

#1142

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June 15, 1996

LICENSED TO PRACTICE LAW  
IN THE STATE OF OHIO &  
COMMONWEALTH OF KENTUCKY

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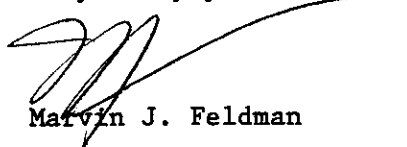
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Akron, OH 44303  
(216)376-2004

RE: The Discharge of Ray Riley

Gentlemen:

Enclosed please find an Opinion and Award relevant to the above captioned matter as well as a copy of my fee bill.

Very truly yours,



Marvin J. Feldman

MJF/dwr

enclosure

cc: Rachel Livengood  
Ed Baker

VOLUNTARY ARBITRATION PROCEEDINGS  
DISCHARGE OF RAY RILEY

STATE OF OHIO, DEPARTMENT OF	:	
PUBLIC SAFETY	:	
	:	
The Employer	:	
	:	
-and-	:	<u>OPINION AND AWARD</u>
	:	
FOP/OHIO LABOR COUNCIL, INC.	:	
	:	
The Union	:	

APPEARANCES

For the Employer:

Richard G. Corbin, Advocate  
Robert J. Young, Advocate  
Rodney Sampson, OCB  
Officer Brian Kress, Perry Township Police Department  
Officer Mark Johnson, Perry Township Police Department  
Ingrid DeDecker, Witness  
Barbara Kamp, Witness  
Greg Roubanes, Witness  
Lt. Slater, Witness  
Edward Davila, Attorney for Greg Roubanes

For the Union:

David M. Lowry, Attorney  
Steve Ayers, Attorney  
Ray Riley, Grievant  
Clint Voelm, Witness  
Ed Baker, Staff Representative  
Ron Moening, Release Union Representative  
Mel Walcott, Staff Representative  
Julia Marie Nutter, Witness  
Robert Warden, Witness

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## I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted on April 16, 1996, and May 20, 1996, at the Conference Facility of the Massillon Office of the employer. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would be filed. It was upon the evidence and argument that this matter was heard and submitted and that this Opinion and Award was thereafter rendered.

## II. STATEMENT OF FACTS

At the time of the instant incident, there was in use at the facility a performance of duty and conduct code unilaterally promulgated by the employer. That code was contemplated under the terms of the collective bargaining unit agreement. The pertinent clauses relevant to the matter at hand of that performance of duty and conduct code were paragraphs (E) and (I) under 4501:2-6-02. (E) revealed the following:

"(E) False statement, truthfulness

A member shall not make any false statement, verbal or written, or false claims concerning their conduct or the conduct of others."

Paragraph (I) in its entirety revealed the following:

"(I) Conduct unbecoming an officer

A member may be charged with conduct unbecoming an officer in the following situations:

- (1) For conduct that brings discredit to the division and/or any of its members or employees.
- (2) For committing any crime, offense or violation of the laws of the United States, the State of Ohio, or any municipality.
- (3) For any improper on duty association with any individual for purposes other than those necessary for the performance of official duties."

The charges against the grievant stem from two confrontations between the grievant and one Gregory Roubanes on September 17, 1995. Gregory Roubanes was the ex-husband at that time, of a co-worker of the grievant, the co-worker also being a state trooper. That individual had the name of Julie Roubanes but after divorce was known as Julia Marie Nutter. There were two confrontations between Mr. Roubanes, the then estranged ex-husband, and the grievant in front of Mrs. Roubane's (Nutter) apartment. According to the employer, it was revealed that the grievant twice confronted Mr. Roubanes and then thereafter allegedly made false statements to the Perry Township Police Department concerning those two events. The opening statement of the employer in that regard, revealed the following:

"The evidence will show the Perry Township Police were summoned to quell the disturbance by residents of the apartment complex. Perry Township officers will testify about their investigation and provide an explanation for the criminal charges lodged against grievant for filing a false police report. The evidence will show grievant falsely alleged Greg Roubane's to be the aggressor, claiming that Roubane's was threatening to kill him during their confrontation. In addition, grievant provided a statement indicating he was acting in self-defense and was attempting to disarm Mr. Roubane's from the outset."

With that in mind, the grievant received a statement of charges from the State Highway Patrol which charges revealed the following:

"Colonel Warren H. Davies  
Superintendent  
660 East Main Street  
Columbus, Ohio 43266

Dear Colonel Davies:

SUBJECT: STATEMENT OF CHARGES

It is herewith stated that reasonable and substantial cause exists to establish that Trooper Raymond O. Riley has committed an act or acts in violation of the Rules and Regulations of the Ohio State Highway Patrol, specifically of:

Rule 4501:2-6-02 (E), Truthfulness

Rule 4501:2-6-02 (I) (1) (2) Conduct  
Unbecoming an Officer

It is charged that Trooper Riley, while off duty, became involved in a physical confrontation on September 17, 1995. During the subsequent police and administrative investigations, he made false statements.

