

**FEDERAL MEDIATION AND CONCILIATION SERVICE
BEFORE CHARLES W. KOHLER, ARBITRATOR**

In the Matter of Arbitration Between:

State of Ohio, Unit 2 Association

and

Ohio Department of Public Safety, Division of the Ohio State Highway Patrol

Case No. DPS-2023-03295-02

Issue: Termination of Sean Pall

Place of Hearing: Columbus, Ohio

Date of Hearing: April 23, 2024

Date of Award: July 1, 2024

Employer Representative: Lieutenant Katlin Fuller

Union Representatives: Kimberely A. Rutowski, Attorney at Law
Jeffrey D. Gray, Attorney at Law

ARBITRATOR

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BACKGROUND

The parties in this case are the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol (“Employer”) and the State of Ohio, Unit 2 Association (“Union”). The Employer and Union are parties to a collective bargaining agreement effective from September 22, 2021, to June 30, 2024.

This matter is an arbitration proceeding under the grievance and arbitration procedure set forth in Article 20 of the collective bargaining agreement. On November 29, 2023, the Union filed a grievance protesting the termination of Sean Pall (“Grievant”).

Prior to his termination, Grievant worked for the Employer for 13 years as an Enforcement Agent In the Ohio Investigative Unit (OIU). He was based in the Employer’s Cleveland office, known as the Cleveland District Headquarters (DHQ).

Enforcement Agents enforce all of Ohio’s liquor laws and administrative regulations of the Ohio Liquor Control Commission. They also carry full criminal authority under Title 29 of the Ohio Revised Code for criminal investigations that occur on or about any of Ohio’s Liquor Permit Holders. Enforcement Agents also investigate food stamp fraud and human trafficking.

The Employer terminated the Grievant following two administrative investigations. Sergeant Chad M. Bass of the Administrative Investigations Unit conducted both investigations. Bass issued the first investigative report on July 24, 2023. (Management Exhibit #2.) The report concerned complaints from students in a first aid class in which Grievant was one of the instructors. Bass issued the second investigative report on September 1, 2023. (Management Exhibit #1) This report concerned an investigation of

concerns of Grievant's supervisor, Assistant Agent-in-Charge (AAIC) Robert Boldin, about possible inaccurate information on time reports submitted by the Grievant.

In a letter dated November 27, 2023, D. Andrew Wilson, Director of the Ohio Department of Public Safety, informed the Grievant of his termination:

Dear Enforcement Agent Pall:

This letter is to advise you that you are being terminated from your employment with the Department of Public Safety, Ohio Investigative Unit, effective upon receipt of this letter, for violation of Ohio Department of Public Safety Work Rules OSP 103.19(A)(5)(a) False Statement/Truthfulness and OSP 103.19(A)(9)(d) Conduct Unbecoming an Officer.

Specifically, as a result of administrative investigation #2023-12036 and 2023-12090, it was found you failed to perform your duties in a professional, courteous manner. You were untruthful regarding your actions that occurred on May 17th - May 19th.

SUMMARY OF ADMINISTRATIVE INVESTIGATIONS

UNTRUTHFULNESS AND MAKING FALSE STATEMENTS

On May 23, 2023, Boldin sent a memorandum to Agent-in-Charge (AIC) Greg Croft. Boldin stated that Agent Jeff Yarian had concerns about the Grievant. On May 18*, Grievant told Yarian that he would be arriving late to work on May 19 because he would be attending a school function before work. Yarian reported that Grievant had arrived at work between 10:00 AM and 10:15 AM on May 19.

When Yarian was reviewing his notes for a case that he and Grievant were jointly working on, he noticed that the Grievant had entered information in the Employer's computer system showing that he had worked on the case from 7:15 AM to 9:25 AM on May 19.

* All dates are in 2023 unless otherwise indicated.

All agents with the OIU must complete a Daily Activity Report in the Ohio Agent Secure Information System (OASIS). The purpose of the report is to document the activities of an agent during the workday.

