

#1171

VOLUNTARY ARBITRATION PROCEEDINGS
GRIEVANT TROOPER ALBERT PLEASANT, IV

STATE OF OHIO	:	
STATE HIGHWAY PATROL	:	
	:	
The Employer	:	
	:	
-and-	:	<u>OPINION AND AWARD</u>
	:	
THE FRATERNAL ORDER OF POLICE	:	
OHIO LABOR COUNCIL, INC.	:	
UNIT 1	:	
	:	
The Union	:	

APPEARANCES

For the Employer:

Robert Young, Advocate
Wendy Clark, OCB
Robert Watkins, Cincinnati Police Department
William Watts, Cincinnati Police Department
Marty Polk, Cincinnati Police Department
Karl Brown, Civilian
Steve Slater, Lieutenant/Highway Patrol

For the Union:

Paul L. Cox, Chief Counsel
Albert E. Pleasant, IV, Grievant
Beth Klopstein, Paralegal
Ed Baker, Staff Representative
Ramona Adkins, Witness
Darren Sanford, Witness
Felicia Pleasant, 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 in Cincinnati, Ohio, on November 5, 1996, whereat the parties presented their evidence in both witness and document form. 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 not 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

Two contractual clauses are important in this matter. 18.08 of the contract revealed the following:

"18.08 Off-Duty Status

Disciplinary action will not be taken against any employee for acts committed while off duty except for just cause."

Paragraph 19.01 revealed the following:

"19.01 Standard

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

Rule 4501-2-6-02 (I)(1) under which the grievant was suspended for

five days revealed the following:

"(1) For conduct that brings discredit to the division and/or any of its members or employees"

On May 29, 1996, the commanding officer of District Eight sent to the superintendent of the State Highway Patrol the following letter:

"May 29, 1996

Colonel Warren H. Davies
Superintendent
Ohio State Highway Patrol
660 East Main Street
Columbus, OH 43205

Dear Colonel Davies:

It is herewith stated that reasonable and substantial cause exists to establish that Trooper A. E. Pleasant, Unit 555, P9, D8, 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 (I)(1) Conduct Unbecoming an Officer

It is charged that while off-duty Trooper Pleasant engaged in conduct unbecoming an officer after identifying himself as an Ohio State Trooper.

Sincerely,

/s/Captain R. G. Lewis
Commanding Officer
District Eight Wilmington"

It is noted that the grievant was identified as being violative of the aforesated rule. The grievant was thereafter suspended for five working days. That suspension activity occurred on June 13, 1996, by letter directed to the grievant which revealed the following:

"June 13, 1996

Trooper Albert E. Pleasant
8559 Daly Road
Cincinnati, OH 45231

Dear Tpr. Pleasant:

Please be advised that for disciplinary purposes, you are being suspended for five working days from your position as a Highway Patrol Trooper, Department of Public Safety, Division of the State Highway Patrol, effective June 18, 1996.

Very truly yours,

/s/CHARLES D. SHIPLEY
Director"

Thereafter a protest was filed and it revealed the following:

"Article 18, Section 08 (off duty discipline), Article 19, Section 01 (just cause), Article 19, Section 05 (progressive discipline)

Grievance filed due to the results of a completed administrative investigation. The investigation initiated from a complaint lodged by the Cincinnati Police Division on April 21, 1996. The grievant believes that he has been suspended for five days without just cause."

The grievant and his friends who were members of a fraternity and their families had a scheduled picnic in a park within the parameters of the City of Cincinnati, Ohio. The group numbered between twenty and twenty-five. The park was protected by the Cincinnati Police Department, Park Detail. On the date of the event at approximately 5:30 p.m. the group was visited by one of the members of the Cincinnati Police Department Park Detail.

That officer viewed the area, and it was not denied by the

grievant, parking cones and cars were parked on the roadway bordering the park---all of which blocked the roadway. These cars belonged to the people at the picnic. At that particular time a disk jockey was playing music and an outside vendor who had been brought in for food service to the group was distributing that food and warming it by virtue of his own grill.

The Park Detail person, a patrol officer, warned the grievant that the parking cones had to be removed; that the illegally parked cars would have to be removed; that the use of the vendor's grill would have to be discontinued; that the disk jockey that was playing music for the group and hired by the group would have to be discontinued and that the park rules would have to be complied with. The grievant and the officer had some words and the Cincinnati police officer testified that he felt threatened. As a result, he called for backup and three other Cincinnati policemen arrived.

The patrolman who initially arrived on the scene testified. He testified that the grievant was very abusive toward him; that the grievant used profanity in almost every other word that he spoke; that the grievant told the officer that he, the grievant, was a state highway patrolman and that a permit was not needed to use the park. At any rate, the scene was further aggravated, according to the Cincinnati Police Department personnel who testified, by friends of the grievant who insisted that the grievant should be more aggressive than he was.

The cars were finally moved by the grievant and his friends to a legal parking spot; the parking cones were removed; the disk jockey

stopped playing and the vendor dismantled his grill and stopped distributing food.

