

**CONTRACTUAL
LABOR ARBITRATION PROCEEDINGS**

IN THE MATTER OF)	
ARBITRATION BETWEEN)	
)	
STATE OF OHIO)	
DEPARTMENT OF PUBLIC SAFETY)	
OHIO STATE HIGHWAY PATROL)	DECISION IN
)	
-AND-)	HOLIDAY OVERTIME
)	ELECTRONIC TECHNICIANS
)	
OHIO STATE TROOPERS)	
ASSOCIATION, INC.)	MATHEW HUNTER
UNITS 1 & 15)	ROBERT LAYMAN

CASE NO: DPS-2019-00342-01
DPS-2019-00443-01

GRIEVANCE: The Grievance protests the denial of Holiday Overtime for Electronic Technicians as violating Articles 27 and 44 of the Collective Bargaining Agreement.

HEARING(S): The Parties jointly stipulated to forego an Evidentiary Hearing and submit this dispute via Briefs and Joint Documents/Exhibits.

AWARD: The Grievance(s) is/are Denied.

ARBITRATOR: David W. Stanton, Esq.

APPEARANCES

VIA BRIEFS

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

James M. Thompson, Lieutenant
Advocate for the State of Ohio

**FOR THE OHIO STATE
TROOPERS ASSOCIATION**

Elaine N. Silveira, General
Counsel/Advocate for the OSTA

ADMINISTRATION

By email correspondence on August 21, 2020 from Hema Patel, 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 Holiday Overtime Grievance" of Electronic Technicians Mathew Hunter and Robert Laman then in dispute between these Parties. The Parties elected to forego an Arbitration Proceeding and presented their respective arguments via written submissions "Briefs" and Joint Exhibits. Accordingly, this matter is now ready for final disposition herein.

GRIEVANCE(S) & QUESTION TO BE RESOLVED

Each Grievance, as set forth in Joint Exhibit 2 (A); (B); (C); and, (D), respectively, challenges the ability of Electronic Technicians to work Overtime on contractually designated/recognized Holidays as violating Article 27, titled, "Overtime" and Article 44, titled, "Holidays" as jointly articulated by the Parties (*See*, Joint Exhibit 2).

Statement of Grievance:

We (ET2 Laman, ET2 Oldham, ET2 Trittschuh and ET3 Hunter) have been told that we do not have the option to work the Holidays due to us working day shift Monday-Friday per Article 26.09 of the Contract. We were told that we can only work on a Holiday if it is approved by the District Duty Officer, and only in case of an emergency.

However, the State allows other employees that are scheduled Monday-Friday on day shift to work Holidays if they choose to work them. These employees would be the Criminal Patrol Troopers, CMV Troopers as well as MCEI Units. We were told that per Article 44 Holidays that we cannot work on the Holidays because they are observed Holidays and we are put on Holiday Leave per TMS. Again, other units that workday shift Monday-Friday are also scheduled off on Holiday Leave due to the observance of the Holidays.

Per Article 27.03 Overtime Assignments it states, "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". In essence, they are doing this to avoid paying us overtime.

We only ask that we be afforded the same opportunities as the other day shift Monday-Friday members of the bargaining unit have offered to them.

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

Did the Employer violate Articles 27 and 44 of the Collective Bargaining Agreement by not allowing Mathew Hunter and Robert Laman (Grievants) to choose to voluntarily work on State recognized Holidays?

If so, what shall the remedy be?

/s/ Elaine N. Silveira

/s/ Lieutenant James M. Thompson

**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 IV
MANAGEMENT RIGHTS**

The Union agrees that all of the functions, rights, powers, responsibilities, and authority of the Employer, in regard to the operation of its work and business and the direction of its workforce which the Employer has not specifically abridged, deleted, granted or modified by the expressed and specific written provision of the Agreement are, and shall remain, exclusively those of the Employer.

Accordingly, the Employer retains the rights to 1) hire and transfer Employees, suspend, discharge and discipline employees, 2) determine the number of persons required to be employed or laid off; 3) determine the qualifications of the Employees covered by this agreement; 4) determine the starting and quitting time and the number of hours to be worked by its Employees; 5) make any and all rules and regulations; 6) determine the work assignments of its Employees; 7) determine the basis for selection, retention and promotion of Employees to or for positions not within the Bargaining Unit established by this Agreement; 8) determine the type of equipment used and the sequences of work process; 9) determine the making of technological alterations by revising the process or

equipment, or both; 10) determine work standards and the quality and quantity of work to be produced; 11) select and locate buildings and other facilities; 12) transfer or subcontract work; 13) establish, expand, transfer and/or consolidate, work processes and facilities; 14) consolidate, merge, or otherwise transfer any or all of its facilities, property, processes or work with or to any other municipality or entity or effect or change in any respect the legal status, management, or responsibility of such property, facilities, processes, or work; 15) terminate or eliminate all or any part of its work or facilities.

