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OPINION AND AWARD

IN THE MATTER OF ARBITRATION

BETWEEN

THE OHIO STATE TROOPERS ASSOCIATION

AND

THE OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF OHIO STATE HIGHWAY PATROL

Grievance #: DPS-2024-03755-01

Grievant: Trooper Michael Ervin

Date of Hearing: April 23 and May 2, 2025

Place of Hearing: Gahanna, Ohio

Arbitrator: Sherrie Passmore

Date of Award: July 21, 2025

Advocates for the State: Lieutenant Kaitlin D. Fuller

Advocate for OSTA: Ronald H. Snyder, Esq.

INTRODUCTION

This arbitration arises pursuant to the collective bargaining agreement ("Agreement") between the parties, The Ohio Department of Public Safety, Division of State Highway Patrol ("Employer" or "Division") and The Ohio State Troopers Association ("Union"). Sherrie Passmore was appointed as the Arbitrator under the authority of the Agreement.

A hearing was held on April 23 and May 2, 2025. Both Parties were represented by advocates who had a full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make arguments. Eight witnesses testified during the two-day hearing. Thirty exhibits were admitted into evidence, including a 235-page administrative investigation report, 21 audio recordings of all witness interviews, 6 other audio recordings and 11 videos. Post-hearing briefs were electronically filed on or before June 9, 2025.

JOINT STATEMENT OF ISSUE

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

RELEVANT PROVISIONS OF THE 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.

19.04 Pre-suspension or Pre-termination Meeting

When the Employer initiates disciplinary action which is covered by this article, written notice of pre-disciplinary meeting shall be given to the employee who is the subject of the pending discipline. Written notice shall include a statement of the charges, recommended disciplinary action, a summary of the evidence being brought against the employee and the

date, time and place of the meeting.

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 Verbal Reprimand (with appropriate notation in employee's file);
2. One or more Written Reprimand;
3. One 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.
4. Demotions 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.

BACKGROUND

The Grievant, Michael Ervin, was an Ohio State Highway Patrol Trooper for approximately 17 ½ years. His employment as a trooper was terminated in December 2024. The statement of charges which led to his termination reads:

Through administrative investigation #2024-12492, it was found that Trooper Ervin while investigating a stolen vehicle, violated Division policy and procedures. He also erred in judgment in his operations and decision-making. Additionally, he was untruthful during the administrative investigation.

The charges stemmed from Grievant's investigation of a stolen motorcycle on June 13 and 14, 2024. Grievant became aware of the stolen motorcycle from a "hot sheet," which is a list of stolen vehicles. Trooper Ervin came into contact with Michael Butterbaugh, a known criminal offender, who informed him he was aware of the location of the stolen motorcycle. Butterbaugh told him he had seen it sitting in a field.

On June 13, 2024, Grievant transported Butterbaugh to a citizen's private property where the stolen motorcycle was allegedly located. The Grievant was unaware of the exact location and was guided to the property by Butterbaugh. Butterbaugh directed him to proceed onto a private driveway running parallel to a set of railroad tracks, which are also private property. After continuing down the backside of numerous properties, Butterbaugh advised him to stop. The two of them exited the patrol car and walked through the foliage to a fence and a guard rail. Grievant helped Butterbaugh step over a guard rail, through a fence, and onto a citizen's private property to search for the motorcycle. Grievant remained with the patrol car. Butterbaugh was out of Grievant's sight for proximately eight minutes. When Butterbaugh returned, he reported he had been unable to locate the motorcycle and stated, "The big building is locked up tighter than shit." He then suggested that the motorcycle might be at Nico Saxour's.

Grievant and Butterbaugh returned to the patrol car and proceeded to drive back to the main road. On the way, while still on private property, they observed a camper on the backside of another property. Grievant wondered aloud whether the camper was stolen. In response, Butterbaugh offered to check out the camper for him. Grievant stopped his patrol car and let Butterbaugh get out. Butterbaugh walked up to camper and peered through the windows. Upon returning to the car, Butterbaugh reported that the only thing he observed inside was a generator.

Later that day, Grievant spoke with Betty Bracken and Joey Helton at an unknown location regarding the stolen motorcycle. He requested their assistance in finding the motorcycle, putting it in a shed, and arranging for someone to be present who could grant him access to that shed.

