**OCB AWARD NUMBER: 2632**

SUBJECT: Arb Summary # 2632

TO: All Advocates

FROM: Charlotte Robertson

OCB GRIEVANCE NUMBER: DPS-2018-01375-15, DPS-2018-01373-01

DEPARTMENT: Ohio Department of Public Safety – Division of the Ohio State Highway Patrol

UNION: The Ohio State Troopers Association

ARBITRATOR: Sherrie Passmore

GRIEVANT NAME: Sgt. William Lee, et. al & Tpr. Stephen Pacheco, et. al.

MANAGEMENT ADVOCATE: Lieutenant James M. Thompson

UNION ADVOCATE: Elaine N. Silveira, Esq.

OCB REPRESENTATIVE: Chris Haselberger

ARBITRATION DATE: November 4, 2019

DECISION DATE: January 30, 2020

DECISION: DENIED

CONTRACT SECTIONS Article 7, Article 20.07, and Article 27.03

OCB/BNA RESEARCH CODES: 117.3271 – Overtime-Distribution of; 93.4661 – Timeliness of Grievances

KEYWORD SEARCH TERMS: Overtime; Funding; Timeliness

**HOLDING: Grievance DENIED.** Grievance denied because the Union failed to show that either Article 7 or Article 27.03 were violated by the Employer’s practice of distributing federal overtime hours to turnpike units.

**Facts:**  On March 1, 2012, the Ohio State Highway Patrol’s Turnpike District was eliminated, and its posts were absorbed into three of the remaining Field Patrol Post Districts. In April of 2018, the Ohio State Highway Patrol received a federal grant of 12,000 overtime hours. The hours were divided and distributed among the Field Patrol Posts. Bargaining unit employees of the Field Patrol Posts were offered to work the overtime hours available, and exempt employees of the Field Patrol Posts were permitted to work these hours if hours were left over. Turnpike Patrol Post bargaining units were offered separate overtime opportunities under different funding sources per the Employer’s prior practice. The Grievants worked at the Turnpike Patrol Post in District 4. They were denied the opportunity to work non-turnpike federally funded overtime hours.

**The Union argued:** The Union argued that the Employer waived its right to object to timeliness at the Step Two hearing. The Union argued that the Employer violated Article 7 by discriminating against the Grievants for their position on Turnpike Patrol, and that the Employer violated Article 27.03 by not offering federal overtime to Turnpike Patrol Post bargaining members before offering it to exempt officers at the Field Patrol Posts.

**The Employer argued:** The Employer argued that the grievances were untimely under Article 20.07 as the grievances were filed well after the Turnpike District was eliminated. The Employer also argued that they did not violate Article 7 because the separation made between Turnpike Patrol Post bargaining units and Field Patrol Post bargaining units was not based on any concept prohibited by Article 7. Further, the Employer argued that they did not violate Article 27.03 because Turnpike Patrol Post bargaining units may work overtime hours funded by the Turnpike Commission, while Field Patrol Post bargaining units may not, based upon the regulations upon which the Turnpike is funded. In addition, no contract language prohibits the Employer from maintaining its prior practice in how it offers voluntary overtime.

**The Arbitrator found:** The Arbitrator determined that the grievances were timely because they were filed within 20 days of the Grievants most recently being told no Turnpike Patrol Post bargaining units would be permitted to work federally funded overtime. The Arbitrator also determined that Article 7 was not violated because the differences in treatment between Turnpike Patrol Post bargaining units and Field Patrol Post bargaining units not were aimed at evading the spirit of the agreement, and instead were shown by the Employer to have actually worked to equalize overtime opportunities overall. Further, the Arbitrator determined that no violation of Article 27 was proven because the April 2018 overtime hours were voluntary overtime and the language of Article 27.03 does not address voluntary overtime to exempt officers, except for off-duty detail, which was not applicable to the facts. Therefore, the grievances were **DENIED.**