**ARTICLE 5
UNION RECOGNITION AND SECURITY**

5.03 Bargaining Unit Work

The parties recognize Electronic Technician 3's perform and shall continue to perform the following duties regarding the functional supervision of Electronic Technicians 1's and 2's, including but not limited to evaluating, assessing files, and conducting internal investigations

**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 26 HOURS OF WORK AND WORK SCHEDULES

26.09 Electronic Technicians

Electronic Technicians shall be scheduled Monday through Friday on the day shift.

ARTICLE 27 OVERTIME

27.1 Overtime and Compensatory Time

Because of the unique nature of the duties and emergency response obligations of the Division, management reserves the right to assign employees to work overtime as needed.

1. Any member who is in active pay status more than forty (40) hours in one week shall be paid one and one-half (1.5) times his/her regular rate of pay including shift differential if ordinarily paid for all time over forty (40) hours in active pay status. The regular rate of pay includes all premium pay routinely received.
2. An employee may elect to take compensatory time off in lieu of cash overtime payment of hours in an active pay status more than forty (40) hours in any calendar week except that for voluntary statewide overtime details (e.g., State Fair, Boy's State and Girl's State), voluntary turnpike overtime and federally funded positions the Employer shall retain the right to pay compensatory time in cash rather than in time off. Such compensatory time shall be granted on a time and one-half (1.5) basis.

3. The maximum accrual of compensatory time shall be three hundred sixty (360) hours for all employees.
4. When the maximum hours of compensatory time accrual is rendered, payment for overtime shall be made in cash.
5. Upon termination of employment, an employee shall be paid for unused compensatory time at a rate which is the higher of:
 - a. The final regular rate received by the employee, or
 - b. The average regular rate received by the employee-during the last three years of employment.

27.2 Active-Pay Status

For purposes of this Article, active pay status is defined as the conditions under which an employee is eligible to receive pay, and includes, but is not limited to, vacation leave, personal leave, compensatory time, bereavement leave and administrative leave. Sick leave and leave used in lieu of sick leave shall not be considered active pay status for the purposes of this Article.

27.3 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.

When an off-duty overtime detail requiring bargaining unit work is offered out of a District it shall first be offered to qualified bargaining unit members in that District. If any openings remain, they shall be offered to exempt officers.

When an off-duty overtime detail requiring bargaining unit work is offered out of a Post or Section it shall first be offered to qualified bargaining unit members in that Post or Section. If any openings remain, they shall be filled by qualified bargaining unit members within the geographical District boundaries containing that Post or Section. If any openings remain, they shall be offered to exempt officers.

This does not apply to off-duty overtime work on the Ohio Turnpike or in instances where the Employer was notified less than forty (40) hours in advance of the off-duty detail.

27.4 Report-Back Pay

- A. "Report-Back" occurs when a member of the bargaining unit is called to return to work to do unscheduled, unforeseen or emergency work after the member has left work upon the completion of the regular day's work, but before he/she is scheduled to return to work.
- B. When a member reports back, he/she shall be paid a minimum of four (4) hours pay at his/her regular rate, plus shift differential if ordinarily paid.
- C. Working a shift as the result of a mutually agreed to shift trade shall not constitute a report back.
- D. Regularly scheduled shift hours following report back are to be paid at straight time. For report back purposes "scheduled time" is that time scheduled by a post commander during the shift selection process set out in Article 26.

27.5 Standby Pay

Whenever an off-duty employee is placed on a standby basis by the Employer, he/she will be paid one-half of his/her regular rate of pay for all hours that he/she is actually on standby.

An employee is entitled to stand-by pay subject to the following: 1) the employee is on direct notice of the requirement to be available to respond; 2) the Employer directs that the off-duty activities are specifically restricted; 3) the employee must immediately respond to any summons from the Employer with the consequence of discipline for failure to respond/report.

27.6 Requests for Compensatory Time Off

Requests for compensatory time off must be submitted in writing in advance of the anticipated time off. Such requests shall be given reasonable consideration. Requests made within 24 hours in advance of the anticipated time off may be given reasonable consideration.

Compensatory time is not available for use until it appears on the employee's earnings statement.

27.7 Granting of Compensatory Time Off

Compensatory time off shall be granted subject to the operational needs of the facility. If

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.

