times" were set after the assumption of dispatching duties of an additional Post. Those times occurred during the weekends wherein more calls are handled due to increased traffic and OVI calls. The Union did not provide any evidence of any financial aspects of the denials of the Grievant's request(s). OSTA Vice President, Kary Root, testified Supervisor Slager was inconsistent in her staffing and her approval/disapproval of leave requests. Based thereon, the Union contends the Compensatory Time request(s) were wrongfully denied. While it has produced multitudes of documents in an attempt to support its position, that produced with respect to the number of Troopers/Sergeants on the Road did not change based on working on the busiest nights versus other nights in question. Increased Dispatcher workload resulted from increased traffic during the "busiest times" including OVI calls.

With respect to the Time Management System "TMS" printouts submitted into evidence, the Union provided this documentation concerning pay period summaries and the various leave requests of various Employees. Dispatcher Hillary Siders provided the reasons for having

personal leave utilized during the first half of her shift on June 29, 2018 based on “babysitting issues” and the low leave balances she had. The Employer emphasizes absences such as these would be addressed by the use of Personal Leave rather than Compensatory Time. It recognized Dispatcher Siders had a low leave balance and did not have sufficient Personal Leave to cover the entire absence for which Compensatory Time was granted to cover the rest of her Shift. The Employer emphasizes babysitting matters are indeed a constant struggle with working Families for which Personal Leave, if available, is designed to address. Such unforeseen personal and Family issues would be addressed through the use of Personal Leave, if available. The approval of Siders' time off request was not out of the ordinary based on her 6:00 A.M. to 2:00 P.M. Shift which is during “normal working hours” and there would have been others at the Medina Post to assist should an emergency arise for the remaining Dispatcher on duty.

Additionally, to refute the Union's contention the Wooster Dispatch Center should have been under the same rules and guidelines as the Medina Dispatch Center, yet two (2) Dispatchers were allowed permissive leave on August 10, 2018 and each Dispatch Center was responsible for two (2) Patrol Posts, Dispatch Manager Frey testified not all Dispatch Centers are alike and have different staffing and leave policies. Such is true with respect to the combined populations and geographic makeups of these respective Counties each Center services. As such, there is a need for separate staffing rules for Dispatch Centers and such is certainly not out of the ordinary since each Center’s policies and procedures are tailored to address the specific needs thereof.

The HP-29, Duty Assignment Sheet for the Medina Dispatch Center for pay period May 27 to June 9, 2018 and the various emails submitted into evidence between Slager and the Grievant demonstrates the Employer's denial of the Grievant’s request was proper under the current Leave Policy. Moreover, Supervisor Slager attempted to accommodate the Grievant's

request for time off despite having to deny her initial request for Compensatory Time. OSTA Vice President Root's attempt to depict Supervisor Slager consistently going against Staffing Policy falls short of its goal wherein one (1) Dispatcher was left to work a shift in which two (2) were preferred does not depict the entire picture. Supervisor Slager did everything within her capabilities to keep staffing levels sufficient while attempting to appease the Dispatcher's request for time off. Some were for illnesses, personal reasons, babysitting issues, the Grievant's Family event of June 2, 2018, and bereavement leave. While the Employer does not contend the instances of Compensatory Time being approved while another Dispatcher was on permissive leave, which is contrary to the goal of the Policy, Compensatory Time was disapproved for the Grievant for her 10:00 P.M. Shift on June 1, 2018 and then subsequently her Personal Leave request for that Shift was approved even though another Dispatcher was on approved Compensatory Time.

It emphasizes Personal Leave requests have much different guidelines on whether or not the Employer is required to approve or disapprove than Compensatory Time. The Grievant's request was submitted and approved for personal reasons authorized by Section 45.04 of the CBA. If the Compensatory Time request was already approved for another Dispatcher and the Grievant's Personal Leave request was approved afterwards, the Employer's stance would be to let it stand. To disallow this would not be fair to the other Employee which would likely result in the filing of a Grievance based on that circumstance. Based on the documentation provided, such reveals there were nine (9) Dispatchers assigned to fill three (3) Shifts seven (7) days per week. Each Dispatcher would fill five (5) eight (8) hour Shifts and Supervisor Slager not only has to fulfill staffing requirements during the busiest time on the weekends, but also must take into account Vacation requests and other interruptions such as in-service training, etc.

Permissive leave instances, including Vacation, Personal, Sick and Compensatory Time equates to 150 separate occurrences where it was taken. There were just over 100 examples of Overtime, which was performed by all Dispatchers during this bid period. Supervisor Slager exercised due diligence to ensure not only the Collective Bargaining Agreement is followed but maintaining staffing levels to sustain the operations while attempting to accommodate requests for time off. The language contained in Article 27.07 clearly indicates, "compensatory time off shall be granted subject to the operational needs of the facility" which it argues is clear and unambiguous. It cites Arbitral authority in support of its position and notes the Union failed to present any evidence the Employer denied the Compensatory Time request(s) due to any other reasons other than operational needs.

For these reasons, the Employer requests the Grievance be denied.

