

IN THE MATTER OF THE ARBITRATION BETWEEN

Ohio State Troopers Association, Inc.	:	
Unit 1 & 15,	:	Grievance No.: DPS-2024-00877-15
	:	
Union,	:	Grievance: 3 day suspension
	:	
and	:	Grievant: Andrew Perez
	:	
The State of Ohio, Department of Public	:	Opinion and Award
Safety, Division of State Highway Patrol,	:	
	:	April 8, 2025
Employer.	:	

APPEARANCES

For the Union:

Larry Phillips, Staff Representative
Andrew Perez, Grievant

For the Employer:

Aaron Williams, Management 1st Chair
James M. Stegner, Management 2nd Chair
Cullen Jackson, Office of Collective Bargaining
Kaitlin Fuller, Observer

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I. INTRODUCTION

This is a labor arbitration conducted under the terms of the parties' collective bargaining agreement. It involves a grievance filed by the Ohio State Troopers Association, Inc. (Union or OSTA) on behalf of the Grievant, Andrew Perez, contesting the Ohio Department of Public Safety, Division of State Highway Patrol's (Employer or OSHP) decision to suspend him for three days without pay for a violation of OSHP Rules and Regulations 4501:2-6-02(l)(4) - Conduct Unbecoming an Officer. The Employer suspended the Grievant by letter dated March 20, 2024 for failing to perform his duties in a professional, courteous manner. The grievance was timely filed on March 22, 2024. It was processed under Article 20 of the 2021-2024 Contract Between Ohio State Troopers Association, Inc. Unit 1 & 15 and The State of Ohio (Labor Contract).

The Employer denied the grievance at all steps of the grievance procedure and the matter was submitted to alternative dispute resolution pursuant to Section 20.12 of Article 20 of the Agreement, which includes a permanent panel of arbitrators. This Arbitrator was selected from the panel. The arbitration hearing took place on April 2, 2025 at the offices of OSTA, 190 W. Johnstown Road, Columbus, Ohio. During the hearing, the parties had the full opportunity to present witnesses, introduce relevant exhibits, and argue their positions in accordance with Section 20.12. Witnesses were sworn and separated, examined and cross-examined. The parties made closing statements and the matter was submitted.

II. ISSUE

The parties submitted the issue as follows:

Was the Grievant issued a three (3) day suspension for just cause? If not, what shall the remedy be?

III. RELEVANT PROVISIONS OF THE LABOR CONTRACT AND EMPLOYER RULES

ARTICLE 19 - DISCIPLINARY PROCEDURE

19.01 Standard

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

* * *

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. One or more Written Reprimand(s).
2. On or more day(s) Suspension(s) or a fine not to exceed five (5) days' pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.
3. One or more day(s) Working Suspension(s). If a working suspension is grieved, and the grievance is denied or partially granted by an arbitrator, and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine; the employee may choose a reduction in leave balances in lieu of a fine levied against him/her.
4. 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.

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant.

The deduction of fines from an employee's wages shall not require the employee's authorization for the withholding of fines from the employee's wages.

OHIO ADMINISTRATIVE CODE SECTION 4501:2-6-02(I)(4) Conduct Unbecoming an Officer

A member shall perform his/her duties in a professional, courteous manner.

IV. FACTS

In August and September 2023, Sergeant Andrew Perez was an Instructor at the OSHP Training Academy assigned to Regional Training. Starting in August, the Training Academy had a class of Basics, which are Cadets from outside law enforcement agencies. On August 31st, the class was early in its training cycle. At the time, about two weeks into the cycle, the Basics would have learned to stand up to speak. They would not yet have learned to take a stance known as the interview or bladed stance. The Grievant demonstrated the stance, where the foot on the side of the person's dominant hand was slightly behind the other foot, and hands were held together, but without fingers interlaced, just above the belt so the person could quickly put the hands up to fend off a blow or reach for a protective device such as a taser or firearm.