27.8 Pyramiding of Overtime

There shall be no pyramiding of overtime.

27.9 Specialty Exemptions

If, during the duration of this contract, bargaining unit members are assigned to the Executive Protection Unit or assigned to work with the Executive Protection Unit for a detail they will be exempt from Sections 26 and 27 of this agreement.

ARTICLE 44 HOLIDAYS

44.01 List of Days

Members of the bargaining unit will have the following Holidays:

1. New Year's Day – (first day in January)
2. Martin Luther King's Birthday – (third Monday in January)
3. President's Day – (third Monday in February)
4. Memorial Day – (last Monday in May)
5. Independence Day – (fourth of July)
6. Labor Day – (first Monday in September)
7. Columbus Day – (second Monday in October)
8. Veterans Day – (eleventh of November)
9. Thanksgiving Day – (fourth Thursday in November)
10. Christmas Day – (twenty-fifth of December)
11. Any day declared as a Holiday by the Governor of the State of Ohio or the President of the United States.

A holiday falling on Sunday will be observed on the following Monday, while a holiday falling on a Saturday will be observed on the preceding Friday for employees whose jobs are performed Monday through Friday. All other employees will observe Holidays on the days listed in this section.

FACTUAL BACKGROUND

As previously indicated, the Parties elected to forego an Evidentiary Hearing and proceeded forthright with their respective arguments through written submissions and Joint

Exhibits/Documents. While the Parties have entered Joint Stipulations regarding certain factual determinations, additional facts have been referenced in their respective “Submissions” and Joint “Documents” – Exhibits and are referenced herein as gleaned therefrom. The Joint Stipulations relative to factual determinations are as follows:

1. The Grievance is properly before the Arbitrator.
2. The Parties agreed to submit the case on briefs for a binding decision by the Arbitrator.
3. Grievants Hunter and Laman are Electronic Technicians assigned to the Piqua District.
4. TMS holiday entries listed as Joint Documents 6 and 7 are defined as follows:

A. HOLLV:

This code designates a state recognized holiday. When Holl V *is not* used in conjunction with any other payroll code, the Unit was scheduled to observe the holiday, did not report to work, and was compensated eight (8) hours of pay at the regular rate. (All remaining TMS Holiday Entries designate additional holiday compensation, and are used *in conjunction with* "HOLLV")

B. HOLWK:

Unit worked on the holiday and was compensated eight (8) hours of pay at time and a half.

C. CMPHL:

Unit worked on the holiday and was compensated eight (8) hours of compensatory time, paid at time and a half.

D. HOLPR TO:

The holiday fell on the Unit's scheduled time-off day and the Unit was compensated eight (8) hours of pay at time and a half.

E. CMPHL TO:

The holiday fell on the Unit's scheduled time-off day, and the Unit was compensated eight (8) hours of compensatory time, paid at time and a half.

F. HOLOT:

Unit worked non-voluntary overtime in excess of eight (8) hours on a holiday *or* was called out at a time outside of their compensated time-off. The Unit was compensated for each minute worked at 2.5 times their regular rate. *This instance occurred one time in the Joint documents. Trooper Weeks worked the Labor Day Holiday on 9/3/18 with a schedule of 7:00 a.m. - 3:00 p.m. and remained out on an incident from 3:00 p.m. - 4:40 p.m. on that date.*

5. Pursuant to Section 26.09, Electronic Technicians are assigned to work the day shift, Monday through Friday.
6. Sergeant Bennett, Troopers Lewis and Spitler are assigned to the Piqua District Commercial Enforcement Section and were assigned to this Section during the time period January 1, 2018 - January 1, 2019.
7. Trooper Huffman is assigned to the Piqua District Commercial Enforcement Section, and was assigned to the Section during the time period of October 8, 2018 - January 1, 2019.
8. Trooper Weeks is assigned to the Piqua District Criminal Patrol Section and was assigned to the Section during the time period of January 1, 2018 - January 1, 2019.
9. Sergeant Schmutz and Trooper Simmons are assigned to the Piqua District Office of Investigative Services, and were assigned to this Section during the time period of January 1, 2018 - January 1, 2019.
10. The Units listed in Joint Document 8 are assigned to the Piqua District Commercial Enforcement, Criminal Patrol, and Office of Investigative Services Sections. They are commonly scheduled to the day shift, Monday through Friday, but their schedules including start times and days off, may be rotated for operational purposes.
12. The Parties agree that all the above facts are true and accurate but reserve the right to argue their relevance to this case.

