

AWARD OF ARBITRATOR

In the Matter of the Arbitration Between:)

STATE OF OHIO, DEPARTMENT OF HIGHWAY)
SAFETY, STATE HIGHWAY PATROL)
Columbus, Ohio)

-and-)

FRATERNAL ORDER OF POLICE,)
OHIO LABOR COUNCIL, INC.)

HARRY J. DWORKIN,
ARBITRATOR

RE: OCB GRIEVANCE NO. 87-2778

A P P E A R A N C E S

On Behalf of Employer

LT. D. L. ANDERSON	Advocate for Employer
CAPT. J. M. DEMAREE	Management Representative
LT. H. A. FRY	Post Commander (Ironton)
DET. JAMES L. HOWARD	Lawrence County Sheriff's Dept.
SHERIFF DANIEL HERONIMUM	Sheriff of Lawrence County

On Behalf of Union

PAUL L. COX, ESQUIRE	Chief Counsel
EDWARD F. BAKER	Staff Representative
CATHY PERRY	Legal Assistant
NORMA HUGHES	Dispatcher I (Grievant)

JOINT STATEMENT OF ISSUE

WAS THE EMPLOYEE'S TWO DAY SUSPENSION FOR JUST
CAUSE?

IF NOT, WHAT SHALL THE REMEDY BE?

PRELIMINARY STATEMENT AND BACKGROUND:

There does not appear to be any significant dispute as regard the essential facts that gave rise to imposition of discipline, and appeal of the two day suspension through the grievance procedure, and to arbitration. The principal disagreement between the parties concerns the measure of discipline, the Employer claiming that the two day suspension was fully warranted by the circumstances, and for just cause. The Union maintains that the penalty was excessive, and fails to take into consideration mitigating circumstances, including the grievant's long record of satisfactory service as a member of the State Highway Patrol, over a period of some 20 years.

The grievant is a Highway Patrol Radio Dispatcher I, assigned to the Ironton Post, Ohio State Highway Patrol. Her job classification is that of dispatcher, with 20 years of service. She has been assigned to the Ironton Post throughout her entire career.

In her role as dispatcher she is authorized, and has been trained to operate the Law Enforcement Automated Data System (L.E.A.D.S.), and the Computerized Criminal History equipment (C.C.H.). Considerable evidence was adduced at the arbitration hearing relating to the use, functions, and purposes of the systems that the grievant, as a trained dispatcher, was authorized to use. The equipment, which uses the acronym "L.E.A.D.S.", provides information to law enforcing agencies on driver's license, vehicle registrations, stolen cars, prior convictions, etc.

The C.C.H. provides the criminal history of individuals for whom a request has been duly made and authorized. The two systems which the grievant is authorized to operate are supervised by the Ohio Bureau of Criminal Investigation and Identification. It is acknowledged by the parties that the criminal history information "is sensitive material and subject to security provisions."

The facts that gave rise to the decision to impose a two day disciplinary suspension stemmed from an internal investigation, in the course of which it was determined by the State Highway Patrol that the grievant was guilty of an infraction, specifically, a violation of Section 124.304 of the O.R.C., relating to "Good Behavior". This provision appears in the Chapter entitled "Civil Service Laws" and states, in part, as follows:

"124.34 Tenure of Office; reduction, suspension, and removal; appeal

and no such officer or employee shall be reduced in pay or position, suspended, or removed, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the director of administrative services or the commission, or any other failure of good behavior, or other acts of misfeasance, malfeasance, or nonfeasance in office." (Underscoring added)

The State Highway Patrol has represented that its investigation disclosed that on Sunday, August 16, 1987, the grievant while on duty, made an unauthorized check of the State's computerized C.C.H. file for the purpose of checking on the

criminal history of her son. It is represented that her activities were unauthorized, and constituted an infraction. In addition, the grievant was charged with failing to log the inquiry as required by Divisional policy in order to safeguard the system's security.

The State Highway Patrol charged further that, on the following Monday, August 17, 1987, the grievant "while on duty" engaged in a telephone conversation with the Lawrence County Sheriff, and,

"...during which conversation she led the Sheriff to believe a person or persons other than herself had possession of her son's criminal history and was using the document to discredit her son."
(Employer's post hearing brief, page 2).

The telephone conversation prompted the Sheriff to undertake his own investigation in order to determine which of his employees had violated security. In the course of his investigation, relying on oral representations conveyed by the grievant, the Sheriff accused a local police chief of failing to properly use the C.C.H. information.