On May 22, Boldin reviewed the Grievant's Daily Report. He noted that Grievant reported that he had worked on cases from 7:15 AM to 10:40 AM on May 19. He also reviewed Grievant's timecard for May 19. There was no leave entered on his timecard for May 19.

Boldin also notified Croft that he was concerned about discrepancies on the Grievant's Daily Reports for May 17 and 18.

Lieutenant David Bailey from the Administrative Investigations Unit (AIU) forwarded Boldin's May 23 memorandum to AIU Sergeant Chad M. Bass. Lieutenant Bailey instructed Bass to initiate an administrative investigation (AI) into the matter.

Sergeant Bass investigated the Grievant's conduct on May 17, May 18, and May 19. On September 1, 2023, he issued a report. The findings of his investigation are set forth below.

On May 17, the Grievant traveled to the Highway Patrol Academy in Columbus to be fitted for a new ballistic vest. According to Grievant's May 17 daily report, he left home at 6:30 AM and arrived at the Highway Patrol Academy at 9:15 AM. According to the report, he worked for 45 minutes in the computer lab and then spent one and one half hours getting fitted for his vest. The report stated that he then spent another one and one half hours meeting with the Academy training staff, and two additional hours in the computer lab working on a fraud case. His report stated that, at 3:00 PM, he left Columbus to travel back to Cleveland. He reported that he was off duty at his residence at 5:30 PM.

Bass's investigation found that Grievant had only spent about 50 minutes at the Academy on May 17. The record of Grievant's identification card transactions showed that he had entered the Highway Patrol Academy at 9:52 AM on May 17. He left the Academy at 10:32 AM and drove to Springfield, Ohio. At about 1:15 PM, he left the Springfield area and began driving toward Cleveland.

The investigation determined that Grievant had never logged into the Employer's computer system on May 17, which was necessary to work on a fraud case. At 2:40 PM, Grievant sent a text message to AAIC Boldin. In the message, Grievant stated that he was in Ashland, Ohio. Ashland is about one hour from the DHQ. Because he was in Ashland at 2:40 PM, Boldin believed that Grievant should have been back in the office by 4:00 PM. However, he never returned to the office on May 17.

On July 6, 2023, Sergeant Bass interviewed the Grievant. Grievant declined to have a Union representative present at the interview. He acknowledged he was aware that his daily reports for May 17, 18, and 19 were the subject of an Administrative Investigation. Bass asked him about his entry "Academy training staff" from 11:30 AM to 1:00 PM on May 18. Grievant told Bass that he was not actually training staff members but was just talking to people.

Bass asked him about his entries in the computer lab from 9:15 AM to 10:00 AM and from 1:00 PM to 3:00 PM. He told Bass that he was wrong about the 1:00 PM to 3:00 PM entry because he talked to Boldin at about 3:00 PM when he had stopped in Ashland to use the restroom.

Grievant said that he had left the Academy at about 2:00 PM. When Bass told him that the records indicated he had left at 10:37 AM, he told Bass that he now remembered that

he had gotten into a big argument with his wife on the phone. He stated that he was upset enough that he might “break down” in front of the staff, so he just left and started driving. He told Bass that he was simply driving around for hours while talking to his wife. However, records of miles driven, and fuel usage did not support Grievant’s assertion that he was simply driving around for hours as he told Sergeant Bass.

Bass told him that it appeared as if he had intentionally misrepresented his locations on his report for May 17. Grievant responded by stating that he did not intend to be deceptive but made errors because he did not complete the report until four days later.

Bass asked him about his May 18 report which showed that he had been at the Parma Municipal Court from 3:00 PM to 5:00 PM, and that he had traveled to his residence from 5:00 PM to 5:40 PM. When Bass told Grievant that he had returned to the office after going to the court, he stated that he had “screwed up.”

Bass also asked Grievant about his May 19 report, which stated that he was working on a case from 7:15 AM until 9:25 AM. Bass told him that his identification card was not swiped at the DHQ until 9:45 AM. He told Bass that he had forgotten to put his leave time on the report because he did the report on Sunday, May 21, and was trying to get his reports done quickly.