/s/ Elaine N. Silveira, Advocate for the Grievant(s)

/s/ James M. Thompson, Advocate for the Employer

CONTENTIONS OF THE PARTIES

UNION CONTENTIONS

The Union contends the Employer violated Articles 27 and 44 of the Collective Bargaining Agreement when it did not allow Electronic Technicians, Matthew Hunter and Robert Laman to choose to voluntarily work on State recognized Holidays. In support thereof, Article 26, Section 26.09, indicates “Electronic Technicians shall be scheduled Monday through Friday on the day shift”. At the time, Electronic Technician 3 Matthew Hunter, served as a Supervisor of Electronic Technician 2 Robert Laman, and approved the overtime in question. As a result thereof, an Administrative Investigation ensued in which both Employees ultimately received a Written Reprimand as set forth in Joint Document 6. Such was effectuated by the Employer based on the belief Electronic Technicians are not permitted to work voluntary overtime on a contractually and State recognized Holiday.

The Union emphasizes there are in fact several Sections that utilize Troopers and Sergeants and are not considered Field Posts and are considered “specialty positions” as set forth in the Joint Documents submitted by the Parties. They typically are scheduled on a Monday through Friday schedule working the day shift. Such represents a small representation of the specialty positions within District 5, which is where the Grievants are assigned. The Union argues nothing in the Collective Bargaining Agreement prohibits these Employees from working voluntary overtime on a Holiday. Moreover, there is nothing in the Agreement that allows specialty positions to work voluntary overtime on a Holiday. Electronic Technicians are prohibited from doing so while the Troopers and Sergeants in these specialty positions are allowed.

Operating under an 365/24/7 operation requiring Employees to work every day, Article 44 envisions Employees assigned to a Monday through Friday schedule will not actually work on a State recognized Holiday. Such is specifically set forth regarding Holidays falling on a Saturday or Sunday. If in fact a Holiday falls on a Saturday, it is observed on the preceding Friday and, consequently, if it falls on a Sunday, it is observed on the following Monday. Based on Joint Stipulation 10, Sergeant Bennett, Trooper Huffman, Trooper Lewis, Trooper Spitler, Trooper Weeks, Sergeant Schmutz, and Trooper Simmons work a Monday through Friday day shift schedule; the same schedule as these Electronic Technicians. Joint Document 8 demonstrates Trooper and Sergeant specialty positions, despite being scheduled on a Monday through Friday day shift schedule, are routinely permitted to work voluntary overtime on a Holiday.

The Contract simply does not distinguish Troopers and Sergeants from the Electronic Technicians with respect to Article 27 titled "Overtime", or Article 44 titled "Holidays". Joint Document 3, OSP Policy 203.15, does not prohibit Electronic Technicians from working voluntary overtime on a Holiday and merely codifies the contractual language set forth in Article 26, Section 26.09. Employees Bennett, Huffman, Lewis, Spitler and Weeks have all worked voluntary overtime on a Holiday and Employees Schmutz and Simmons chose not to. Just because Schmutz and Simmons did not work voluntary overtime on a Holiday does not equate to the fact they could not; they simply chose not to. The Union requests Electronic Technicians be given the same opportunities as the Troopers and Sergeants to work voluntary overtime on a Holiday.

The Union emphasizes, Joint Document 8 contains 31 instances of Troopers and Sergeants working voluntary overtime on a Holiday during a one-year period. Sergeant Bennett

worked on nine (9) Holidays, Trooper Huffman worked on four (4) Holidays, Trooper Lewis on Seven holidays; Trooper Spitler worked on four (4) Holidays, Trooper Weeks worked on seven (7) Holidays; and, Trooper Weeks worked on seven (7) Holidays - all on voluntary overtime. Joint Stipulation No. 4 recognizing the TMS Entries of a HOLWK, or a CMPHL, demonstrates the Unit worked on a Holiday. When the Unit did not work on a Holiday, the TMS Entry is HOLLV. Except for the one time Electronic Technician 2 Laman worked overtime on January 1, 2018, all of his TMS entries in Joint Document 7 are all HOLLV. None of those Employees who worked voluntary overtime on a Holiday in Joint Document 8, were investigated and received discipline for doing so. These Grievants were both disciplined because Laman worked voluntary overtime on New Year's Day 2019 and Hunter approved the TMS Entry; however, as set forth in Joint Document 6 representing the Administrative Investigation of both Grievants, there was never any allegation Electronic Technician 2 Laman did not have any work to accomplish during the eight (8) hour shift or any allegation he did not perform any work during the eight (8) hour time frame.