Respectfully,

/s/Captain L.P. Hardesty  
District '3' Commander  
43 Lincoln Way West  
Massillon, Ohio 44647"

After the statement of charges were forwarded to the grievant, there was a disciplinary meeting held and the State Highway Patrol stated the following as a result of that pre-disciplinary meeting:

"After listening to the testimony given by the employer, carefully reviewing the facts of the investigative report, I am of the opinion, as the Meeting Officer, that there is sufficient evidence

to substantiate just cause for discipline in this matter."

The grievant thereafter received a notice of termination for disciplinary reasons and that activity was dated October 31, 1995, and revealed the following:

"October 31, 1995

Tpr. Raymond O. Riley  
2500 Tennyson NW  
Massillon, OH 44646

Dear Tpr. Riley:

Please be advised that for disciplinary reasons, you are being removed from your position as a Highway Patrol Trooper, Department of Public Safety, Division of the State Highway Patrol, effective at the close of business on October 31, 1995.

This removal is the result of your violation of section 4501:2-6-02 (E), and (I)(1) and (2), of the Rules and Regulations of the Ohio State Highway Patrol. It is charged that you became involved in a physical confrontation on September 17, while off duty. Also, during the subsequent police and administrative investigation, you made false statements.

Very truly yours,

/s/Charles D. Shipley  
Director"

Thereafter and on a timely fashion, a protest was filed and a statement of grievance revealed the following:

"Discharged on \_\_\_\_\_ without just cause.  
Progressive Discipline was not used."

The protest was denied and the Step 3 response of the employer revealed the following:

"December 8, 1995

Trooper Raymond Riley  
2500 Tennyson NW  
Massillon, Ohio 44646

Subject: FOP, Unit 1 Step 3 Response  
Grievance No. 15-03-951022-0102-04-01  
Ohio Department of Public Safety/  
State Highway Patrol

Dear Trooper Riley:

This Office has reviewed your grievance alleging a violation of Article 19, Sections .01 and .05 of the Unit 1 Agreement. You grieve that your employment with the Patrol was terminated without just cause for allegedly violating OHP Rules and Regulations 4501:2-6-02(E) by giving a false statement to the Perry Township Police Department regarding an off-duty altercation in which you were involved.

After reviewing your grievance, this Office has determined that management acted within the guidelines of Article 19 in terminating your employment for the transgressions referenced above. The discipline imposed was commensurate with the offense and did not constitute a violation of the Agreement. Therefore, this grievance is denied.

Sincerely,

Robert E. Thornton,  
Chief of Contract Administration"

At the time of the instant incidents the department record of the grievant revealed that on June 6, 1995, the grievant received a one day suspension for giving false location to a post dispatcher during a check-up. Other than that, the grievant had not received any department whatsoever. He was a fifteen year employee of the State Highway Patrol

with numerous awards.

The record also revealed that there was a police report filed by Gregory Roubanes with the Jackson, Ohio, Police Department stating that he, Roubanes, received a phone call from the grievant. The call, it was reported, was made at approximately 11:30 a.m. in November 29, 1994. In that call it was reported by Mr. Roubanes that the grievant threatened the life of Mr. Roubanes. Mr. Roubanes also revealed that the phone call was some five minutes in length and that the grievant, according to Mr. Roubanes, had stated the following:

"Things Said: 'Watch my Back'  
'I'm gonna get you fat boy'  
'You're life's in danger fat boy'  
'I'm gonna get you -- your dead  
fat boy'"

At any rate, on September 17, 1995, the evidence clearly revealed that the grievant who was employed as a state trooper at the time, pulled into the garage area of Mrs. Roubanes' condominium. Shortly thereafter and approximately within one minute, according to evidence, Mr. Roubanes pulled onto the street in which the former Mrs. Roubanes lived. Mr. Roubanes testified that it was a sheer coincidence that he pulled in at that time because he was not following Mr. Riley. At that particular time, Mr. Roubanes used his cellular car phone to try to call the former Mrs. Roubanes. Mr. Roubanes stayed in his car on the street, while making the call. There was no answer at Mrs. Roubanes' household.