On June 14, 2024, Butterbaugh approached Trooper Joshua Muck to inform him he recovered a stolen motorcycle on behalf of the Grievant. Trooper Muck called the Grievant at 3:00 A.M. to make him aware of the recovery. The same morning, Butterbaugh called the Chillicothe Post and left a message for the Grievant informing him of same.

Later that morning, Grievant met Butterbaugh at his residence. Butterbaugh explained that he had gone to Nico's, retrieved the stolen motorcycle from him, pushed it back to his own residence, and secured it in his shed. Butterbaugh opened the shed for Grievant and the stolen motorcycle was inside.

Trooper Muck found the situation peculiar and expressed his concerns to Sergeant Christopher Finley who looked further into the incident. Sergeant Finley reviewed the Grievant's case narrative and watched Grievant's body-worn camera and in-car video footage. During his review of the footage, he noted policy and performance concerns. Sergeant Finley immediately reported his concerns to Lieutenant Melanie Provenzano who forwarded them up her chain of command. As a result of these reports, an administrative investigation of Ervin was initiated. The investigation resulted in the aforementioned charges being filed against him and ultimately his termination

POSITIONS OF THE PARTIES

Position of the Employer

The Employer had just cause to terminate Grievant because it proved the Grievant violated three work rules. His removal was warranted because of the egregiousness of the violations. Those work rules are: 4501:2-6-02(B)(5) - Performance of Duty, 4501:2-6-

02(Y)(1)(2) - Compliance to Orders, and 4501:2-6-02(E)(1) - False Statements, Truthfulness.

The Grievant violated the performance of duty work rule in multiple ways. He failed to adhere to his extensive training from the Division and went rogue and his operations when he used Butterbaugh, a known criminal/drug abuser, to search another civilian's private property, a private camper, and conspired a plan to recover a stolen motorcycle using civilians. He also failed to conduct proper pat-downs, advise dispatch of his location, and did not make supervision of him aware of his actions surrounding is investigation of the stolen motorcycle.

Grievant violated the compliance to orders work rule by failing to adhere to the Division's policies regarding the use of informants and digital media. He used Butterbaugh as an informant when he had Butterbaugh search two properties and incorporated civilians into a plan to recover the stolen motorcycle. In doing so, he did not follow the approval process required under OSP Policy 103.17 and for properly utilizing an informant. The policy specifically prohibits informants from effectuating or assisting with search and seizure.

In violation of OSP policy 103.22 – Digital Media, Grievant intentionally covered his body worn camera and failed to capture all pertinent aspects of his investigation. Specifically, Ron is not captured on camera, nor are the first two interactions with Butterbaugh. He covered his body worn camera with his Stetson, his hand, and at one point, completely removed it.

Grievant was in violation of the rule regarding false statements and truthfulness because he was untruthful during the administrative investigation. In his initial interview, the Grievant stated he never used Butterbaugh for information in the past; however, in his second interview, he admitted to using Butterbaugh for information in the past. Case report #23-790016-0971 revealed the Grievant used Butterbaugh on October 11, 2023, when

Butterbaugh advised no one was to be inside his residence and granted the Grievant access to search for the suspect. Additionally, Trooper Martin (Gene) Folden accompanied the Grievant to Butterbaugh's residence to inquire about a human trafficking case on February 14, 2024.

Next, the Grievant was untruthful when the Grievant minimized his relationship with Butterbaugh. He described knowing "of" the Grievant as a local Massievillean, a frequent flyer, and a passenger in a traffic stop. However, upon review of the investigation in its entirety, including interviews with Trooper Folden and the discovery of the case report documenting the Grievant's previous interaction with Butterbaugh, it was evident that the Grievant's description was disingenuous and deceptive.

The discipline imposed is not arbitrary, capricious or discriminatory. There are no mitigating factors that justify modifying the discipline in this case.

Position of the Union

The Union's position is that the Employer did not have just cause to terminate. The Employer violated the principles of due process by failing to provide adequate notice of the specific charges against him prior to his pre-disciplinary hearing, prior to his termination, and during the grievance process. The Employer also failed to produce sufficient evidence to justify the termination of Grievant.

The Pre-Disciplinary Notice lists a rule stating Troopers must be truthful, a rule saying that Troopers must satisfactorily perform their duties, and that Troopers must comply with all rules, regulations and orders. The Notice states that Trooper Ervin violated Division policies and procedure and erred in judgment and decision-making. However, it

contains no specifications of the conduct which Trooper Ervin is alleged to have engaged in to violate those regulations.