Following a break, one of the Basics was being reprimanded for forgetting a water bottle. Trainees are expected to keep it with them at all times to get used to having their gear with them at all times. The bottle was hidden by the staff and the class was instructed to take a static hold or front leaning rest position — essentially the top pushup position, with arms extended fully. They had to remain in that position while the Basic being reprimanded searched for the bottle. The idea was for the Basic to focus on searching thoroughly rather than rushing to let the class release from the static hold position. The Grievant helped during this due to short staffing.

During the exercise, the Grievant explained that it was important to search with an attention to detail. Some of the Basics were tiring in the static hold and closed their eyes. The Grievant told them to keep their eyes open to see potential threats. After the bottle was found, the class returned to their seats. The Grievant was standing in front of the class, which was set up in classroom style with a center aisle. There were 45-50 trainees in the class. Basic Mary Janowiecki was in the second row on the right as the Instructor would view the class. The Grievant discussed accountability with the class and asked if anyone had children. Basic Janowiecki raised her hand. She began speaking while seated and the Grievant told her “Stand up or you’re going to get your face punched.” (MX 1).

The next day, Basic Kiri Williams approached Instructor Todd Pollitt during a break and asked if it were permissible to be threatened by staff. Williams did not know the Grievant’s name, but described him and Pollitt understood she meant the Grievant. Pollitt said Williams indicated the Grievant’s statement was “If you don’t stand up straighter or speak louder he would beat her face in.” On September 1, Instructor Phillip Clemons sent an email reporting the allegation. He noted that Williams said the statement was the Instructor was going to “Kick her ugly face.” (MX 1).

Janowiecki did not make a complaint. Clemons interviewed Janowiecki before reporting the allegation. Clemons’s email indicates that Janowiecki reported the comment as the Grievant

was going to kick her in the face. During the investigation, Janowiecki described the Grievant's comment as "Stand up and answer my question before I beat your face in." Clemons interviewed Basic Bedard, who told Clemons the Grievant told Janowiecki that, if she did not stand up and address him appropriately, he would hit her in the face.

Administrative Unit Investigator Sergeant Scott Bayless conducted the investigation. (MX 1). Williams was not interviewed. During the investigation, besides the Grievant and Janowiecki, the only other person present for the entire scenario was Instructor Michael Miller. Miller stated the Grievant told Janowiecki to stand up and face her threat or she could get punched. Miller repeated that the Grievant was speaking about what could happen, not that he would hit her in the face. Instructor Kamal Nelson told Bayless that he was in and out of the classroom during the exercise and did not want to be involved in it. He could hear some of the dialogue, but was paying partial attention only. Nelson reported hearing the Grievant say "Get up before I beat your face in" or "Stand up before I beat your face in." (MX 1).

During the investigation, the Grievant stated he told the class to "Keep your eyes open or a couple things can happen." They could "get your face punched, get your face kicked," the subject could "grab a weapon of some sort" and they would not see it. When Janowiecki did not stand, he told her "Stand up or you're going to get your face punched." The Grievant mentioned the interview stance during the investigation, but acknowledged the class was not doing the stance that early in the training.

At the hearing, the Grievant testified that everyone was sitting and Janowiecki raised her hand in response to his question about children. He had already told them to stand and take the interview stance to get into the habit. Janowiecki started speaking without standing and he told her to stand up or you could get punched in the face. This was related to the exercise just completed and what could happen in the field. The Grievant further testified he did not say he

would punch or kick Janowiecki. The Grievant acknowledged that the class was not instructed to take the interview stance at this stage of the training.

The second incident occurred on September 13, 2023. Trooper Emily Wooley was at the Academy for regularly scheduled, quarterly honor guard training. She drove from Bowling Green with Lieutenant Jordan Schwochow. After the training, during lunch, the Grievant approached Wooley and asked to speak with her in his office. The Grievant knew her from when Wooley was a Cadet. Wooley testified she knew the Grievant as her Instructor and as her boyfriend's classmate. They are also friends on social media. Wooley testified she went to the Grievant's office. The Grievant was behind his desk and she was seated on a bench. The door remained open the entire time and music was playing. According to the Grievant, Wooley was seated in a chair to the left of his desk.