DISCUSSION AND FINDINGS

The disposition of this matter hinges upon a determination of whether the Union has established the Employer violated Article 27, titled "Overtime", Section 27.07, titled "Granting of Compensatory Time Off", when it denied the Grievant her request(s) for Compensatory Time to be taken for her 10:00 P.M. – 6:00 A.M Shifts for June 29, 2018 (Thursday June 28 – Friday June 29); and, August 10, 2018 (Thursday August 9 – Friday August 10).

The Union submits utilization of Compensatory Time is indeed sacred and such allows Employees "payment" for accrued hours taken in time rather than monetarily. The Employee may forsake the payment for hours worked so that it could be payment in "time off" to be taken later. Obviously, given these circumstances and the dates requested by the Grievant, they were indeed strategically requested to afford the Grievant a "mini vacation" for each affected time period and were submitted well in advance of the dates requested. It submits there were

instances established at the Arbitration Hearing which demonstrate the Employer has operated the Dispatch Centers with fewer Employees/Dispatchers than the Interoffice Communication(s) suggests. In fact, on the dates in question the Dispatch Center would have necessary personnel to afford the Grievant the opportunity to have these days off and such were not unduly disruptive to the operation of the Post(s).

The Employer emphasizes the denial of the request(s) for Compensatory Time were strictly due to “operational needs” as sanctioned in Article 27, Section 27.07. It emphasizes the testimony of Dispatch Manager, Lydia Frey, who indicated the Medina Dispatch Center had recently assumed additional dispatching responsibilities of the Elyria Post in addition to maintaining its own responsibilities. Medina Dispatch Supervisor, Dina Slager, issued Interoffice Communications to the Dispatch Center's assigned Dispatchers outlining new standards wherein two (2) Dispatchers would need to be on Shift during the “busiest times” and such time off requests would be granted for only one (1) Dispatcher per day. The "busiest times" were characterized as those Shifts beginning on Thursdays at 10:00 P.M. running through the Saturday Midnight Shift. Clearly, the Employer, as it suggests, provided sufficient evidentiary basis to support the denial of these requests being solely for operational reasons.

Article 27, titled “Overtime”, Section 27.06, titled “Request for Compensatory Time Off”, sets forth the procedural manner in which Compensatory Time requests must be submitted. There is no dispute the Grievant complied with this Section of the Collective Bargaining Agreement and it is only referenced for purposes of acknowledging the initial step in the utilization of Compensatory Time was in fact adhered to by the Grievant. Article 27, Section 27.07, titled "Granting of Compensatory Time Off", addresses those considerations once a request for Compensatory Time is received. As this evidentiary record demonstrates, the Medina

Post, where the Grievant was assigned, had assumed the Dispatch responsibilities for the Elyria Post and in doing so Dispatchers would assume additional responsibilities with respect to the increased number of State Troopers operating on any given Shift. The requests the Grievant provided were indeed in compliance with the procedural aspects for requesting such Compensatory Time; however, her request(s) were denied based on what the Employer alleges were "operational needs" of the Dispatch Center/Post(s).

When reading that Section of Article 27, the very first sentence indicates "Compensatory Time off shall be granted subject to the operational needs of the facility." In accordance with the general proposition, that of identifying Management's rights to exercise reasonably and objectively its endeavors to effectuate operational needs of the Department of Public Safety, such general guidelines provide Management the right to determine where and when Employees are to be utilized and under what circumstances. The limitation placed upon the Employer's ability to either grant or deny requests for Compensatory Time necessarily must be weighed against the operational needs of each Facility. The exercise of this basic and fundamental, contractually recognized, inherent right must be reasonably related to the staffing objectives required for each Facility, especially as such relates to workload requirements. Clearly, Dispatchers play an essential role in the furtherance of Law Enforcement endeavors and must be readily available to discharge their very important responsibilities. In most scenarios, the ability of State Troopers responding to crime and/or accident scenes begins with communication channeled through these Dispatch Centers and acted upon by Dispatchers.

It has long been held the determination of whether certain work is required to be performed and when said work will be endeavored is a decision left to the discretion of Management so long as that discretion is exercised fairly, objectively and where operationally

applicable, uniformly. The limitation placed upon the exercise of that right is subject to the final sentence in Section 27.07 which indicates, "compensatory time off shall not be unreasonably denied in accordance with FLSA standards". That sentence is at the heart of this dispute in that the question arises as to whether the Grievant's requests to extend previously approved time off into "mini vacations", which were characterized as "obvious" and included "sacred" Compensatory Time, were unreasonably denied or based on "operational needs".

For each denied request for Compensatory Time at issue herein, the Record indicates the Grievant had other time off requests granted providing her with the opportunity to request these days to have a continuous block of time off – "mini Vacations". In fact, an Email from Supervisor Slager to the Grievant regarding her utilization/request for Compensatory Time for June 1/2, 2018 indicates, "I'm hesitating to have to come down with a hard fast rule on this because then we have no wiggle room". Such suggests Supervisor Slager attempted to accommodate such requests while also recognizing her managerial responsibility to maintain and ensure the "operational needs" of the Dispatch Center were optimized. Indeed, every effort must be made to afford Employees the opportunity to reap the benefits of the bargain consummated between the Parties with respect to such benefits set forth in the Collective Bargaining Agreement. This case proves no exception.