The investigation disclosed further that the grievant engaged the Lawrence County prosecutor in a conversation, "and once again led this individual to believe persons other than herself had possession of the C.C.H." The State Highway Patrol claimed that the grievant's unauthorized activities in the foregoing respects led to tensions between the various law enforcement agencies, and unfavorably reflected on the Ohio State Highway Patrol, its security system, and its officers. The

grievant was charged with causing discredit on the Ohio State Highway Patrol, in improperly using the security system, and thereafter making misleading statements concerning the information to other law enforcement agencies.

The F.O.P. claimed that the grievant's actions in the respects charged were not designed to intentionally violate the rules and regulations concerning the use of the security system, and that, she failed to obtain prior clearance for her personal use of the equipment solely by reason of the fact that a superior officer was not immediately present. Her use of the equipment, and inquiry, were prompted by a statement communicated to her by her son that, "a criminal record print-out was being circulated about him due to his participation as a witness in a Grand Jury investigation." In any event, after the grievant obtained the print-out, she "shredded" the information, which is represented as being standard procedure after running a C.C.H. check. Her failure to "log-in" the use of the security equipment was inadvertent, and unintentional; she simply "forgot". On the basis of all the circumstances, and the grievant's long record of satisfactory service as a dispatcher, the Union contends that the two day suspension was excessive, and in violation of Section 19.05, "Progressive Discipline" of the contract.

APPLICABLE PROVISIONS OF AGREEMENT:

ARTICLE 4 - MANAGEMENT RIGHTS

Except to the extent modified by this Agreement the Employer reserves exclusively all of

the inherent rights and authority to manage and operate its facilities and programs. The exclusive rights and authority of management include specifically, but are not limited to the following:

- (2) Direct, supervise, evaluate, or hire employees;
- (3) Maintain and improve the efficiency and effectiveness of governmental operations;
- (4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- (5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote or retain employees;

- (8) Effectively manage the work force;

- (11) Determine and manage its facilities, equipment, operations, programs and services;

ARTICLE 18 - INTERNAL INVESTIGATION

18.01

The parties recognize that the State has the right to expect that a professional standard of conduct be adhered to by all Highway Patrol personnel regardless of rank or assignment. Since internal investigations may be undertaken to inquire into complaints of misconduct by bargaining unit employees, the State reserves the right to conduct such investigations to uncover the facts in each case while protecting the rights and dignity of accused personnel. In the course of any internal investigation, all investigative methods employed will be consistent with the law.

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.

19.05 Progressive Discipline

The following system of progressive discipline will be ordinarily followed:

1. Verbal Reprimand (with appropriate notation in employee's file);
2. Written Reprimand;
3. Suspension;
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.

POSITION OF STATE HIGHWAY PATROL:

The Employer justifies its disciplinary action on the ground that, the grievant's several infractions constituted just cause for corrective discipline, and that the two day suspension was reasonable, and appropriate, designed to make the grievant aware of her demonstrated deficiencies, and to correct her behavior. The grievant's activities were prohibited, and unauthorized, and had the potential for inflicting harm to the operations of the State Highway Patrol, as well as its relationship with other enforcement agencies with whom the State Highway Patrol deals on an on-going basis. The grievant's actions "led to tensions between the various law enforcement agencies, resulting in discredit to the Ohio State Highway Patrol." These tensions

were the direct and proximate result of the grievant having "improperly accessed the system and subsequently making misleading statements concerning the information she had discovered."

The circumstances clearly constituted "just cause" for a substantial measure of discipline. The State Highway Patrol, in assessing a two day suspension, took into consideration both the nature of the grievant's violations, and infractions, and her 20 year record of satisfactory service. The two day suspension was solely for the purpose of correcting her deficiencies, and was not ulteriorly motivated, or punitive in its purpose. The decision to impose discipline was well within the recognized contractual, and statutory authority of the Employer, including its obligation and responsibility to conduct its operations in an "orderly, efficient, and safe" manner.

A thorough investigation was conducted, and a determination made on the basis of a preponderance of the evidence that the grievant did commit the infractions as charged. Following disclosure of the information, the State Highway Patrol applied its rules, and penalties in an even-handed manner, without discrimination, and in a manner wholly consistent with the principles inherent in the concept of just cause. The two day suspension was reasonably related to "the seriousness of the employee's proven offense" and took into consideration the grievant's record of service with the State Highway Patrol, which is acknowledged to have been of a satisfactory character.