The police department by and through the policemen who were present stated that the grievant made some direct remark that he, the grievant, "would kick their ass when they, the officers of the Cincinnati Police Department, were on the interstate." The grievant denied that comment. At any rate there were no physical altercations but there was a confrontation, all of which was finally reported to the superior officer of the initial patrolman who was on the scene and all of which was complained of to the State Highway Patrol by the Cincinnati Police Department. The discipline of a five day suspension ensued to which the grievant protested.

The evidence in this particular matter was not in concert. As a matter of fact, the evidence as to what occurred is in substantial conflict except for the fact that the parties admitted to being present at the same time and place at the same park in Cincinnati, Ohio. The union claimed, through the grievant and others, that the Cincinnati officers were belligerent especially the first officer who arrived on the scene and that the grievant took exception to such degree so as to cause a loudness of voice and profanity. The employer on the other hand indicated and stated by and through the Cincinnati police officers who were present, that the grievant was obnoxious, intolerable, overbearing and downright profane in his epithets directed toward the police especially toward the first officer involved.

It was upon that evidence that this matter rose to arbitration for opinion and award.

III. OPINION AND DISCUSSION

There is no doubt that off duty activity on the part of a bargaining unit member that may be embarrassing to the employer is subject to discipline by the employer. It is noted in the contract at paragraph 18.08 which is indicated hereinabove in full, that the parties contemplated discipline directed toward the bargaining unit for such off duty activity but that the off duty activity must be of such a nature so that the discipline may be invoked only for just cause. The question is in this particular matter is whether or not the activity was of such a nature so as to trigger just cause discipline in the form of a suspension.

There is no doubt that the grievant and the initial Cincinnati police officer involved were not cordial with one another. The police officer asked for the person in charge and the grievant admitted to him that he was the person in charge. The police officer stated that the street could not be blocked and that the cones and illegally parked cars would have to be moved and rearranged so as to unblock the street. The grievant was also told that food could not be dispensed on the premises in the manner that was occurring then and there and that further loud music would not be tolerated, all of which was protected against under the park rules and all of which was explained to the grievant as being in violation of those rules.

Evidently the grievant, did not like the tone of voice of the patrolman nor being told by the patrolman that those occurrences that were happening had to be changed and there was a profane epithet by the grievant toward the police officer involved. That string of swearing

and allegedly antagonistic conduct triggered the initial patrolman to call for backup and backup did arrive in the form of three other patrolmen. Those patrolmen did testify that the grievant was somewhat obnoxious, obstreperous and difficult to contain and that he was profane. There was no physical altercation. The grievant had identified himself as a member of the Ohio State Highway Patrol. From all of that conduct, a suspension occurred which suspension was protested.

The grievant's prior deportment record revealed four instances in which the grievant was involved in discipline. In November of 1994, the grievant received a verbal reprimand for a preventable patrol vehicle crash. In June of 1994, the grievant received a written reprimand for an unauthorized passenger in his state vehicle. In January of 1995, the grievant received a written reprimand for failure to follow proper procedure. In November of 1995, the grievant received a suspension of one day because of a prisoner escape allowed by the grievant. The grievant's seniority date with the employer is June 25, 1993.

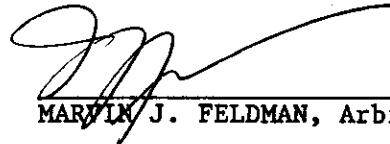
The grievant's deportment record is not really enviable for a three year employee but it is not of such a nature so as to reveal that the grievant is unemployable. The grievant's seniority revealed that he is a short termmer and cannot be considered a senior employee. It is apparent from the evidence that the grievant was involved in some inappropriate conduct at the time and place complained of and that that conduct was of such a nature so as to cause a veteran policeman of nine years presently working on the Cincinnati Police Department to call for backup. Taking into account the grievant's seniority and the grievant's

department record and the fear felt by the Cincinnati Police Department officer for the activity of the grievant, on that date there appears to have been certain occurrences which would trigger discipline. It is apparent that something of an embarrassing activity occurred in this matter for which the grievant must be disciplined.

This would be the fifth discipline for the grievant in a period of three years and four months and while it is not serious it is a continuing direction toward termination. There is good and sufficient reason in the record to reduce the discipline because it is apparent that the employer caused the grievant to lose too much time for a nonaltercation problem although the event was easily understood to be embarrassing of the employer. Therefore since there is good and sufficient evidence in the record to reduce the discipline, the discipline shall be reduced to one day. The grievant is forewarned that conduct embarrassing to his employer off duty will be disciplined as the parties contemplated within the four corners of the contract.

IV. AWARD

The grievant shall be suspended one day instead of five days and shall receive four days back wage payable at the next pay date after receipt of this order. There is just cause for discipline shown in the record.


MARVIN J. FELDMAN, Arbitrator

Made and entered
this 12th day
of November, 1996.