Likewise, the Notice of Termination states merely that Troop Ervin has been terminated for violation of Highway Patrol Rules and Regulations and lists those same three rules. Two of the three rules cited are essentially catch-all regulations. The notice specifies no conduct which Trooper Ervin allegedly engaged in which violated those rules.

The same is true for the conduct of the grievance process. Both before and after the imposition of discipline, OSTA attempted to ascertain from the Employer what statements Grievant made during the internal affairs interviews were alleged to be untruthful. In response, the Employer did not identify any particular statements but referred OSTA to the evidence packet.

OSTA also requested a summary of the evidence supporting the charges of untruthfulness which is required under Section 19.04 of the Agreement. The Employer's only response was that they had not provided this information before. Simply asserting that "we have not done it before" does not cure the Employer's failure to provide simple due process and a proper just cause assessment before proceeding to termination.

The Employer failed to produce evidence that Grievant engaged in any conduct which would warrant termination at this stage of his career.

In recovering the stolen motorcycle, Grievant reasonably relied on the Open Fields Doctrine. Under that doctrine, a warrantless search of the area outside a property owner's curtilage does not violate the Fourth Amendment to the United States Constitution.

Butterbaugh had told Grievant he had seen the stolen motorcycle under investigation sitting in a field. In transporting Butterbaugh to the location where Butterbaugh said he had

seen the motorcycle, Grievant had a reasonable belief that if the motorcycle was sitting in an open field, it would be subject to the Open Fields Doctrine and his search for it would not be a Fourth Amendment violation. When Butterbaugh directed Grievant down a gravel/dirt road, Grievant was not aware that it was a private drive. He thought it was a public access road. There are numerous public dirt and gravel roads in the county which are not marked with signage.

The Employer's assertion that Butterbaugh searched buildings at that location is not supported by the evidence. Butterbaugh was out of Grievant's sight when he allegedly searched one of those buildings. The Employer concluded he had searched it because upon returning, he reported to Grievant that the building was locked up tight. Butterbaugh could have concluded that simply by seeing the building was padlocked. The other building the Employer asserted Butterbaugh searched was at the location of the camper. Grievant testified Butterbaugh did not approach the building. There is no evidence to dispute this assertion.

That Grievant covered the lens of his body-worn camera (BWC) with his Stetson at one point does not justify discipline. Trooper Ervin's Stetson inadvertently covered the lens as he had it sitting on his lap in the cruiser. The audio was not muted, and it is clear that no activity took place during that time period, to which the video recording would have been pertinent. Simply having his hat covering the BWC lens for a short period of time normally would be an issue of training, not discipline.

The evidence produced at the arbitration hearing does not demonstrate that Trooper Ervin was untruthful during his administrative interview. The allegation appears to be based solely on the way Erwin described his "relationship" with Butterbaugh prior to the June 13

incident. When asked in his initial interview whether he had prior knowledge of Butterbaugh, Grievant's response was "I knew of him."

He clarified his relationship with Butterbaugh in his second interview. In that interview, he acknowledged that he had previously obtained some information from Butterbaugh and that his prior contrary statement in the first interview was mistaken. It is not at all uncommon for witnesses to correct the testimony upon having additional information provided to them during the interview. Employees should be encouraged to be honest and correct errors in their statements prior to the completion of an investigation, rather than using the correction as the basis for a charge of untruthfulness.

The truthfulness charge in this case rests on splitting hairs on the issue of whether Grievant "knew" Butterbaugh or "knew of" Butterbaugh. It should not be the basis for proving a chargeable untruthfulness and ending the career of a 17-year employee.

Even if Grievant made some errors in judgment during the investigation of the case at issue, that would clearly be an aberration in a long-standing, award-winning career.