Based thereon, the Union insists the Employer violated Articles 27 and 44 of the CBA when it did not allow Electronic Technicians Matthew Hunter and Robert Laman to work voluntary overtime on a State recognized Holiday and received Disciplinary Action in conjunction therewith.

For these reasons, the Union requests the Grievance be Sustained.

EMPLOYER CONTENTIONS

The Employer contends this matter represents a classic example of the “Plain Meaning Rule”, wherein the language allegedly violated is plain and clear and conveys a distinct idea leaving no occasion to resort to interpretation. The Collective Bargaining Agreement clearly

indicates the need for overtime and the right to assign it is determined by the Employer.

Electronic Technicians are primarily tasked with installing, repairing and maintaining electronic and communication equipment; they do not respond to service calls or interact with the motoring public; their duties predominately are to maintain communications equipment in the Patrol cars and at the Highway Patrol Facilities. This type of work is usually scheduled in advance and completed Monday through Friday during the first shift. They do not run a 24-hour operation and the Contract clearly indicates they work an “administrative schedule” unlike the 24/7 schedule of the Troopers and Sergeants.

Troopers and the Sergeants work with State highways that do not close on nights, weekends and/or Holidays; the need to protect the motoring public is a 24/7 operation. Highway Patrol Troopers and Sergeants work traffic interdiction and respond to emergencies for the motoring public, whereas the duties of the Electronic Technicians are administrative in nature. They install and repair communications equipment during the day, which does not require them to work on afternoons, evenings, or on weekends. In the event an emergency occurs, wherein Highway Patrol Posts may lose its communication capabilities, Electronic Technicians are called out to handle that emergency. They are compensated at the applicable overtime rate if the event occurs outside their scheduled workday.

Additionally, if the Employer called in an Electronic Technician on a State recognized Holiday to respond to an emergency, that Employee would be compensated according to the Collective Bargaining Agreement. Article 44, Section 44.3 contains a prerequisite whereby the Employee may be required by the Employer to work a Holiday; such does not permit an Employee to choose to work that Holiday. Electronic Technicians are not operationally

necessary, nor are they required to work on Holidays. Instead, they are given the benefit of a paid day off on all State recognized Holidays as set forth in Section 44.01.

In accordance with the respective Classification Specifications, an Electronic Technician 2 primarily performs installation, repair, testing and preventive maintenance on Highway Patrol electronic and communication equipment. An Electronic Technician 3 oversees and directs installation, maintenance and repair of that equipment. (*See*, Joint Document 4) The Classification Specification of Highway Patrol Officers includes Troopers and Sergeants and their job responsibilities and purpose is to enforce traffic laws and investigate criminal incidents in violation of certain laws within statutory jurisdiction. (*See*, Joint Document 5) The need to enforce traffic laws and investigate criminal incidents is not a Monday through Friday, first-shift job. Such activity occurs regardless of the time of day, day of the week, or whether it occurs on a State recognized Holiday. They operate on a 24-hour schedule, 7 days per week based on the fact the motoring public travels Ohio roadways throughout that timeframe. Unlike Electronic Technicians, State Troopers and Sergeants are operationally necessary and are scheduled on State recognized Holidays.

Additionally, Highway Patrol Policy, OSP-203.15 titled, "Work Schedules" mirrors the Collective Bargaining Agreement with regard to work schedules for the Electronic Technicians. The Monday through Friday, day shift work schedule is consistent with that recognized in the Collective Bargaining Agreement. Electronic Technicians only work outside their normally scheduled days and hours when an emergency circumstance arises and are compensated at the applicable overtime rate. Work schedules for Troopers and Sergeants are mandated differently on weekends and Holidays. Highway Patrol requires expanded coverage for traffic interdiction on Holidays and weekends because traffic is heavier at those times. Both traffic and criminal

laws and investigating motor vehicle crashes occur on weekends and Holidays outside the normal Monday through Friday work schedule. Troopers and Sergeants work Holidays patrolling the roads, filling an operational need and serve a functional purpose benefiting the motoring public and the State of Ohio taxpayers. Troopers and Sergeants do not get Holidays off. The Employer assigns them to work Holidays and schedules additional Troopers and Sergeants on certain Holidays due to operational need generated by increased traffic on the roadways. The Employer emphasizes there is no operational purpose for Electronic Technicians to work on their assigned Holidays off. Absent an emergency where the Employer would call-in an Electronic Technician to work, the work performed by them is only needed Monday through Fridays during the day shift. To allow them to voluntarily perform their assigned duties on Holidays, at an applicable overtime rate, is not only inconsistent with the Collective Bargaining Agreement, but serves no operational purpose.