Immediately thereafter and while the phone line was being answered by Mrs. Roubanes telephone answering equipment, the grievant approached



the car of Mr. Roubanes, according to Mr. Roubanes, in which Mr. Roubanes was the driver. Mr. Roubanes was parked in the area of the front of the condo and the phone message center was still on and recording on Mrs. Roubanes answering machine. A conversation between Roubanes and Riley was coincidentally transferred by open telephone line to the answering machine in Mrs. Roubanes' household. A transcript revealed that Mr. Roubanes was still in his car when Mr. Riley approached him.

A transcript of that telephone conversation is attached hereto and made part hereof as of fully rewritten and is three pages in length and it is found at the conclusion of this Opinion and Award.

One can read the three pages of the typed transcript of the phone call and the activity and inner play language between Riley and Roubanes. It might be noted that there were no threats revealed by Roubanes and Roubanes, although he had a pistol in the car, did not attempt to fend off the grievant with it at that particular time of confrontation.

Thereafter, Riley broke off the first confrontation, and drove off in his truck and Roubanes pulled his car back so he would not be hit by the backing up pick-up of Riley. Thereafter and almost immediately, Riley stopped his truck in the middle of the exit driveway of the condominium complex and walked back to Roubanes again. This time Roubanes went for his gun, shot it in the air and Riley went back to his truck and Roubanes pulled out. At the time of the second activity, the phone recording was off.

Because of that activity and the noise, local police were called and an investigation ensued by the local police. Neighbors of Mrs. Roubanes were questioned. From that reported activity and the phone tape, Riley was determined to be the aggressor in this particular matter. Thereafter, Riley was terminated from his employment all as heretofore stated.

The police clearly found that Riley approached Roubanes when Riley first came out the drive of Mrs. Roubanes' house. Police officers further found that there were no threats issued by Mr. Roubanes. That was buttressed by the telephone tape. In the second confrontation, the testimony by Mr. Riley was that a gun was pointed at him by Roubanes but Roubanes testified that he fired in the air just to scare off Riley. There is no evidence whatsoever in the file by any of the witnesses to verify Riley's testimony. There was testimony by the neighbors that they saw, on many occasions, two State Highway Patrol vehicles at Mrs. Roubanes household; that they knew who Mr. Roubanes was because he circled the condo area on many occasions; that Mr. Roubanes did not live with his wife and that they knew who Mr. Riley was because of his coming and going at Mrs. Roubanes' household.

At the police station, the grievant wrote a statement. The statement is contrary in many respects when compared to the telephone tape (which is attached). An important part of the Riley statement revealed the following:

"Approximately 7pm I was enroute to Canton PD to work out & I stopped at 221 Perry Dr. While

returning to my truck I observed Greg Roubanes sitting in his Cadillac & because he has followed me for the past 4 months I approached his vehicle to ask him to stop.

Roubanes opened the driver side door & I noticed a handgun in his right hand pointed at me. He kept repeating I'm going to kill you Mother Fucker. I attempted to disarm him out of fear for my life at that time he kept spraying me in the face with some sort of green liquid. I wasn't able to get the gun. I then ran to my truck & attempted to leave, but Roubanes blocked the drive & I got out of my truck & so did Roubanes. Roubanes pointed a handgun at me & fired it. While Roubanes had the gun pointed at me, I asked him to just let me go, but he said I'm going to kill you.

Roubanes has been constantly stalking me, following me, calling my house make (sic) threats & hanging up. Roubanes has slashed my tires on three occasions. He fired at me & missed. I was then able to climb into my truck & leave. I then reported the scene & spoke to Ptl. Kress."

It might be noted that paragraph 19.01 of the contract revealed the following:

#### "ARTICLE 19 - DISCIPLINARY PROCEDURE

##### 19.01

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause."

It might be further noted that the progressive discipline section of contract is found at paragraph 19.05 and it revealed the following:

##### "19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include: 1. Verbal Reprimand (with appropriate notation in employee's file);

2. Written Reprimand;
3. A fine not to exceed two (2) days pay;
4. Suspension;
5. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action."

Based on the evidence of the telephone tape, the investigation of the neighbors and impacted by the contents of the ethical code and the contract, the grievant was terminated. The grievant at hearing produced a psychologist witness who examined the grievant some two months after the event and stated the grievant may have been suffering from traumatic amnesia at the time of the statement writing and that probably caused some misstatements. The grievant also placed his then attorney's testimony in the record. The attorney stated the police who questioned the grievant caused the grievant to write the words in the statement. The police denied that accusation. The statement of the grievant was handwritten by the grievant.

It was upon this multitude of evidence that this matter rose to arbitration for Opinion and Award.