The Grievant testified that he had discussed with Sergeant Castellanos the need for a female role player for an all female Firearms, Arrest, Self-Defense, and Tactics (FAST) class scheduled the following week. He decided to ask Wooley and asked her to come to his office. Wooley testified the Grievant asked her to participate in the FAST training as the subject of a pat down search. According to Wooley, the Grievant told her he needed attractive females to make the males uncomfortable and said she was a 4.5, while others were 4s, but he did not want to inflate her ego. The Grievant also mentioned a pregnant female who still needed to lose a few pounds and said he had to be careful because his mouth gets him in trouble. During the investigation, the Grievant acknowledged that he told Wooley the former female role player had recently had a baby and still had a few pounds on her. She could not perform all the duties needed because she was heavier. This is consistent with Wooley's testimony.

Wooley testified that she found the Grievant's comments to be inappropriate, unprofessional, and discourteous. She found it especially so for a supervisor and trainer, who should be held to a higher standard. The manner in which the Grievant phrased his request was

inappropriate. Nothing he said was about her contributions to the Department or how she represents it. Rather, it was all about her looks. Wooley testified that she did not tell the Grievant she thought his comments were inappropriate during the conversation. The Arbitrator observed that, while she testified, Wooley became upset recounting the conversation and needed a moment before continuing. She would not look at the Grievant during her testimony.

The Grievant testified that he told Wooley he needed a female to be the subject of a search for a FAST class the next week. He did not tell her it was an all female class. The Grievant testified that he said he needed someone who makes the uniform look good, that is, gives a good impression of the OSHP. He has used that phrase and heard others use the phrase similarly. He testified he never said 4.5 or 4 and does not know where Wooley got the numbers. The Grievant acknowledged Wooley could continue to role play for future training where males attended. However, he did not tell her about continuing in the role at the time, he only mentioned the next week's class on September 13, 2023.

Sergeant Jacob Fletcher conducted the AI investigation. (MX 2). He interviewed Lt. Schwochow. After the training, Lt. Schwochow waited for Wooley while she spoke to the Grievant. Upon leaving the Academy, Schwochow said he noticed something wrong right away. During the ride back to Bowling Green, Wooley explained what happened to him. Schwochow concluded the remarks were inappropriate. However, he did not report the incident.

On September 15, 2023, Wooley reported the incident to Sergeant Matthew Davis. Davis reported a sexual harassment complaint via email that day to Lieutenant Angel Burgos. Davis included that Wooley was with him as he typed the email. Wooley testified she did so to make certain it was accurate. Davis noted she was still visibly upset.

Wooley testified that she initially blamed herself for not standing up for herself and saying anything to the Grievant. She reported it to her supervisors because she was uncomfortable with the encounter. According to Wooley, women in law enforcement do not want

to be seen as “that girl,” meaning taking comments too personally. This keeps women from reporting them.

Following the two investigations, the Grievant was charged on March 10, 2024 with violations of 4501:2-6-02(l)(4), Conduct Unbecoming an Officer based on failing to perform his duties in a professional, courteous manner. The charge was sustained and, on March 10, 2024, he was suspended for three days without pay. The Grievant had no prior discipline. (MX 2). His evaluations were also good. (UX 2-3). Finally, the Grievant testified that both Janowiecki and Wooley misunderstood his statements. He does not believe his comments were inappropriate at the time. However, he would say them differently now.

V. POSITION OF THE STATE

The grievance should be denied. The evidence is clear. Officers are to be professional and courteous. This is especially true for supervisors and Academy Instructors. The Grievant failed to do so when speaking to Basic Janowiecki and Trooper Wooley. The Grievant was not charged with making threats toward anyone. OSTA’s focus on the lack of any threat is a distraction. The State had just cause to suspend the Grievant for three days.