The Employer insists the Collective Bargaining Agreement clearly sets forth the assignment of overtime and how Electronic Technicians are scheduled. They are not permitted to work voluntary overtime on a State recognized Holiday and the Employer has never permitted an Electronic Technician to work voluntary overtime on a State recognized Holiday in the past. The only time an Electronic Technician worked voluntary overtime on a Holiday was when Grievant Laman worked on January 1, 2019 for which he received Disciplinary Action. Grievant Hunter approved Grievant Laman's voluntary Holiday overtime payroll entry and had no authority to do so. Grievant Hunter, an Electronic Technician 3 is a Bargaining Unit Employee and serves as a “lead worker” over other Electronic Technicians and performs certain ministerial duties such as first-level timekeeping. Only exempt District-level Staff possess the authority to approve schedule changes. At no point did the Employer allow directly or indirectly the Electronic

Technician to choose to work a Holiday. The Employer insists Grievant Hunter acted outside his authority as a lead worker in permitting Grievant Laman to work the State recognized Holiday.

During the course of the Administrative Investigation, witnesses, including Grievant Laman, acknowledged Electronic Technicians do not work on State recognized Holidays. Such was corroborated by those questioned during the course of that investigation. As stated throughout, it was indicated Electronic Technicians have never worked voluntary overtime on State recognized Holidays. Such is supported by the Collective Bargaining Agreement based on the operational needs of the Employer. Such is also a long-standing practice whereby Electronic Technicians cannot choose to work Holidays as evidenced in the Grievant's payroll records and statements made during the Administrative Investigations. The one and only time an Electronic Technician worked a Holiday without Management approval, that Electronic Technician was disciplined as was the lead worker involved.

With respect to the payroll documents, wherein the Union contends some Troopers in "specialty sections" who typically work a Monday through Friday schedule also work State recognized Holidays, such, it contends, is comparing apples to oranges. Electronic Technicians perform support functions installing and repairing communication equipment which can be completed Monday through Friday on first shift absent an emergency. Troopers and Sergeants, even in specialty areas, work a variety of shifts and are subject to different days off based on operational necessity. The job duties differ for the Troopers and Sergeants regardless of the section in which they work as compared to the job duties and responsibilities of the Electronic Technicians. The Employer insists operational necessity dictates why Troopers and Sergeants in these specialty sections work on Holidays since they have to remain both proactive and reactive with their interactions with the motoring public.

The specialty sections cited by the Union do indeed have instances arise regardless of the day of the week or whatever Holiday is recognized. While the typical work schedule for certain specialty Officers generally occurs during the day shift Monday through Friday, there are occasions they are required to work on Holidays when an emergency situation arises. Many of these Troopers and Sergeants carry the same arrest powers as any other Trooper or Sergeant and those that do not interdict traffic are not scheduled to work Holidays. Many, based on their specialty sections, do not work State recognized Holidays. Like many State Employees, Electronic Technicians are in fact compensated for State recognized Holidays with the benefit of a paid day off as negotiated and contained in the Collective Bargaining Agreement. If in fact an emergency arises on a Holiday that requires an Electronic Technician to respond, the Employer will call back that Technician and that Technician will be paid overtime pursuant to the negotiated rate.

Ultimately, the Employer determines who works Holidays and who does not. While some Monday through Friday Employees may be scheduled to work a Holiday, it is the Employer's decision and discretion based on operational need. Some Employees who work a Monday through Friday schedule do not work Holidays based on operational need. As such, the Employer does not schedule them to work. Troopers and Sergeants who patrol the roadways provide an essential service to the safety of the motoring public whereby their presence is required even on State recognized Holidays. There is no benefit for Electronic Technicians to work on a Holiday absent some emergency. To hold otherwise would run counter to the Highway Patrol's long-standing practice of not scheduling Electronic Technicians to work voluntary overtime on State recognized Holidays based on the clear and unambiguous language of the Collective Bargaining Agreement and the Employer's policy in relation thereto.

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

DISCUSSION AND FINDINGS

The disposition of this matter hinges upon the determination of whether the Employer, as alleged, violated Articles 27 and 44, respectively, of the Collective Bargaining Agreement when it failed to allow Electronic Technicians Matthew Hunter and Robert Laman to voluntarily work, at the applicable Overtime rate, on a State recognized Holiday.