### III. OPINION AND DISCUSSION

The ethical rules of conduct of a state trooper has a strong impact on this case. It is noted that the ethical code stated that a member of the State Highway Patrol shall not make any false statement verbal or written or false claims concerning their conduct or the conduct of others and that they shall not be involved in conduct unbecoming an officer. The ethical code of conduct was not attacked by the union as

being unpublished, unreasonable or unevenhandedly applied. From the evidence it must be assumed that the union believed that the rules therefore were reasonable, published and evenhandedly applied there being no claim contraiwise.

In this particular matter the grievant wrote a statement concerning the events of September 17, 1995. That statement was in the grievant's handwriting and he wrote it at the police station in the presence of his then attorney with a police officer also present which police officer warned the grievant of his constitutional rights. In that statement the grievant revealed that the grievant approached a Mr. Roubanes and at the time of his initial approach the grievant testified that there was a pistol in Mr. Roubanes' hand and that Mr. Roubanes threatened to kill him. The fact of the matter is that the words of Mr. Roubanes were being recorded on a telephone recorder those events being fully described in the statement of facts in this particular case. The statements of the grievant in his written statement of the event written at the police station immediately after the event does not comport in any manner or respect with the actual facts as were revealed by the telephone tapes. I have recited this statement of fact indications of the written statement of the grievant and attached hereto are the dictated results of the telephone tape. The reader may examine them and compare them and without trouble will reach the same result.

Further, at the time the grievant was involved with Mr. Roubanes on September 17, 1995, the grievant was married and had no business at the home of Mr. Roubanes' ex-wife. Further, the grievant was involved in a serious and near violent public argument and from the evidence it

appeared that the grievant caused that argument by approaching Mr. Roubanes. The fact of the matter is the situation in its entirety as described in the evidence of this case revealed that the grievant triggered the entire event of confrontation, arguing, annoying the residents of the area and bringing public discredit to the employer. The grievant forgot that he was a law enforcement officer, that he was married and that he had no business whatsoever at his co-worker's home.

The evidence that the grievant placed into the record and through his psychologist and his then attorney are not very helpful to the grievant's cause. The psychologist examined the grievant some two months after the incident. The psychologist indicated and stated that the grievant could have been suffering from traumatic amnesia and therefore wrote a statement of facts contrary to the truth as a result of the trauma that had occurred. The fact of the matter is, the grievant had been a state trooper for a goodly number of years and presumably had been through some stress situations as part of his duty. There is no evidence that the grievant ever suffered from traumatic amnesia under any prior stressful situations. It is my belief that the grievant was not suffering from traumatic amnesia situation at the time of the instant event either. Further, the lapse between the event and the examination by the psychologist just does not comport with commonsense in matters of these sorts.

The grievant also placed into the record by and through his then attorney that a police officer suggested the activity of the grievant in his writing of his statement. The police merely indicated and stated under oath on two separate occasions that they allowed the grievant to

write his own statement; that they allowed the grievant to answer the questions as were asked and that they in anyway did not seek to put words into the grievant's mouth or in anyway coerce or harass the grievant. The record clearly shows that the grievant wrote his own statement in his own handwriting; that he was represented by counsel; that he was warned of his constitutional rights and that the procedures now complained of by the grievant by and through the testimony of his attorney are clearly unfounded in the record.

There must be a finding in this particular case that the grievant's conduct was conduct unbecoming an officer in that he confronted another citizen and made a public spectacle of himself and brought disrepute upon the employer. There must also be a finding that the grievant's statement that he made in his written statement is in fact, contrary to fact. The grievant therefore made an untruthful statement. As a result of all of this, I find that the grievant is guilty of the events that occurred and he acted contrary to the clear and unambiguous language of the ethical code under which the personnel of the State Highway Patrol react to. For all of these reasons, the grievant is not entitled to any relief whatsoever under the protest filed.

#### IV. AWARD

Grievance denied.

Made and entered  
this 15<sup>th</sup> day  
of June, 1996.

  
MARVIN J. FELDMAN, Arbitrator

# 2#2 NARRATIVE SUPPLEMENT

PAGE 9 OF

INCIDENT NUMBER	95-07889
INCIDENT DATE/TIME	09-17-95/19:20

P.T.P.D.

OFFENSE  
FIGHT/SHOT HEARD

believed he traveled Northbound on Perry Dr. N.W. Mr. Riley denied following Mr. Roubanes after the incident.