Grievant said that he had obtained permission from Boldin to come in late on May 19 but had forgotten to document it in his report. Boldin later told Bass that Grievant did not request leave for May 19. When Bass asked him why he reported that he was traveling to the office from 6:30 AM until 7:15 AM on May 19, he stated that he had just copied Yarian’s report for that time. He stated that he had forgotten that he had come in late on

May 19. Grievant stated that he had also forgotten that he had taken leave when he approved his timecard for May 19.

Bass asked the Grievant why he had used his radio to sign on duty at 7:01 AM on May 19. He stated that he had just done that out of "habit." He said that he knew he would be working on that day and had his radio with him, so he just called in on duty out of habit.

CONDUCT UNBECOMING A LAW ENFORCEMENT OFFICER.

On April 27, 2023, Captain Jeffrey Davis, Training Academy Executive Officer, sent an email to Lieutenant Chad Miller of the AIU. Attached to the email was a complaint from a basic trainee. On April 27, Miller forwarded the complaint to Sergeant Bass for investigation.

On March 13, 2023, Grievant was teaching a first aid class to students enrolled in a Basic Peace Officer Course. The training was held at the Highway Patrol Academy. After the class was completed, students were asked to complete an evaluation. One of the students reported that the course was not taught in a professional manner.

Training Academy Sergeant Carlos Castellanos spoke to the class and asked who thought that the first aid class had been taught unprofessionally. Tyrek Smith stated that the agent who taught the class (Grievant) made comments that made him uncomfortable, and that his comments were borderline sexual harassment.

Smith stated that Grievant was talking about tourniquet use. He said that if one of the students, Decker, had to put a tourniquet on another student, Engram, "he would have to move his big dick out of the way to get the tourniquet high and tight."

Decker and Engram were roommates at the Academy. Smith reported that Grievant said something about how students near their room could hear Engram “getting fucked.”

Sergeant Bass subsequently interviewed students and instructors. The instructors claimed unawareness due to distractions.

Decker confirmed that he had heard the comments regarding penis size and alleged sexual behavior between himself and Engram. Student Kayla Martin told Bass that many of Grievant’s comments were sexual in nature. She heard the comment about Engram’s penis size. Student Tyler Thompson remembered Grievant making jokes about auto erotic asphyxiation and about the large size of one student’s penis.

Student Eleni Manouselis told Bass that Grievant had made different comments about male genitalia and made comments about students engaging in sexual intercourse in their rooms. She said that Grievant had referred to putting a tourniquet around the throat for “sexual arousal.” She said that the comments of the Grievant made female class members tense and caused them to be stressed out and uncomfortable.

Student James Tommer remembered the Grievant joked about African Americans having large penises that would have to be moved out of the way to apply a tourniquet. He also remembered Grievant joking about “Engram and Decker fucking” in their room. He also stated that Grievant sometimes referred to the class as “fuckers.”

Student Abigail Fryman told Bass that she remembered the Grievant making jokes about Engram and Decker and what they would do at night. She also stated that Grievant commented about Engram having a large penis. She remembered that Grievant

sometimes referred to the students as “fuckers.” Fryman stated that she was not offended but thought that the comments were inappropriate and unprofessional.

Student Grace Ruhenkamp told Bass that Grievant joked about one of the students having a large private part and then slapping his roommate with that part. She stated that she was not offended but thought that the comments were inappropriate.

Bass conducted two interviews with the Grievant. He admitted that he had made a joke about asphyxia erotica. He denied that he ever used this the word “dick.” He said that when he was instructing students about how to place a tourniquet high up on the leg, near the “leg pit,” you sometimes must move the “male appendage” out of the way. He commented that men have different penis sizes. He denied making any comment about Decker and Engram engaging in sexual activities in their room. He denied using the word “fuck” in his class.

In his second interview, Grievant admitted to making comments about Engram and Decker engaging in sexual activities in their room. He admitted that he referred to the students as “fuckers” because he wanted to be politically correct and therefore did not want to refer to them as he/she or male/female. When Bass asked him why he had told him during the first interview that he did not use the word “fuck,” he stated that he did not remember because he didn’t use it in every class that he taught. He acknowledged to Bass that some people might find the word “fucker” offensive.