DISCUSSION

This case involves the termination of the Grievant's employment for misconduct. As such, the Division has the burden of proving just cause, consisting of whether:

1. The Grievant did what he is accused of doing; and
2. Under all the circumstances, removal was appropriate.

The Grievant's Alleged Misconduct

The Division terminated Grievant for violating OSHP Rules 4501:2-6-02(B)(5) –

Performance of Duty, 4501:2-6-02(Y)(2), Compliance to Orders and 4501:2-6-02(E)(1). False Statements/Truthfulness, 4501:2-6-02(B)(5) – Performance of Duty, and 4501:2-6-02(Y)(2), Compliance to Orders. The statement of charges reads:

Through administrative investigation #2024-12492, it was found that Trooper Ervin while investigating a stolen vehicle, violated Division policy and procedures. He also erred in judgment in his operations and decision-making. Additionally, he was untruthful during the administrative investigation.

Performance of Duty

Rule 4501:2-6-02(B)(5) Performance of Duty provides:

Members who fail to perform their duties because of an error in judgment, or otherwise fail to satisfactorily perform a duty of which such member is capable, may be charged with inefficiency. Unsatisfactory performance may be demonstrated by a lack of job-related knowledge, an unwillingness or inability to perform assigned tasks, failure to take required action, or failure to take appropriate action at any time.

The Employer proved numerous deficiencies in Grievant's performance during his investigation of a stolen motorcycle on June 13 and June 14, 2024. During that investigation, Grievant failed to adhere to his training and exhibited poor judgment in multiple ways. Among the most serious of his actions was deploying civilians, known to be criminals and drug addicts, to conduct searches of a citizen's private property and to recover a stolen motorcycle for him.

Multiple supervisors testified that Grievant failed to abide by his training with regard to searching and recovering the stolen vehicle. All had reviewed the video footage of Grievant's investigation and immediately became concerned about his actions. The explanations Grievant offered did not justify his conduct.

Neither Grievant nor Butterbaugh had the right to be present on the property where he permitted Butterbaugh to conduct searches in connection with his investigation of a stolen motorcycle. Grievant claimed he thought he was driving on a public access road when Butterbaugh directed him to turn off Three Locks Road. His claim is not credible. Shortly after making the turn, Butterbaugh can be heard on video telling Grievant "This is their driveway." Grievant had no reason to believe otherwise. There was no sign indicating it was a public road nor did it otherwise appear to be. The driveway is gravel with a grassy median and curves slightly toward the house. He conceded he did not have any reason to assume it was a public access road. Grievant admitted that according to the Ross County Auditor's map and his Union, the driveway is on private property. Both Sergeant Bayless and Sergeant Finley testified Grievant did not have the legal authority to be present on private property under those circumstances.

While on this private property, he allowed Butterbaugh to conduct two searches. Grievant testified he believed the first search was permissible based on the Open Fields Doctrine. His reliance on that doctrine was not reasonable. He was never trained on the doctrine, and it was evident from his testimony that he had a very limited understanding of its application. No Division policy was produced explaining the doctrine or what it permitted him to do. The Open Fields Doctrine allows law enforcement to search land or areas outside the immediate curtilage of a home (the area directly surrounding it) without a warrant. The biggest problem with Grievant's reliance on the doctrine, is that it is inapplicable here. Grievant did not conduct a search of the field at the back of the property, Butterbaugh did. Butterbaugh is not a law enforcement officer and Grievant had no right to give him the authority to search on his behalf. Butterbaugh searched more than the field.

Grievant observed Butterbaugh running beyond the field. it is evident Grievant anticipated this. As Butterbaugh was taking off, Grievant warned him to stay away from any buildings. He did not heed that warning, reporting when he returned that one of the buildings was locked up “tighter than shit.” Yet Grievant did not question or say anything to him about the remark.

No justification was offered for stopping and allowing Butterbaugh to search a private citizen’s camper on the way back to Three Locks Road. Grievant lacked the legal authority to be present on the site of the camper and did not have the legal authority to search it. He did not obtain consent from the owner or a search warrant. Law enforcement officers cannot arbitrarily search people’s homes by looking through random windows to see what is inside, or to determine if something is stolen. Nor can they facilitate/allow civilians to conduct such searches.

Grievant’s only defense to the camper search allegation was that there was no evidence that Butterbaugh conducted a search. To the contrary, the video shows Grievant letting Butterbaugh out of his patrol car and can be heard telling him that he can “peek in the window.’ Upon returning to the cruiser, Butterbaugh reports that he saw a generator inside.