I directed Ofc. Kress to obtain a statement from Ms. Roubanes about any knowledge she could provide on the events that had occurred. She provided Ofc. Kress with a Panasonic Micro Cassette tape from her answering machine. On the tape is a call received while she was gone and she states the voices are that of Mr. Roubanes and Mr. Riley's. After listening to the tape, I have concluded that Mr. Roubanes must have just called her when he pulled into the driveway and seen Mr. Riley. The tape indicates the fight that ensued when it started and ended. However, not when the weapon discharge occurred. The follow is a transcription of the tape:

Answering Machine Announcement By Julie Roubanes:

Julie : Hi! This is Julie, I'm unable to take your call right now. Leave your message I'll get back to you soon.

Phone noise long pause

Greg : Don't worry there's nothing to get back to me about. I hope your having fun. Your a conniving , manipulating, no good, your pitiful.

pause phone noise

Ray : inaudible

Greg : What? What your problem!

( CAR DOOR OPENS )

Ray : You going to come cut my tires?

: Noise

Greg : Come on ! Come on ! Come on !

SON CLEARED	<input type="checkbox"/> A DEATH OF OFFENDER <input type="checkbox"/> B PROSECUTION DECLINED <input type="checkbox"/> C EXTRADITION DENIED	<input type="checkbox"/> D VICTIM REFUSED TO COOP. <input type="checkbox"/> E JUVENILE/NO CUSTODY <input type="checkbox"/> F ARREST - ADULT	<input type="checkbox"/> G ARREST - JUVENILE <input type="checkbox"/> H WARRANT ISSUED <input type="checkbox"/> I INVEST. PENDING	<input type="checkbox"/> J CLOSED <input type="checkbox"/> K UNFOUNDED <input type="checkbox"/> U UNKNOWN	DATE CLEARED
REPORTING OFFICER	PTL. M. JOHNSON			BADGE NO. 8	DATE 09-18-95



# NARRATIVE SUPPLEMENT

PAGE 10 OF

INCIDENT NUMBER 95-07889

P.T.P.D.

OFFENSE  
FIGHT/SHOT HEARD

INCIDENT DATE/TIME  
09-17-95/19:20

: Noise

Greg : Bitch!

Ray : Fucker!

Noise, scuffle and car horn

Greg : Come on! Come On! Come on Mother Fucker! Come on Mother Fucker !

Noise: Horn sounding

Ray : Bring your ass out here!

Greg: Come on ! Come on!

Noise : Horn sounding

Greg : Fuck head! Come on!

Ray: Fat Boy!

Greg: Come on !

Ray : Come on fat boy!

Greg : Come on !

Noise : Horn sounding

Ray: Come on fat boy!

Greg : Go Ahead!

ON CLEARED

A ☐ DEATH OF OFFENDER

B ☐ PROSECUTION DECLINED

C ☐ EXTRADITION DENIED

D ☐ VICTIM REFUSED TO COOP.

E ☐ JUVENILE/NO CUSTODY

F ☐ ARREST - ADULT

G ☐ ARREST - JUVENILE

H ☐ WARRANT ISSUED

I ☐ INVEST. PENDING

J ☐ CLOSED

K ☐ UNFOUNDED

U ☐ UNKNOWN

DATE CLEARED

REPORTING OFFICER

PTL. M. JOHNSON

BADGE NO.

8

DATE

09-18-95

# REPORTATIVE SUPPLEMENT

PAGE 11 OF

INCIDENT NUMBER 95-07889

P.T.P.D.

OFFENSE FIGHT/SHOT HEARD

INCIDENT DATE/TIME 09-17-95/19:20

Female Voice ( possibly Mrs. DeDecker ) : You guy's want to stop that! Stop it!

Noise: Scuffle

Greg : Come on!

Noise : inaudible horn sounding

Greg : You ain't shit!

Ray : You won't come out of there will ya?

Greg: Come on!

Ray : Fat boy!

Noise : Scuffle

Greg : Come On!

Riley: Come on! Come on fat boy! Big fat mother fucker!

Noise: Scuffle / cell phone tones heavy breathing

(Calls 911?)

end of tape.

A follow up investigation will have to be conducted with Mr. Roubanes cell phone company and a copy of his phone records for the day of 09/17/95.

The tape indicates that both Mr. Roubanes and Mr. Riley provided false information about the initial confrontation.

ON CLEARED

A ☐ DEATH OF OFFENDER  
B ☐ PROSECUTION DECLINED  
C ☐ EXTRADITION DENIED

D ☐ VICTIM REFUSED TO COOP.  
E ☐ JUVENILE/NO CUSTODY  
F ☐ ARREST - ADULT

G ☐ ARREST - JUVENILE  
H ☐ WARRANT ISSUED  
I ☐ INVEST. PENDING

J ☐ CLOSED  
K ☐ UNFOUNDED  
U ☐ UNKNOWN

DATE CLEARED

REPORTING OFFICER

BADGE NO. 6

DATE 09-18-95