**OCB AWARD NUMBER: [2642]**

SUBJECT: Arb Summary # 2642

TO: All Advocates

FROM: Tom Dunn

OCB GRIEVANCE NUMBER: DPS-2018-03246-15

 DPS-2018-03273-01

DPS-2018-03286-01

DPS-2018-03407-01

DPS-2018-03409-01

DEPARTMENT: Ohio Department of Public Safety

UNION: OSTA

ARBITRATOR: David W. Stanton

GRIEVANT NAME: William Ogden

Stephen Zientek

James Hannon

Joseph Hershey

Charles Jackson

MANAGEMENT ADVOCATE: Michael W. Wood,

UNION ADVOCATE: Elaine N. Silveira

OCB REPRESENTATIVE: Tom Dunn

ARBITRATION DATE: January 23, 2020

DECISION DATE: May 18, 2020

DECISION: Sustained

CONTRACT SECTIONS 4, 20, 26, 27

OCB/BNA RESEARCH CODES: Emergency

Overtime

 Split Days

 Schedule

 Management Rights

**HOLDING:** The Arbitrator found that the Employer violated the Collective Bargaining Agreement when Employer changed the Grievants’ work schedules and split their offdays. The Arbitrator recognized the need for sufficient staffing; however, the Arbitrator found that the Employer was well aware of the detail and had ample time to plan staffing for said detail. The Arbitrator determined that the penalty would be the payment of overtime for all hours worked on September 29, 2018. The Arbitrator found that the Employer had violated the contract. Therefore, the grievances are **SUSTAINED.**

**Facts:** The instant matter involves multiple Grievances, combined by the Parties, concerning the Employer's schedule change impacting these Grievants - four (4) Troopers and one (1) Sergeant - to allegedly avoid the payment of Overtime for a demonstration at Kent State University requested by the Director of Public Safety on or about September 7, 2018. the event involved a request for assistance at Kent State University for an “open carry rally” to be held on its Campus on September 29, 2018. Such involved a highly publicized and politically sensitive event involving Second Amendment Rights involving an event speaker, Kaitlin Bennett, who is an American Gun Rights Advocate, Anti-Abortion Activist and social media personality. She received media attention in 2018 for open carrying an AR-10 (assault rifle) at Kent State University after graduation. The event was initially to be held at the Student Center Quad area of Kent State University, however, upon learning of the cost implications of the venue, Bennett’s organization changed the event to a “march” conducted throughout the public areas on Campus. Bennett's group would be marching throughout the Campus armed with various firearms, some would be wearing full military gear along with their weapons. Additionally, counter protestors were planning to demonstrate at the location as well. These groups often come to protests armed with bats, pipes and improvised weapons with the intention of inciting violence. The situation was characterized as similar to that at Charlottesville, Virginia which turned violent after protestors clashed with counter-protestors resulting in over thirty (30) injuries and one fatality. Multiple Agencies were contacted to coordinate resources, including operational and logistical matters with planning procedures running concurrently. Contingency plans, based on multiple scenarios, were considered and discussed. Two officers were injured.

The September 29, 2018 event was a planned event wherein Kent State University had knowledge of the event in question and requested the Employer's assistance at least twenty-two (22) days in advance thereof. These Grievants declined the offer to work the Detail on Overtime; however, their schedules were subsequently changed and their days off split to accommodate personnel needs for this Detail.

**The Union argued:** Union contends the Employer simply cannot change work schedules to split days off solely to avoid paying Overtime. The Employer failed to advance any operational reasons requiring the Contract to be violated. Testimony from the employer further failed to offer any operational reason to justify splitting days off and was done solely to avoid the payment of overtime. The Union asserts the definition of “emergency” is “a serious unexpected and often dangerous situation requiring immediate action”. The Employer was aware of this Detail on September 7, 2018 when the request for assistance was made, and the event was not until September 29, 2018. Such automatically excludes this Detail from being considered an emergency; as it was expected. The Union does not challenge the Employer's ability to render assistance when requested. Ultimately, the Union contends that Employer’s actions violated both Articles 26 and 27 of the Collective Bargaining Agreement; therefore, the grievances should be sustained.

**The Employer argued:** The Employer contends the Union has failed to meet its burden of proof to establish its action to change the Grievant's schedules to provide assistance at Kent State University for a highly publicized and politically sensitive event involving Second Amendment rights, did not violate either Article 26 and/or 27 of the Collective Bargaining Agreement. Further, Employer argued that time off days can in fact be split for “extraordinary circumstances”. The language, as written, provides for examples and was not intended to be an all-inclusive list as suggested by the Union. Employer further argued the Employer's involvement at Kent State University was, by definition, an “extraordinary circumstance”. The extent of the assistance was unknown and involved an open- carry demonstration, providing a wide variety of possible outcomes. With respect to the Union's assertion the Employer changed the Grievants' schedules solely to avoid the payment of Overtime, it submits the Union did not offer any evidence relative thereto, nor did the Union question Mejia regarding the Overtime issue. The Employer emphasizes Article 4 titled “Management Rights” affords it the right and contractual authority to address operational needs and the direction of the working forces as an exclusive right of Management. The operation of its work and the business directly related to the topics of Employee Scheduling and Overtime were present in this matter. The Union failed to establish these schedule changes were effectuated solely to avoid Overtime; these schedule changes were made to address the extraordinary circumstances, and therefore, the grievances should be denied.

**The Arbitrator found:** While the Arbitrator is indeed mindful of the Employer's need to provide sufficient staff for whatever operational need may arise, the penalty, if you will, of affecting one's consecutive off-days carries with it the penalty of Overtime at the applicable rate of pay. The Arbitrator determined Employer was well aware of this Detail for which it received the request on September 7, 2018 to occur on September 29, 2018 and had time to plan for the even. Further, the Arbitrator determined that the planned event, while potentially volatile in nature, was nonetheless orchestrated and did not rise to an unexpected, unforeseen and/or spontaneous event which provided little, if any, prior planning where schedule modifications would be appropriate under Article 26. The Arbitrator determined that when the Employer changed the named Grievant's work schedules resulting in a split of their offdays, it was in violation of the Collective Bargaining Agreement, and the penalty is the payment of Overtime. Each named Grievant shall receive the applicable Overtime rate for all hours work on September 29, 2018. Therefore, the Arbitrator **SUSTAINED** the Grievances.