Grievant denies involving civilians in a plan to recover the stolen motorcycle on his behalf. The evidence shows otherwise. The Grievant can be heard on camera talking to Bracken and Helton about the stolen motorcycle and saying, “Have it there”, “Tell him to keep it in the shed”, “I need to be the one to get it”, and “So that’s the plan” Additionally, the Grievant stated “someone needs to be there to let me in”; thus, give him access to the shed. And that is exactly what happened. That night, Helton and Butterbaugh went to Nico’s, took the motorcycle from him and brought it back to Butterbaugh’s shed. Essentially, they stole

the stolen motorcycle from Nico with Grievant's tacit approval.

Butterbaugh contacted Grievant to let him know that he had the stolen motorcycle in his shed and would meet him there to give access to the motorcycle. Grievant met Butterbaugh at his home the next morning. As per the "plan", Grievant was given access to the shed, the stolen motorcycle was inside, and Grievant recovered it.

Grievant also attempted to justify his actions on the basis that he had recovered stolen vehicles in the past in similar ways, and it had never been called to his attention that his methods were improper. Testimony elicited from Grievant on cross examination and his investigative reports shows that those cases were not comparable. Most notably, none involved using a civilian to conduct searches for or to recover stolen property.

Involving civilians in searching for and in recovering stolen property was not only against policy, but it also put those civilians and the Division at risk. If anything had happened to them while doing so, the Division may have been held liable. The consequences for Butterbaugh and Helton could have been particularly serious when they went to Nico Saxour's to attempt to recover the stolen motorcycle. Both reported that when they got there, Nico was high on methamphetamine, had a firearm, and was paranoid.

Grievant also put himself at risk by ignoring his training. The Division trains its troopers to conduct a pat-down on any person before transporting them. The purpose of a pat-down is to check for weapons that could pose a danger to the officer or others. Grievant concedes he conducted an inadequate pat-down of Butterbaugh before driving him to the property off Three Locks Road. When Butterbaugh returned from searching the wooded property after being out of his sight for nearly eight minutes, the Grievant failed to do any pat-down and transported him anyway.

Grievant's actions cannot be justified based on a lack of training or needing to be retrained. The Division extensively trains its troopers. As a 17-year veteran, Grievant knew better. His supervisors uniformly testified that he had demonstrated in the past that he knew how to properly investigate and recover a stolen vehicle. Only three months earlier, Grievant had participated in the Scout program, a three-day training program provided by the Division's Vehicle Theft and Fraud Unit (VTFU). According to the program syllabus, the training included "the effective processing and handling stolen vehicles." The syllabus included a list of expectations for Troopers who attended the program. One of those expectation was that the Troopers remain in continuous contact with the VTFU regarding issues in their area. At no time during his investigation did Grievant contact the VTFU or even make any of the supervisors aware of his actions prior to recovering in the stolen vehicle.

Compliance to Orders

Rule 4501:2-6-02(Y)(2) Compliance to Orders provides:

A member shall conform with, and abide by, all rules, regulations, orders and directives established by the superintendent for the operation and administration of the division.

Grievant's use of Butterbaugh during his investigation was in violation of OSP Policy 103.17 - Use of Informants. The defense to this allegation was that Butterbaugh was merely a witness and had not offered anything of value for assisting Grievant. The evidence does not support his contentions.

The Policy defines a confidential informant as

...a person who provides information or cooperation relevant to criminal

activity to Division officers or who engages in activity in the furtherance of a criminal investigation. A CI may or may not be working with the Division in exchange for some form of compensation or consideration. (Emphasis added).

Butterbaugh meets the definition of a confidential informant. He provided information and engaged in activity in the furtherance of a criminal investigation by searching a citizen's private property, twice. Furthermore, Butterbaugh obtained the stolen motorcycle on behalf of the Grievant. This went beyond serving as a witness (i.e., providing information about what one personally observed).

Grievant left Butterbaugh and Helton with the impression that helping him investigate and recover the stolen motorcycle was in their best interests. On the video of the ride to the backside of the property where the stolen motorcycle was alleged to be located, Butterbaugh comments that he is willing to help Grievant to get himself out of trouble. On the return trip, Butterbaugh comments again about helping to avoid jail. Grievant says he will go to the sheriff's office to tell them Butterbaugh helped him by showing him where some stolen vehicles were.