The Stipulated Issue as provided addresses the alleged violation of the afore-referenced Articles and does not specifically mention whether this Arbitrator has been conferred the jurisdiction to consider the attendant Disciplinary Action. The Record demonstrates each Employee was subject to an Administrative Investigation following being read the Internal Investigation Pre-Interview Form (DPS-0036) in the presence of Labor Representative, Bruce Elling. The investigations and interviews occurred on January 30, 2019 concerning this matter. Not only is there a question as to the alleged violation of the above-referenced contractual Articles, but also a question surrounding the implementation of a Written Reprimand as referenced in the Administrative Investigation Report for each of the above-named Grievants. The Issue as so stipulated, is deemed to be the only matter properly before this Arbitrator. “Just Cause”, as contractually required for the issuance of the attendant Disciplinary Action, will not be addressed herein.

The Union contends there simply exists no contractual basis to deny these Employees the opportunity to work voluntary overtime on a State recognized Holiday as listed in Article 44 of the CBA. Even though they are scheduled Monday through Friday day shift, they are being denied the same opportunities provided to several other Sections within the Ohio State Highway Patrol. The State utilizes Troopers and Sergeants not considered Field Post Employees. They

are considered specialty positions and are commonly scheduled on a Monday through Friday schedule working the day shift like that of the Grievants herein. The Collective Bargaining Agreement, according to the Union, simply does not contain any prohibition against these Employees working voluntary overtime on a Holiday as do other Employees, even those in those specialty sections. It insists the Joint Documents presented clearly indicate numerous instances where Troopers and Sergeants have worked voluntary overtime on a Holiday even though they are scheduled Monday through Friday day shift. None of those Employees were subject to an Administrative Investigation or received Disciplinary Action for doing so. Grievant Laman worked voluntary overtime on New Year's Day 2019 based on the TMS authorization provided by Grievant Matthew Hunter – his Supervisor. These Employees are being improperly denied the opportunity to work voluntary overtime in violation of the Collective Bargaining Agreement.

The Employer insists that in conjunction with the Management Rights Article, the determination of when overtime is necessary and who is to perform said overtime, is at the discretion of the Employer. These Employees simply do not possess the unilateral right to decide whether they want to work on a Holiday. The plain and unambiguous language of the Collective Bargaining Agreement designates these Employees are Electronic Technicians who work a Monday through Friday day shift schedule. While rarely they may encounter an “emergency situation”, much like that identified through the Administrative Investigation, where Grievant Laman indicated he had to work on President's Day in either 2006 or 2007 when he was subpoenaed to testify in a Deposition in Columbus, Ohio; and, when he had to work on another Holiday to repair damaged cable lines to a building. On each occasion, he acknowledged he had prior approval to work those Holidays based on the subpoena and a call-out. The Employer insists the CBA affords the Employer the authority to determine the need for overtime and the

right to assign it as determined by it. As such, when these Electronic Technicians determined they would work New Year's Day 2019 and whereupon Electronic Technician 3, Matthew Hunter approved Electronic Technician 2 Laman's TMS Entry Form, they did so based on unilateral action which was not subject to prior authorization of the appropriate Management personnel with the authority to render such approval.

The Parties' Collective Bargaining Agreement, under which the Arbitrator's authority is memorialized and conferred, sets forth in Article 4 titled, "Management Rights", the Employer's inherent and contractually recognized right to "... determine the work assignments of its Employees" and determine the nature and extent of the work to be performed. Additionally, Article 27, titled, "Overtime" indicates, "...management reserves the right to assign employees to work overtime as needed". These contractually recognized rights of Management afford it the sole discretion to make reasonable and objective determinations as to when and under what circumstances overtime is necessary and will be performed by what personnel. While there are some limitations placed upon this Management right with respect to canvassing available Employees and making available these opportunities based on certain seniority rights, the ultimate decision of determining if overtime is required is, as set forth in the Collective Bargaining Agreement, and as generally recognized in labor-management relations, afforded to the Employer. Such, in any instance, is subject to Managerial offer and acceptance by the applicable and qualified Employee under the premise such would be approved when offered to, and accepted by, that Employee qualified to perform such tasks.

It is these contractual provisions taken in conjunction with the designation of State recognized Holidays, as well as, the Overtime Article that serve as the basis for adjudication of this matter. As gleaned from the Administrative Investigation identified by the Parties as Joint

Document 6, indicates on January 1, 2019, Electronic Technician 2 Robert Laman, reported to the Piqua District Headquarters, Radio Shop wherein he worked an eight (8) hour shift on what was a State and contractually recognized Holiday - New Year's Day 2019. On the following day, his direct Supervisor, Matthew Hunter Electronic Technician 3, who possessed certain, but limited, administrative authority, approved his eight (8) hours of Holiday worked and entered such into the Time Management System also known as "TMS". There is no evidence to suggest any Management personnel, with the authority to designate the need for such overtime and attendant authority to approve it, did so. Once discovered, such prompted an email from Staff Lieutenant Ray Martin specifically instructing ("Direct Order") each Electronic Technician they were not to work on a recognized Holiday unless it is cleared through the District Duty Officer, which would only be done in the case of an emergency requiring a call-out.