ISSUE

The parties stipulated to the following statement of issue for resolution by the Arbitrator:

Was the Grievant terminated for just cause? If not, what shall the remedy be?

RELEVANT PORTIONS OF THE LABOR AGREEMENT

ARTICLE 19 - DISCIPLINARY PROCEDURE

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

ARTICLE 20 - GRIEVANCE PROCEDURE

* * *

20.09 Arbitration

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4. Decisions of the Arbitrator

The arbitrator 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 arbitrator shall submit an account for the fees and expenses of arbitration. The arbitrator's decision shall be submitted in writing and shall set forth the findings and conclusions with respect to the issue submitted to arbitration. The arbitrator's decision shall be final and binding upon the Employer, the State of Ohio, Unit 2 Association and the employee(s) involved, provided such decisions conform with the Law of Ohio and do not exceed the jurisdiction or authority of the arbitrator as set forth in this Article. The grievance procedure shall be the exclusive method for resolving grievances. The parties may request that the arbitrator, on a case by case basis, retain jurisdiction of a specific case. In that the parties are using a permanent arbitrator, questions of clarifications of awards will normally be submitted to that arbitrator 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 Arbitrator

Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall the arbitrator impose on either party a limitation or obligation not

specifically required by the language of this Agreement. Employees who are terminated and subsequently returned to work without any discipline through arbitration, shall have the termination entry on their Employee History on Computer (EHOC) stricken.

20.10 Disciplinary Grievances

1. An employee with a grievance involving a suspension, fine, demotion, or discharge shall file his/her grievance at the Agency Step level within twenty (20) days of notification of such action.
2. Reprimands shall be grievable. Reprimands shall be grievable through the Agency Step which shall be the final level of review. Reprimands shall not be subject to arbitration under this Agreement.
3. In cases involving termination for dishonesty or making false statements, if the arbitrator finds dishonesty occurred or false statements were made, the arbitrator shall not have authority to modify the disciplinary action.

**RELEVANT RULES AND REGULATIONS OF THE OHIO DEPARTMENT OF
PUBLIC SAFETY**

Division of the

OHIO STATE HIGHWAY PATROL

OSP 103.19(A)(5)(a) - False Statement/Truthfulness

An employee shall not make any false statement, verbal or written, or false claims concerning his/her conduct or the conduct of others.

* * *

OSP 103.19(A)(9)(d) - Conduct Unbecoming an Officer

An employee shall perform his/her duties in a professional, courteous manner.

POSITIONS OF THE PARTIES

Position of the Employer

The Grievant was found to have been untruthful in several instances, as substantiated by an administrative investigation and arbitration testimony. First, he inaccurately reported his activities on May 17 in his daily report and subsequent communications, claiming to have been at the OSHP Academy all day when evidence showed he was elsewhere. Video surveillance, badge access records, and radio ping reports confirmed he left the academy early and traveled to different locations. Second, the Grievant made a false statement to Sergeant Bass, on July 6, when the Grievant advised he forgot his actions on May 17 when he was filling out his daily report. Last, the Grievant was untruthful regarding his actions from 7:00 A.M. through 9:25 A.M. on May 19 on his daily report, timecard, and signaling on-duty through his portable radio to dispatch. The Grievant claimed that he had forgotten to enter his leave and that it had been verbally approved by AAIC Boldin. He was confronted about his dishonesty and eventually admitted to it. The Grievant was also found to have been dishonest about his actions and whereabouts on May 17 in a text message to AAIC Boldin.

Several incidents occurred regarding the Grievant's activities as a CPR/First-Aid instructor. Initially, a student survey revealed complaints of unprofessionalism. Upon investigation, Tyrek Smith reported to Sergeant Carlos Castellanos that the Grievant had made inappropriate comments during class. Specifically, the Grievant joked about explicit and derogatory topics involving other students. His overemphasis on genitalia was noted in the testimony. Sergeant Bass subsequently interviewed multiple students and

instructors, confirming consistent reports from students about the Grievant's behavior. Despite this, some instructors claimed unawareness due to distractions. In interviews, the Grievant initially denied some allegations but later admitted to making offensive remarks. The Grievant's inappropriate comments during the course were deemed unnecessary and unprofessional. The Grievant's behavior was unacceptable for someone teaching future police officers.