In a video of Grievant speaking with Bracken and Helton later that day about the stolen motorcycle, Grievant mentions that there is a recovered Toyota which has papers belonging to Helton inside the passenger area. A short while later, Grievant had a second conversation with them which was also captured on video. He can be heard saying "you guys left me," "I want you guys to help me out," and, "I would've slap charges on you." This was the same conversation in which he discussed a plan for getting the motorcycle back. He instructed them to "just tell them they're on video, and that's what's going to help me out." Grievant adds, "I want to either meet or call you. If I have to find you, then after that, it's going

to ruin our relationship.” He also states, “I’m trying to keep everybody’s name out of it” and that if he is able to recover the motorcycle the next day in the way he has described “there’s no paper trail that way.”

The video footage of Grievant recovering the stolen motorcycle the next day further documents that he had incentivized Butterbaugh. It shows Butterbaugh opening his shed containing the stolen motorcycle and commenting that he was not giving up until he got the bike back, not wanting to go to jail. He asks Grievant about the charges against him, noting that he has three cases. Grievant says that he will go to the talk to the sheriff’s office about his help. Butterball tells him he is willing to do more work to get out of more charges. A short while later Butterbaugh mentions that had to tell Nico Saxour he would not get charged. Grievant explains there is an official way to make Butterbaugh an informant, and he will talk to the Sheriff’s Office about it. Butterbaugh then lists the charges against him.

The Confidential Informant Policy outlines a procedure for getting an informant approved. As evidenced by the above conversation with Butterbaugh, Grievant was well aware of the procedure, but failed to follow any of the steps to get him approved. Even if he had, Butterbaugh would not have been approved given his criminal history.

The Policy also makes it clear that Grievant had no authority to use a civilian to conduct a search for or recover a stolen motorcycle. It unequivocally prohibits an informant to be used to effectuate a search or seizure. It is axiomatic that if an informant who has been properly vetted cannot be used in that way, a known criminal cannot.

False Statement

Rule 4501:2-6-02(E)(1) False Statement, Truthfulness provides:

A member shall not make any false statement, verbal or written or false claims concerning his/her conduct or the conduct of others. A member shall not, nor attempt to, commit an act of deception.

The Employer's basis for this rule violation was that Grievant was dishonest about his relationship with Butterbaugh twice during the administrative investigation. The violation was proven.

In his initial interview, the Grievant stated he never used Butterbaugh for information in the past. That was not true. During a stolen motorcycle investigation in October 2023, Grievant had contacted Butterbaugh to see if the suspect was in his home.

He also used Butterbaugh for information regarding a human trafficking case. This was discovered during the administrative interview of Trooper Gene Folden. He told the investigator that Grievant directed him to Butterbaugh's residence to inquire about the case on February 14, 2024. Trooper Folden testified that upon arriving at Butterbaugh's residence, Grievant and he called each other by name. He testified the information elicited by Grievant and provided by Butterbaugh included the following:

And he (Grievant) asked him about the human trafficking suspect. And he said, 'Yeah, I know him.' And he asked him if he had a semi-truck trailer. And he said, 'Yeah, he does and that's where he lives', which is at our target residence. So, he (Grievant) was able to confirm that the guy did have a truck and trailer.

Trooper Folden further testified that upon leaving, he commented to Grievant that he questioned the validity of Butterbaugh's information because he appeared to be impaired. In response, Grievant said he had some prior dealings with Butterbaugh, had gotten good

information from him in the past, and explained that Butterbaugh frequents the area and knows everybody. He identified Butterbaugh to Fulton as a snitch or informant. Folden's testimony was credible and was not refuted. Confronted with these facts in his second interview, he admitted to using Butterbaugh for information in the past.

Grievant was also deceptive during the administrative investigation when he minimized his relationship with Butterbaugh. Rather than answer the question "Did you know Michael Butterbaugh before this investigation?", he asked for a definition of "know". The investigator continued his question with "know of him?". Even though he had not been provided with the requested definition, he immediately responded "Yes, I knew of him" and described Grievant as a local "Massievillian," a frequent flyer, and a passenger in a traffic stop. During this line of questioning his union representative objected stating the Grievant advised he knew Butterbaugh through minimal contacts, the Grievant was new to the post, and was unaware of its local persons. Grievant did nothing to correct is representative's characterization of his knowledge of Butterbaugh.