During the course of the Administrative Investigation, (*See*, Joint Document 6) it is apparent both Electronic Technicians had previously discussed not only working on New Year's Day approximately two weeks prior to that Holiday, but also all Holidays in 2019. Each had sufficient time to seek the approval from an appropriate Management Employee; however, they garnered the mistaken belief such simply was unnecessary. There was some discussion where they were under the belief that subsequent to Contract negotiations, they were "advised" they were simply not prohibited from working on a Holiday. Grievant Laman indicated Electronic Technician 3 Hunter gave him prior approval to work New Year's Day and approved working that Holiday on the TMS entry. Laman acknowledged they had not worked Holidays in the past. Apparently, discussions ensued throughout the Shop wherein other Electronic Technicians would be afforded the opportunity to work on Holidays and the attendant TMS entries would be approved. Laman further acknowledged on two (2) occasions he did in fact work a Holiday -

once when he was subpoenaed to testify in a Deposition; and, on a call-out to repair damaged cable lines to a building. Both were subject to prior approval.

Electronic Technician 3, Matthew Hunter, who served in a “lead” capacity and performed such administrative functions as completing TMS reporting records, etc., admitted he had informed Laman, Trittschuh and Oldham he would approve their payroll entries if they wanted to work the Holidays since there was nothing contractually prohibiting them from doing so. He claimed during the course of his Investigation he did not see any reason to contact Management regarding overtime. He indicated he had discussed this with other Bargaining Unit Members who worked day shift who informed him they work Holidays and they did not seek Management's approval to do so. He acknowledged he is Laman's direct Supervisor and managing his payroll was one aspect of his job duties. He indicated he did not seek approval from District Staff prior to approving Laman's Holiday work entry and he did not need permission from District to approve or disapprove payroll entries.

Based on this background, distinction must be drawn between the job responsibilities of those Employees who work a Monday through Friday schedule on day shift and those, who by the nature of those job responsibilities, work on Holidays. Such is not to say Electronic Technicians would never work a Holiday. Obviously, there were occasions when both Grievants worked on a Holiday - being subpoenaed to be deposed; a call-out to repair damaged cable lines; and, when the Dayton Patrol Post was being constructed. On each occasion Management designated the need for such work and prior approval was obtained. These instances suggest such equate to either a pre-authorized/planned and/or an emergent situation where their attendance was required and approved prior to them working those respective Holidays. There is no evidence to suggest any type of practice existed; and, on those occasions, based on the emergent

necessity of them working on a respective Holiday, those instances are distinguishable from a *cart blanche* exercise of working on a State and contractually recognized Holiday based on a unilateral decision without Managerial approval.

Moreover, as set forth in the Classification Specifications (*See*, Joint Documents 4 and 5, respectively), the job duties, responsibilities and the roles of the Electronic Technicians, Troopers and Sergeants, are operationally distinguishable. While there are “specialty sections” that work Monday through Friday day shift, with some being subject to working Holidays when the need arises; Management provides prior approval before soliciting and ultimately approving work on a Holiday. Here, no Managerial approval was sought and/or obtained. Such was determined after discussions ensued and these Grievants unilaterally determined they “... were going to start to work all the Holidays in 2019”. Such, in the opinion of the Arbitrator, was an ill-advised decision which simply did not possess the necessary Managerial authority to designate the overtime as a necessity or needed, nor was there approval sought for the Employee to work it. While only one of the Grievant's worked it, both were initially going to work the Holiday in question, and both were involved in scheduling for it.

In accordance with the contractual language and the examples provided where those existed on a somewhat emergent and/or pre-planned basis, the unfettered ability to work on a Holiday absent approval from Management is simply not consistent with the specific designation for Electronic Technicians to work Monday through Friday day shift as set forth in Article 26, Section 26.09 of the Collective Bargaining Agreement. That provision, taken in conjunction with the Management Rights Article and Articles 27 and 44, respectively, provides sufficient basis to deny the Grievances in their entirety. Based thereon, the Grievances of Matthew E.

Hunter, Electronic Technician 3 and Robert M. Laman, Electronic Technician 2, are hereby denied.

AWARD

The Grievances are Denied.

David W. Stanton

David W. Stanton, Esq.
NAA Arbitrator

December 18, 2020
Cincinnati, Ohio