The Union called several character witnesses on behalf of the Grievant, including Trooper Nadi Graham and agents Cindy Corser and Susan Baker. They testified that they had never known the Grievant to act unprofessionally. However, they admitted that they did not work in the same district as the Grievant and only interacted with him a few times a year.

The Grievant had the opportunity to explain his actions during the arbitration. He claimed that he was mentally devastated due to a divorce from his wife. However, the Employer did not accept this as a valid excuse for his behavior. The Grievant's actions were deemed premeditated, and his dishonesty was considered inexcusable.

The Grievant's untruthfulness is a serious offense, especially given the higher standard that police officers are held to. AAIC Boldin testified that he no longer trusted the Grievant. The Grievant's dishonesty was also damaging to the reputation of the agency and the integrity of other officers within the department.

The collective bargaining agreement states that if an arbitrator finds that an employee has been dishonest or made false statements, the arbitrator shall not have the authority to modify the disciplinary action. Major Anne Ralston testified that the agreed-upon

language in the contract shows the importance of being truthful. She stated that the recommendation for discipline was termination.

In conclusion, the Grievant was found to have violated the Employer's work rules by making false statements and displaying conduct unbecoming of an officer. His actions were deemed unacceptable, and his termination was justified and warranted.

Position of the Union

The Union argues that the Employer failed to establish that the employee's termination was for just cause, and therefore, the termination should be rescinded with full back-pay and benefits. The Union asserts that the burden of proof lies with the Employer to prove the employee's guilt. The Union also argues that the standard of proof required in this case should be "clear and convincing" due to the stigmatizing nature of the allegations.

The Union points out that "just cause" is not defined in the collective bargaining agreement. Article 20 of the collective bargaining agreement gives an arbitrator express authority to interpret terms in the agreement. Thus, the arbitrator has the authority to determine the appropriateness of the discipline imposed. Even though the Employer will argue that Article 20.10 applies, the arbitrator still must analyze the discipline and the circumstances under the just cause standard.

The well-recognized "Daugherty test" sets forth the seven elements that must exist for just cause. The test includes seven questions, and a negative answer to any of these questions signifies that cause does not exist for discipline. The Union argues that the

Employer failed to meet the requirements of the first, third, fourth, sixth, and seventh prongs of the Daugherty test.

The Union contends that the employee was not forewarned that his actions would lead to discipline. It is commonplace for daily activity reports to be inaccurate. The Union presented witnesses who testified that errors are common in these reports. Further, agents are usually allowed to correct these reports without discipline. AAIC Dudley testified that when she reviews daily activity reports, she will return them to the agent to correct any errors. Dudley testified that, in her 23 years as a supervisor, she has never disciplined anyone for errors in daily activity reports.

In this case, Boldin failed to counsel the Grievant regarding discrepancies in his daily reports for May 17, 18, and 19. Instead, on May 23, he sent a memo requesting an investigation.

Grievant testified that the errors on his daily activity reports and payroll reports on May 18 and 19 were accidental. On May 18, he forgot that he returned to the office after he was in court in Parma. Sergeant Bass agreed that the May 18 discrepancy was not nefarious.

The discrepancies on May 19 were accidental. Grievant had told Boldin that he would be late to work because of a school function. On May 18, he told his partner that he would be at a school function before he reported for work on May 19. Grievant radioed on duty at 7:01 AM on May 19 out of muscle memory and routine. Further, the Grievant's daily activity report for May 19 was caused by the widespread practice of copying and pasting a partner's daily activity report. These errors could have been corrected if Boldin had brought them to the attention of the Grievant.