The evidence is undisputed that the grievant conducted an unauthorized access of the limited access C.C.H. file. The

grievant readily admitted that she ran the check while on duty; she admitted her awareness that she was "not allowed to run the check" based on the Division's rules and policies, of which the grievant was fully aware. Specifically, the grievant was "well aware of the prohibition of running criminal history checks for non-law enforcement purposes." The grievant compounded her infraction in utilizing the C.C.H. files for non-law enforcement reasons, and in failing to properly log her activities as required by Divisional policies. The grievant cannot claim "ignorance" inasmuch as she was an experienced dispatcher, capable of making proper entries, with a long record of satisfactory service. As a result of the grievant's conversations with law enforcement officials concerning the information which she had obtained, including the Chief of Police of Proctorville, the Lawrence County Sheriff, and the Lawrence County prosecutor, these officials were left with the belief that a member of the Sheriff's department and/or the Proctorville Police department had improperly ran the check on the grievant's son, thereby tending to discredit the State Highway Patrol, and causing friction between the law enforcement agencies. The State Highway Patrol claims that,

"...the incident resulted in strained relationships between the various departments, and had also caused the Sheriff to change his Departmental policy concerning the release of CCH information, which has caused reduced efficiencies for the Proctorville Police Department.
(Employer's post hearing brief, page 10)

A further adverse consequence that could result from the unauthorized use of the security system is that the system could be removed from the installation:

"...If the terminal was removed from the Iron-ton post, the efficiency offered road officers through quick access to all types of vehicle and violator files would be lost. Perhaps most important, the safety afforded officers by the computer's ability to provide instantaneous information about an individual's criminal history and criminal tendencies would be lost." (Employer's post hearing brief, page 11).

In response to the Union's claim that the Employer failed to utilize "progressive discipline", (Paragraph 19.05), the Employer represents that the totality of the circumstances, and the potential adverse consequences, including the intra-departmental tensions between the law enforcement agencies, "merited a more harsh penalty" than a written reprimand:

"...The penalty was meant to impress upon the grievant the seriousness of her actions, in order to insure no reoccurrences. While the Employer could have issued a written reprimand, the two day suspension was certainly justified due to the seriousness of the offense, and is also specifically allowed under Article 19.05 of the collective bargaining agreement." (Employer's post hearing brief, page 12).

The State Highway Patrol urges that the disciplinary penalty be upheld as being consistent with the totality of the circumstances, and for just cause:

"...The grievant knowingly accessed a confidential, highly sensitive criminal history file without authorization. The grievant accessed the file for a purpose other than for official criminal justice duty. The grievant failed to log the access. The grievant was aware all of these activities violated both divisional and extra-divisional policies.

Additionally, after finding her son did in fact have a record in the confidential Computerized Criminal History file, she used this information in conversations with the

county Sheriff and the county Prosecutor in such a fashion as to lead both individuals to believe other law enforcement employees were improperly using the information. This misinformation, in turn, caused strained relationships affecting even other police agencies, the results which are still in effect today." (Employer's post hearing brief, pages 13 & 14).

POSITION OF FRATERNAL ORDER OF POLICE:

The Union points to the fact that the grievant is a 20 year veteran, holding the position of dispatcher, and has been authorized and trained to operate the Law Enforcement Automated Data System, and the C.C.H. System. The Union does not dispute the fact that, on August 16, 1987, the grievant ran a C.C.H. check on her son, using the security system which she was trained to operate. After running the check, the grievant shredded the print-out which is standard procedure. She inadvertently forgot to "log-in" running the C.C.H. check, which was due to the fact that no supervisor was then on duty. The F.O.P. concedes that there was no substantiation for the rumors that had been circulated, and which came to the grievant's attention concerning her son. The Union does not dispute the fact that the grievant's actions were unauthorized, although they were not prompted by any ulterior purpose, or conscious intent to disregard Divisional policies governing the operation of the security equipment, and use of the print-out information.

The Union's principal argument is, that, the grievant's unauthorized use of the C.C.H. check system may have warranted

discipline consistent with the "Progressive Discipline" provision of the contract, Section 19.05. In view of the grievant's excellent work record, discipline should have been no more than a "written reprimand". Under the circumstances here present the two day suspension was excessive, and not for just cause.

The grievant, in the course of her testimony, represented that in all probability, had a supervisor been present he would have granted authorization to make the C.C.H. check concerning the grievant's son. Her failure to log the inquiry was an "oversight"; "she was not trying to hide anything."