The evidence of record demonstrates two (2) Interoffice Communications - December 18, 2017 (Joint Exhibit 6) and February 7, 2018 (Joint Exhibit 7) - were issued by Dispatch Supervisor Slager addressing such time off requests. The IOC dated December 18, 2017, "Medina Dispatch Center Staffing", indicates, "As a rule, two Dispatchers may be granted permissive leave per day, but not from the same Shift". The February 7, 2018 IOC, "Medina Dispatch Center Double Coverage", indicates:

The transition of Post 47 dispatching duties is now complete. The window period leave requests have been completed. There were some days where a second dispatcher was granted permissive leave; this left one dispatcher handling both Posts and brought up Officer safety concerns. I previously mentioned that it was not my intention to mandate two dispatchers at all times. However, with the additional phone calls and dispatching responsibilities it has become necessary to have two dispatchers during our busiest times. From this time forth, we will grant one dispatcher permissive leave per day unless we can operationally manage to grant a second dispatcher leave. As we move forward, I will continue to monitor our dispatching needs and adjust accordingly. I appreciate the input I have received from you. Please let me know if you have any other concerns.

Such suggests Supervisor Slager adjusted Staffing guidelines for the “Bid Period of February 18, 2018 through August 18, 2018”; the timeframe within which the Grievant’s Compensatory Time requests were made. While Supervisor Slager previously acknowledged, she hoped to avoid a “hard fast rule”, with the increased “dispatching duties” following the assumption of Post 47 - Elyria Post - such was apparently necessary to address “Officer safety” while also affording certain “wiggle room” where the granting of permissive leave for more than one (1) Dispatcher was “operationally manageable”.

Moreover, it simply is not contractually required for the Employer to assume an overtime obligation in order to deviate from the staffing needs based on operational guidelines of a given Facility. The evidence of record demonstrates that indeed those Shifts moving into the weekend time frame would indeed be “busier” with increased calls to the Dispatch Centers. Moreover, it would seem logical that in the event additional Troopers are on Shift, based on the addition of another Post for which Dispatch duties are required, such would equate to increased calls into the Dispatch Centers serving these Posts. Common sense dictates not all Dispatch Centers are identical with respect to the various Leave Policies in place, as well as, the nature of the areas over which they preside/service. In fact, population, geographic layout and the existence of various roadway systems impact the staffing obligations of each Post and consequently the

attendant Dispatch Center. Time off requests for illness, personal reasons, including babysitting issues, Family events and bereavement leave impact the ability of the Employer to properly staff based on operational needs for each Dispatch Center. Such considerations are logical and reasonable and can fluctuate for a variety of reasons as seen with Supervisor Slager's reluctance to establish a "hard fast rule" for such requests.

Moreover, the record demonstrates Personal Leave requests have much different approval guidelines than Compensatory Time requests. For example, a previous request for Personal Leave by the Grievant was submitted and approved in accordance with the Contract after a Compensatory Time off request was previously approved for another Dispatcher. The Grievant's Personal Leave was approved after the other Dispatcher's Compensatory Time request was approved and the Employer emphasized it was not going to retract the approval based on circumstances beyond its staffing control; affording it certain "wiggle room" where operationally manageable.

Ultimately, the determination rests on whether the Grievant's request(s) for Compensatory Time were denied based on operational needs of the Facility; the evidence of record suggests they were. The Grievant's June 28, 2018 request for Compensatory Time for her Shift of 10:00 P.M. to 6:00 A.M. was denied based on the reason "Dispatcher Krall was granted CU on 6/29". Moreover, with respect to the Grievant's August 10, 2018 request for Compensatory Time for her 10:00 P.M. to 6:00 A.M. Shift, the reason given for the denial was quoted as "leave request not approved based on current leave policy. Dispatcher Krall is on approved leave for 2:00 p.m. shift. Suggestions have been made to attempt to accommodate the request". Clearly, each denial was reasonably based on staffing considerations to ensure the Dispatch Center was appropriately manned.

Given the assumption of the Elyria Post dispatching obligations, such resulted in potentially increased work-loads due to increased traffic and OVI's during the busiest Shifts on which these requests would apply. Given the increase in the number of Troopers on duty on the busiest Shifts, as well as, the assumption of additional duties of the Elyria Post, equates to an increased number of dispatch responsibilities. In accordance with the Interoffice Communication and based on the operational needs of the Dispatch Center, the Employer's denial of the Grievant's request(s) based on "operational needs" were reasonably related to staffing considerations and were consistent with the Collective Bargaining Agreement. Moreover, as such, the denial thereof is not found to have been "...solely for financial reasons..." as recognized in *Beck*. Accordingly, there simply exists no evidentiary basis to grant the relief sought by the Union herein. As such, the Grievance must be, and therefore is, Denied.

AWARD

The Grievance is Denied.

David W. Stanton

David W. Stanton, Esq.
NAA Arbitrator

April 2, 2020
Cincinnati, Ohio