The Union asserts that it is unclear whether the accumulation of events led to Grievant's termination or whether a single charge led to the termination. According to the Union, if the Employer lacks just cause for any of the events in question, it must follow that it lacks just cause for the entirety of the charge. Because the Employer did not have just cause to terminate Grievant for the May 18 and May 19 discrepancies in his reports, it did not have just cause to terminate him for untruthfulness.

The Employer did not try to determine whether the Grievant engaged in conduct unbecoming a police officer while teaching a class at the Academy. The Employer only interviewed eight of the 41 trainees as part of the investigation. Sergeant Bass made his conclusion even though there were several inconsistencies in the statements of the trainees.

Grievant has taught at the Academy for 11 years and has never been accused of acting unprofessionally. The Grievant presented several witnesses who testified that they never heard him discussing genitalia with trainees, nor had they ever heard him refer to trainees as "fuckers" or "bitches." Further, none of the other instructors heard Grievant use this type of language during class.

The Union also argues that the Employer's investigation was not conducted in a fair and objective manner. It failed to interview all trainees at the Academy. Boldin failed to address the discrepancies in daily activity reports with Grievant before requesting an investigation. Boldin's disregard for the past practice of attempting to resolve inaccuracies in reports with the employee resulted in an unfair investigation.

The Employer did not apply its policies, procedures, and penalties evenhandedly. Lastly, the Union asserts that the degree of discipline was not related to the employee's record

of service. Dudley testified that she was aware of at least one instance where an agent falsified documents and was not terminated.

In 2011, AIC Croft was found to have falsified records pertaining to his work location. An investigation found that there was reasonable cause to believe that he had committed a wrongful act or omission. However, he was not terminated and continues to work as an agent.

Further, AAIC Tatter was found to have falsely reported his home address. An investigation found that he committed a wrongful act or omission. However, Tatter was not terminated.

Grievant admitted that he “fluffed” his daily report for May 17. However, he did not do it for personal gain; he did it to avoid embarrassment over his crumbling marriage. Although he voluntarily admitted that he misrepresented his records on May 17, he is the only individual to be terminated for an inaccurate daily report.

The Employer has failed to follow progressive discipline because it did not review Grievant’s employment history, active discipline, and commendations. He was disciplined disproportionately compared to other employees who had committed similar offenses. Therefore, his termination was without just cause.

The Union urges the Arbitrator to sustain the grievance, rescind the Grievant’s termination, and provide full back-pay and benefits.

DISCUSSION AND CONCLUSIONS

Two administrative investigations were consolidated into one disciplinary action resulting in the Grievant's termination. The first investigation, in May 2023, uncovered discrepancies in the Grievant's daily reports. Additionally, in a separate incident from March 2023, a basic trainee accused the Grievant of making inappropriate sexual comments during a CPR/First-Aid course, leading to further investigation and contributing to the disciplinary decision of termination.

The explanation of the Grievant for the inaccuracies on his May 17 daily report is that he was emotionally devastated because his wife, from whom he had been separated since February, told him in a phone call that she was dating someone and that she wanted to end their marriage. Grievant recalled that she also told him that she would not engage in marriage counseling.

Anyone who received a phone call of this nature would have a strong emotional reaction. Grievant reacted by immediately leaving work and driving his police cruiser in a random direction. One can certainly understand that Grievant did not want to perform any work duties until he had an opportunity to fully digest the news.

The reasonable and rational course of action for the Grievant would have been to request an emergency leave of absence before he left the Highway Patrol Academy. He did not follow this course. However, he had many opportunities to correct his initial mistake. At any time on May 17, he could have told his supervisor that he had not been working and informed him of the reason for his actions. He had the same opportunity up until the time that he submitted his time report for May 17.

When Grievant was interviewed by Sergeant Bass on July 6, he first stated that he did not fill out his report for May 17 until May 21, and had simply forgotten what he had done on May 17. When he was confronted with the fact that he had left the Academy at 10:32 AM, he remembered that he had received a disturbing phone call from his wife and had left the Academy because he was upset. During his third interview on September 20, he admitted to Bass that he knew he had “screwed up” and was trying to cover up his behavior by making up entries on his daily report. Therefore, he was untruthful on July 6 when he told Sergeant Bass that he had simply forgotten what he had done on May 17.

