

## The State Contract Series

For use in understanding the state employees' contract



# ARTICLE 13 – Overtime, Work Week, Work Schedules

## What is overtime?

Time in active pay status over 40 hours in a work week is overtime. A workweek consists of 7 consecutive 24 hour periods. It begins and ends on the same time of each work week. Article 13.01 defines a workweek as beginning on 12:01 a.m. Sunday and ending at 12:00 midnight the following Saturday. In order to receive overtime, a bargaining unit member must be in active pay status, which in Article 13 means eligible to receive pay and includes, but is not limited to, vacation and personal leave. (Sick leave, any leave used in lieu of sick leave and cost savings days for full time employees in Bargaining Units 6, 7, 9, 13 and 14 are not considered active pay status for overtime purposes.) Payment is at the rate of one and one half (1 1/2) times the regular rate of pay. Payment at the overtime rate can be made in compensatory time or money at the employee's choice.

Overtime must be approved by the supervisor. That is, a person cannot work overtime and expect to be paid if it is not first approved and/or assigned by the supervisor. (See Arbitration #146.) This is different than the federal law which allows a person to be paid if management is aware or should have been aware the employer is working overtime, regardless of whether management approves the overtime.

## What is stand by pay?

A person is on standby when conditions are so restrictive that a bargaining unit member can't use time for their own personal use and is required to accept work when called to return to work. If a bargaining unit member is truly on standby pay, he/she can be disciplined if he/she doesn't respond. The pay is given because the employee is unable to use his/her time away from work to his/her

own benefit. (For specific standards, see Arbitrations #100, #92 and #464.)

## What is emergency paid leave?

The 2006 Collective Bargaining Agreement Article 13.15 defines 2 types of emergencies:

- 1) Weather Emergency – Weather emergency under 13.15 must be called by the Director of the Department of Public Safety. A declaration by the county sheriff that a level 3 emergency exists does NOT make it an emergency for the purpose of Article 13.15 of the Collective Bargaining Agreement.
- 2) Other than Weather Emergency may be called by the Agency Director.

However, under some circumstances, employees have received emergency pay if management acts as though an emergency is in effect (Arbitration #275). There have also been events, where even though management has said there was an emergency, arbitrators have not awarded emergency pay.

Arbitrator Rivera in Arbitration #299 further supports Arbitrator Graham's assertion in prior cases. She found for the employees expecting premium pay because the person in authority, a lieutenant in corrections in this case, said it was an emergency and ordered the employees to respond to the situation as if it was an emergency. (However, Arbitrator Rivera found escapes in a correction facility to be a normal and reasonably foreseeable occurrence.)

Employees directed to work during a weather or other than weather emergency will receive an \$8.00/hour stipend. The stipend provides an hourly bonus for all hours worked during a declared emergency. Also, the stipend will be figured into the hourly rate when computing the overtime rate for overtime hours worked during the 40-hour work week in which the emergency occurred.

Essential employees must work in emergency circumstances. Who is essential is determined by management. Essential employees will be provided with an explanation and a card for use during a weather emergency. Further, any essential employee ticketed for being on the roadway during an emergency can expect assistance from the Office of Collective Bargaining when they present the documentation and request for assistance.

## What is call back pay?

When an employee is called to return to work outside his/her schedule, the employee receives call back pay at a minimum of four hours of straight time or actual hours of overtime, whichever is greater. Under the 1994 fact finder's recommendation, if call-back abuts an employee's regular shift, there is **NO** call-back pay. However, note special provisions for ODOT. There is a minimum ½ hour at the overtime rate for work abutting the shift on snow and ice removal in ODOT. Call back is different from standby because the employee is not expected to be necessarily available for the call. Work performed at an employee's home is not considered a call back.

## How is overtime distributed?

Many agencies addressed overtime in Appendix Q – Agency Specific Agreements. Also, review Agency overtime policy.

Under the contract, there is both voluntary and mandatory overtime.

Voluntary overtime is ascertained by a quarterly canvass. Volunteers are then put on a roster on a seniority basis. This roster should be posted. Overtime is then equalized among those who normally do the work. Who normally does the work is often a source of dispute between the state and the union. To resolve this dispute, the classification specification into which the duties fall determine the person(s) who does the work. That can sometimes be different than the person who has "normally" done the work.

Nonetheless, the classification specification controls. Agency or local agreements may further define which persons are eligible. *[In ODOT, it is the duties as defined in the classification specification and/or the position description.]* Absent an agency or local agreement on overtime, the employer may rotate mandatory overtime of the seniority roster.

Remember under Article 1.05, supervisors can be used to avoid mandatory overtime.

Language regarding agency or local overtime agreements gives the parties the flexibility to work out unique problems of that agency. These agreements should be well thought out and thoroughly discussed to prevent future grievances. The state has also tried to use these agreements to redefine the contract -- these agreements should be drafted to reflect a balance of operational need and fairness to the employees. Otherwise, the contract may be violated.

**NOTE:** Bargaining Unit 4 has an overtime agreement in Appendix P for the Ohio Veterans Home and Mental Retardation and Developmental Disabilities.

## Overtime and setting of work schedule

There have been several arbitrations on changing work schedules to avoid the payment of overtime. Arbitration #32 reaffirms that management cannot change work schedules to avoid the payment of overtime.

Arbitration #169 decision defined the standard further. The arbitrator held that in order to be a clear violation of the contract, the rescheduling must be shown to be rescheduling **SOLELY** to avoid overtime. The contract includes this language. Arbitration #303 confirms management's flexibility to change work schedules. In evaluating grievances of this type, address the following questions:

1. What are management's stated reasons for changing scheduled hours of work?
2. In what ways do the effects of management's decisions to change work schedules NOT serve the operational needs of management? Can the same work product be performed under the prior schedule?
3. In what ways is the new schedule inefficient?
4. Has any member of management ever made statements which can be construed to indicate that management's decision to change scheduled hours of work was to avoid overtime payment? Do we have information that the changed schedule is in direct response to budget limitations? Work schedules, also, cannot be changed to avoid holiday pay. (See Arbitration #93.) The employer may direct an employee not to report to work on the holiday, but not to avoid holiday premium pay.

### **Flex time**

The language on flex time is permissive. It is best dealt with through labor management and/or internal organizing. This language does not mandate that flex time policies be put in place or changed. Note however there is a new flex time policy issue which sets forth managements position on flex time.

Under the state contract, the part-time employees' schedules, showing days and numbering hours, will be posted.

**NOTE:** This leaflet is for explanatory purposes only and does not reflect an official intent statement by the union.

### **References**

Article 13; 13.01; 13.15; 1.05  
Arbitration 32; 92; 100; 146; 169; 275; 299;  
303; 464

### **Part-time employees**



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