While there were variations in what the Grievant allegedly told Janowiecki, the gist was the same. He told her to stand up before she got punched in the face. The OSHP has an interest in how it and its instructors are viewed by outside law enforcement. In addition, the Grievant’s testimony about the interview or bladed stance is irrelevant, since he acknowledged that Basics were not trained to take the stance until later in the training course. As to the incident with Trooper Wooley, the arbitration hearing was the first time the Grievant mentioned the FAST training the following week was an all-female class. If that were true, there would be no need to mention that he needed a female to make the men uncomfortable. Even so, he acknowledged that Trooper Wooley would continue to play a role in future classes involving

male attendees. Wooley's testimony was consistent with her AI interview and Davis's email notifying the OSHP of the incident.

While OSTA focused on the Grievant's intent, this is irrelevant. He failed in his statements to Janowiecki and Wooley and the manner he delivered them. As a Sergeant and an Academy Instructor, he is held to a higher standard. Any determination of credibility should be made in favor of the State's witnesses. The grievance should be denied in its entirety.

VI. POSITION OF THE UNION

The grievance should be granted, the discipline rescinded, and the Grievant made whole. The State failed to prove just cause for a three day suspension. The State skipped steps in progressive discipline and gave the Grievant a three day suspension.

For the Janowiecki incident, no other Basics were interviewed. Trooper Miller was the only person interviewed who was present when the Grievant made the statement. Miller said the Grievant told Janowiecki "you could get punched in the face." This is much different than saying you would get punched. Additionally, there was no impact on the OSHP. No other Basic mentioned anything about it. As to the Wooley incident, the Grievant was tasked with finding a female for the FAST training. There are two versions of what was said, but they have vastly different meanings. Wooley testified the Grievant said "You look good in the uniform," while the Grievant testified he told her "You make the uniform look good."

The State failed to prove both allegations. While issuing discipline because it is possible something happened, that is not good enough. Rather than charge the Grievant with making threats or sexual harassment, it charged lesser violations but still issued a more severe penalty than it otherwise would for a CUBO charge. As to credibility, Wooley's version is out of character for the Grievant. And both Schochow and Davis heard it from Wooley, so it is understandable that their versions are consistent with hers. The grievance should be sustained.

VII. OPINION

The Employer bears the burden of proving that just cause exists for the Grievant's discipline. Just cause generally requires persuasive proof that the rules or policies cited for the discipline were violated and the discipline was proportionate to the offense. That is, the discipline imposed was reasonable under the totality of the circumstances. Usually, the just cause standard favors progressive discipline, which gives the employee an opportunity to correct behavior and provides notice that failure to do so will lead to more severe discipline. However, progressive discipline need not always follow an oral warning, written warning, suspension, and discharge in lock step order. The facts and circumstances of each particular case dictate the appropriate disciplinary level. Progressive discipline concepts, however, do not apply in the face of gross misconduct, such as dishonesty, that warrants summary discharge in the first instance. This is particularly so when law enforcement officers are involved, given their unique place in the working world. Law enforcement officers are guardians of the peace and security of the community, and the efficiency of our entire system, designed to maintain law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust given them. For this reason, police officers must be held to a higher standard of conduct than other public employees. "Law enforcement officials carry upon their shoulders the cloak of authority of the state. For them to command the respect of the public, it is necessary then for these officers even when off duty to comport themselves in a manner that brings credit, not disrespect, upon their department." *Jones v. Franklin Cty. Sheriff*, 52 Ohio St.3d 40, 43 (1990). Law enforcement officers are generally aware of this, although they do not always like it. Finally, no citation is needed for the principle that employers have the initial discretion to impose discipline for proven misconduct. Generally, arbitrators will not second guess management so long as the penalty imposed is reasonable and not arbitrary or capricious.