Contrary to the statements of the Grievant, Boldin testified that Grievant had never requested leave on the morning of May 19. When he initially reviewed the Daily Report for May 19, Boldin was unaware that Grievant had attended a school function before reporting to work.

In his daily report for May 19, Grievant made a radio transmission stating that he was on duty at 7:01 AM. In fact, he was on his way to a school event. He also stated that he had worked on a case from 7:15 AM until 10:40 AM. In fact, he arrived at DHQ at 9:45 AM. The only explanation of the Grievant is that he had “forgotten” that he had taken any leave. The Arbitrator does not believe that the Grievant simply “forgot” that he had been at an event at his children’s school for about two hours before he reported for work.

Further, the Arbitrator does not believe that the Grievant used his radio to report that he was on duty at 7:01 AM simply because he was in the habit of doing so. The investigation found that, on other days when he had used leave for part of the day, he radioed on duty about the same time that he began working.

Boldin testified that, because of the dishonest actions of the Grievant, the agency would have to inform the prosecutor and defense attorney of the dishonesty of Grievant if he was called to testify at a trial.

The Union contends that the Employer has a practice of allowing employees to correct daily activity reports if a supervisor questions the accuracy of a report. The Union presented testimony establishing that errors in daily activity reports are common and many supervisors send reports back to agents to fix errors. In addition, the Union presented testimony as to the difficulty of recording time in the Kronos payroll system.

The Grievant's entries on his daily activity reports for May 17 and May 19 went far beyond mere errors. Errors are unintentional mistakes. The Merriam-Webster dictionary defines "error" as "an act involving an unintentional deviation from truth or accuracy." (<https://www.merriam-webster.com/dictionary/error.>)

The inaccurate entries that Grievant made on his daily reports were not errors. They were deliberate and intentional false entries. Grievant also intentionally misled Sergeant Bass during the investigation. He initially said that he merely forgot what he did on May 17 when he purposely made up activities to cover up the fact that he was not working. He engaged in similar behavior on May 19, when he falsely reported that he had arrived at work at 7:15 AM when he arrived at 9:45 AM.

In his May 18 daily report, Grievant stated that he was at Parma Municipal Court from 3:00 PM until 5:00 PM. In fact, he returned to DHQ at 4:10 PM. Although this report was inaccurate, the Employer did not consider this to be a serious matter. This is an example of the more common type of error that agents are allowed to correct without discipline. On May 18, he did not falsely report that he was on duty when he was not working.

The Union also argues that Grievant was not forewarned that his actions could lead to discipline. This argument is without merit. Any law enforcement officer knows the importance of submitting truthful reports. It is disingenuous for the Union to assert that the Grievant was unaware that he could be disciplined or discharged for intentionally falsifying his daily time reports.

The Employer also found that the Grievant had engaged in conduct unbecoming a law enforcement officer on March 13 when he was teaching a first aid class. The Union correctly points out that the Employer only interviewed 8 of 41 students, and the other instructors denied hearing the Grievant use offensive language. Eight students represent about 20 percent of the class, which is a reasonable sample size. All eight students reported that the Grievant's conduct was inappropriate and/or unprofessional. Because Sergeant Bass obtained similar information from the students that he interviewed, it was unnecessary to conduct additional interviews. The Union suggests that Sergeant Bass should have interviewed all 41 students. However, interviewing all 41 students would have been impractical, and would have been an inefficient use of agency resources. The Arbitrator finds that there is sufficient evidence to conclude that Grievant behaved in an unprofessional and undignified manner when teaching a first aid class. As an experienced law enforcement officer, Grievant had an obligation to teach the class in a professional manner. He was expected to set an example for individuals who were being trained to become law enforcement officers. He acted in a manner unbecoming a law enforcement officer.