Based on his own responses and the uncorrected statements of his union representative, Grievant left the impression that he only knew Butterbaugh in an indirect way. A review of the evidence as a whole shows otherwise. He had used Butterbaugh for information in the past, knew exactly where he lived, knew his associates, knew his girlfriend. He even had Butterbaugh's phone number. During his investigation of the stolen motorcycle at issue in this case, Grievant stated he would call Butterbaugh, and his number would be displayed as private or anonymous.

That the Grievant arrived at Butterbaugh's residence during the human trafficking investigation just three months earlier, unannounced, in civilian attire, and both the Grievant

and Butterbaugh immediately acknowledged each other by name was further proof of their familiarity. The Grievant failed to acknowledge this same familiarity when he described his relationship with Butterbaugh to the Employer during his interview. His description was misleading, disingenuous, and dishonest.

Procedural Defenses

The Union argues that just cause should not be found because Grievant did not receive sufficiently specific notice of the charges against him and did not receive a summary of the evidence supporting those charges in violation of principles of due process. The Employer argues those defenses were waived when the Union agreed at the outset of the hearing that this matter was properly before the Arbitrator. Those defenses were not waived. Agreement that a matter is properly before an arbitrator is a concession that the grievance is arbitrable. The procedural arguments are directed at the just cause determination, not arbitrability.

For purposes of determining just cause, alleged violations of procedural requirements must be evaluated from the standpoint of due process. Due process requires sufficient notice to allow a Grievant to prepare for and offer of a defense to a charge. That requirement was met, even if procedural requirements under the Agreement were not.¹

Prior to this grievance proceeding to arbitration, the Grievant was provided with the entire administrative investigation, including all audio and video recordings. The

¹ Even violations under a Loudermill analysis, do not necessarily prevent a finding of just cause for termination. Since the Loudermill decision came out, the lower courts have limited the remedy for Loudermill violations. For example, an employee who can prove that the public employer violated his Loudermill rights is not entitled to reinstatement if the employer can show that there was any just cause for the discharge.

investigation report includes a summary of each audio and video recordings, including witness interviews. Being provided with all evidence, rather than just a summary, satisfies due process.

Grievant was also given sufficient notice of the charges against him with one exception noted below. In the pre-disciplinary notice, he was advised of the rules he was being charged with violating and that those violations were in connection with his investigation of a stolen motorcycle on June 13 and 14, 2024. The internal affairs report identifies the performance concerns about his investigation and his violation of the Division's policy regarding the use of confidential informants. A copy of that policy is attached to the report. Management's Step Two response identifies the specific statements Grievant made during the administrative investigation that were untruthful:

Grievant was untruthful when he stated he had not use Mr. Butterbaugh for information in the past and was untruthful regarding his relationship with Mr. Butterbaugh.

The record, however, is bereft of any evidence that Grievant was given fair notice that he was being charged with violating the Division's digital media policy. The lack of adequate notice precludes finding just cause to discipline Grievant for that violation.

The Employer argued at hearing that Grievant violated this policy six times when he did not record pertinent interactions, covered his body-worn camera, and/or removed it from his person During the administrative investigation, Grievant was asked only briefly about one instance of not recording an interaction and one instance of his body cam not pointing in the correct direction No supervisor identified these alleged violations as performance concerns. The policy is not

referenced anywhere during the investigation and is not included as an attachment to the investigative report. The digital media policy was not referenced until the arbitration hearing.

The Remedy

Termination is an appropriate penalty in this case. The seriousness of Grievant's misconduct outweighs any mitigating factors, including his department record and years of service.

Law enforcement officers are legitimately held to an extremely high standard of conduct. In law enforcement, honesty and trustworthiness are paramount. Grievant's superiors felt they could no longer trust him. The evidence establishes that Grievant could not be trusted to tell the truth, could not be trusted to make sound decisions, and could not be trusted to operate within the Division's training, policy and procedure, and expectations.

For a police officer, untruthfulness is so egregious that it is destructive to a continuing employment relationship. It compromises the ability of an officer to perform essential law enforcement functions, especially to testify in criminal matters. A record of dishonesty could make it difficult for his testimony to withstand cross examination.

AWARD

For the reasons stated above, the grievance is denied. The Employer carried its burden of proving it had just cause to remove the Grievant.

A handwritten signature in black ink, reading "Sherrie J. Passmore". The signature is written in a cursive, flowing style.

Sherrie J. Passmore
Arbitrator
July 21, 2025