The Employer suspended the Grievant for conduct unbecoming an officer for the two comments that were found to be unprofessional. The Arbitrator agrees with the Employer that it has an interest in how its instructors are perceived by outside law enforcement. And it goes without saying that it has an interest in its supervisors, trainers, and employees being professional. The Union argues that, as to the Janowiecki incident, only Instructor Miller was present for the entire incident and heard the Grievant say that, if Janowiecki did not stand up, she could get punched in the face. However, Sgt. Clemons spoke to Basics Williams and Bedard, both of whom stated the Grievant told Janowiecki that he would kick or hit her in her face. While they differed on the word “kick” versus “hit,” the gist was the same, that the Grievant would strike her. Taken with Janowiecki’s statement that the Grievant said he would kick her in the face if she did not stand up, three witnesses heard the Grievant say almost the exact same words. This corroborates Nelson’s statement that, even though he was in and out and not paying close attention, he heard the Grievant comment “Get up (or stand up) before I beat your face in.” Contrary to the Union’s position, four people heard the Grievant say that he would do something, not that something could happen.

Additionally, this is contradicted by the Grievant’s own statements during the investigation that he said “Stand up or you’re going to get your face punched.” The Grievant further indicated that he was explaining to the class earlier the need to keep their eyes open or they could have their face punched or kicked, or not see the subject reaching for a weapon. The Arbitrator concludes that Miller likely was talking about the first comment as to keeping one’s eyes open, not the comment directed specifically to Janowiecki, which the Grievant acknowledged was “Stand up or you’re going to get your face punched.”

At the hearing, the Grievant testified that he only said what could happen, not that he would punch or hit Janowiecki. But this is inconsistent with his interview. This was not the only inconsistency. The Grievant testified that he was having the class stand and take the interview

stance, which he also stated during the investigation interview. However, he acknowledged that the class was not instructed to take the stance that early in the training, only that they were required to stand. Standing is consistent with his statement to Janowiecki that, if she did not stand, he would punch her in the face. Nothing was said to Janowiecki about taking the interview stance.

As to the Wooley investigation, the Grievant testified that he was looking for a female role player for an all female FAST training the following week. However, he did not mention this during the investigation. And he admitted he did not tell Wooley the class was all female. Additionally, there would be no need to tell her that he needed a female instructor to make the men uncomfortable during the search exercise if the class were all female. The Grievant also acknowledged that he was instructed to find a female role player. These statements are not entirely consistent.

The Grievant's testimony that both Janowiecki and Wooley misunderstood his comments misses the mark. It is not the intent of what is said or done that makes comments or conduct inappropriate. Rather, it is whether those comments or actions are heard or taken by the recipient as being inappropriate. That he did not threaten Janowiecki is irrelevant. The comment that he would punch her in the face if she did not stand up is unprofessional from a trainer, who is expected to speak and act appropriately, especially when teaching appropriate behavior to future law enforcement officers.

Similarly, that he did not intend to offend Wooley is irrelevant. He was not charged with sexual harassment. OSTA makes much of the State not charging the more serious violations of sexual harassment or making threats. As to the first, since the conversation between Wooley and the Grievant was he said/she said, it is reasonable to conclude the State decided it would be more difficult to prove sexual harassment and decided to charge conduct that was not professional and courteous. This is within its discretion. It does not make the lesser charge any

less true. Furthermore, the Grievant testified that he does not think his comments were inappropriate at the time, but would say them differently now. This is tantamount to acknowledging they were unprofessional.

On this record, the Arbitrator concludes the State proved it had just cause to discipline the Grievant. He was involved in two situation where he made inappropriate comments that were unprofessional within days of each other. As a Sergeant and Training Academy Instructor, part of his duties included training Cadets and Basics on professional behavior. Having made unprofessional comments within days could certainly lead the State to conclude he was not modeling professional conduct. Even though the Grievant had no prior discipline and good evaluations, two instances of unprofessional conduct on within days of each other warranted more than the initial step of progressive discipline. Since a suspension of three days falls in the second step of progressive discipline, the suspension was reasonable in light of the circumstances here.

VIII. AWARD

The grievance is denied.

Dated: April 8, 2025



Daniel G. Zeiser
Arbitrator