The Union argues that, due to the stigmatizing nature of the charges, the Employer must present "clear and convincing" evidence supporting the allegations. The normal standard

of proof in arbitration is “a preponderance of the evidence.” However, some arbitrators do require a higher standard to prove conduct that is criminal or involves moral turpitude. The Arbitrator believes that, in this case, the Employer has presented “clear and convincing” evidence that Grievant engaged in dishonest and untruthful behavior in the course of his duties. The Employer presented overwhelming evidence supporting its allegations. In addition, the Grievant admitted that he was dishonest and deceptive.

The Union presented two reports from the State of Ohio Office of the Inspector General. Both reports were issued in September 2011. The cases both involved supervisory agents who falsely reported their home address. At the time, agents were required to live within 75 miles of their assigned office. Both cases involved agents who had been promoted but had not relocated within the 75 mile radius. They falsely reported that they were living at an address within 75 miles of the office, when they were residing more than 75 miles from the office. One of the cases involved current AIC Croft.

The Union argues that these reports show evidence of disparate treatment because neither of these agents were terminated. The Arbitrator notes that the reports involved incidents that occurred about 13 years ago. The Union did not present any evidence concerning the disciplinary policies and practices that were in place at that time. Further, the reports are from a state agency that is not affiliated with the Employer.

Both reports recommended that the Employer should conduct an administrative investigation into the actions of the agents. However, the Union did not submit any investigative reports conducted by the Employer. Therefore, it is unknown whether the Employer concluded that these two agents had engaged in dishonest or untruthful acts

that warranted termination. Without more information as to the actions of the Employer, the reports do not constitute sufficient evidence of disparate treatment.

Article 19.01 of the collective bargaining agreement provides that “No bargaining unit member shall be * * * removed except for just cause.” “Just cause” consists of various substantive and procedural elements. Primarily, there must be sufficient proof that the employee engaged in the conduct for which he or she was discharged or disciplined.

In a typical “just cause” case, the employer must show that the level of discipline was appropriate for the offense and consistent with the discipline used in other similar situations. In addition, “Just cause” requires the employer to consider the positive aspects of the employee’s record and other mitigating circumstances.

In this case, the parties negotiated a restriction on the authority of the arbitrator to modify the discipline imposed in cases where an employee is terminated for dishonesty or making false statements. If the arbitrator finds that “dishonesty occurred or false statements were made,” the arbitrator may not modify the discipline imposed.

By negotiating this provision, the parties intended to maintain a strong stance against dishonesty and false statements. Even in the absence of this provision, law enforcement employees are held to an extremely high standard of honesty.

The Union presented Grievant’s performance reviews from 2017 through 2022. They show that he met or exceeded expectations in the performance of his duties. The Union also points out that Grievant had never been disciplined for untruthfulness or conduct unbecoming during his 13 years of employment. While Grievant performed his duties competently, the fact remains that he engaged in dishonest and deceptive conduct.

Honesty is an essential requirement for employment as a law enforcement officer. For the public to trust law enforcement agencies, its employees must demonstrate integrity and credibility. Therefore, his termination was justified despite his work record.

If an officer engages in dishonest or deceptive conduct in one aspect of his or her work, all the officer's work can be called into question. Law enforcement agencies must be able to rely on the accuracy and integrity of investigations of illegal activity. *Brady v. Maryland*, 373 U.S. 83 (1963), requires law enforcement agencies to notify prosecutors and defense attorneys if a law enforcement witness engaged in dishonest conduct. A law enforcement officer who has engaged in dishonesty has little value as a witness. AAIC Boldin testified that he cannot trust the Grievant to do the right thing.

In this case, the Employer has presented clear and convincing evidence to establish that the Grievant was both dishonest and that he made false statements. He falsified his daily activity reports for May 17 in May 19. In addition, the Arbitrator concludes that Grievant engaged in conduct unbecoming a law enforcement officer while teaching a first aid class at the Highway Patrol Academy. Further, he was truthful during both investigations.

The evidence establishes that the Employer had just cause to discharge the Grievant. Therefore, the Arbitrator will deny the grievance and uphold the penalty of termination.

AWARD

The grievance, filed November 29, 2023, is hereby denied. The Grievant, Sean Pall, was discharged for just cause.

/s/ Charles W. Kohler

Charles W. Kohler, Arbitrator