Moreover, there has been no threat of discontinuance of the C.C.H. check security equipment by reason of the grievant's single instance of unauthorized use. At most, the circumstances would indicate that the grievant used "poor judgment", by reason of which the two day suspension was excessive, and punitive in effect.

The F.O.P. disputes the charge relied on in imposing discipline that, the grievant made an unauthorized call to the Sheriff of Lawrence County, and that she lodged an accusation against the Proctorville Police Department. The grievant spoke to the Sheriff during the course of a routine call; she "merely relayed the information she had received to the Sheriff." After the law enforcement agencies were apprised that none of their officers was responsible, "no other difficulties resulted from this incident" and there were no long-range tensions between the agencies, and the State Highway Patrol.

Throughout the grievant's 20 years of service, she had but one verbal warning, for tardiness; "giving her 20 years of exemplary service, the two day suspension is severe and excessive", and is in violation of Section 19.05, "Progressive Discipline".

ARBITRATOR'S FINDINGS AND OPINION:

The grievant is a long term employee, her service extending over a period of 20 years, during which period she performed her duties and responsibilities in a satisfactory manner. The sole blemish on her otherwise "perfect" record is an oral reprimand for tardiness.

The Employer determined, following an investigation, that the grievant committed infractions, and that her behavior was unwarranted in several respects relating to her unauthorized use of equipment she was trained, and authorized to use for official purposes, and which constituted part of a confidential security system.

Among the charges of misconduct are, that, the grievant made unauthorized use of the confidential security system for personal purposes, unrelated to her official duties; she failed to log the inquiry; she made an on-duty call to the Lawrence County Sheriff, in the course of which she made false accusations against the Proctorville Police Department. Her actions were inappropriate, in violation of the Divisional policies, brought discredit to the State Highway Patrol, and created tensions between the law enforcement agencies, and the likelihood that the use of the

equipment at the Ironton Post would be discontinued by reason of its improper use.

The Union has contended that the discipline was excessive, and fails to take into consideration mitigating circumstances, including the grievant's long and satisfactory work record, and the absence of any ulterior purpose, or intent to disregard her responsibilities, and obligations.

In the judgment of the Arbitrator, based on a careful assessment of the facts and circumstances, and considering the grievant's record of satisfactory performance, the two day disciplinary suspension was well within the authority, and discretion of the Employer, consistent with the applicable contract language, and for just cause. The Arbitrator has been made fully aware of the requirements governing "progressive discipline" as set forth in Section 19.05 of the collective bargaining agreement. The Arbitrator notes that, progressive discipline will be "ordinarily followed", with penalties ranging from a verbal reprimand, to demotion or removal. However, the Section expressly states that, "more severe discipline...may be imposed...if the infraction or violation merits the more severe action." It necessarily follows that the Employer is vested with the right to exercise discretion, and sound judgment in the determination of an appropriate measure of discipline, commensurate with the circumstances, and the principle of "just cause".

The grievant's concern for her son's well being is understandable; however, her sworn duty and responsibility were of

paramount importance. There is here established a serious breach of confidentiality in utilizing the L.E.A.D.S. access equipment for personal as distinguished from official business. The grievant's behavior, as indicated by the evidence, would reasonably tend to destroy confidences between various law enforcement agencies, as indeed was the case between the State Highway Patrol, the Sheriff's Department, and Proctorville Police Department. The situation prompted an investigation by the State Highway Patrol, which was time consuming, and involved the activities of State Highway Patrol personnel, as well as others. In addition, a reasonable potential consequence was, that, the security system would be discontinued at the Ironton Post.

The Arbitrator notes that, the problems which stemmed from the grievant's unauthorized use of the security equipment have apparently been resolved, and good relations currently exist between the parties involved. This restoration of good relations resulted in part from the fact that the investigation disclosed that no member of the Sheriff's Department, or Proctorville Police Department, was involved in circulating any rumors concerning the grievant's son. However, but for the grievant's unauthorized activities, the problems would never arisen.

The Arbitrator has carefully reviewed the circumstances relating to the Union's charge that there is here evident disparate treatment under the same and similar circumstances. The Arbitrator finds that such charge is unfounded. In fact, other employees have been disciplined for misuse of security equipment, including one who was accessed a three day suspension.

The grievant is entrusted with a code number for the operation of L.E.A.D.S. equipment, and has received special training relating to her confidential duties. Of paramount importance is, that, the use of such equipment must be for official business only, not personal, which prohibition the grievant disregarded.

In the judgment of the Arbitrator the totality of the grievant's infractions, including the unauthorized access of the Computerized Criminal History file, obtaining an unauthorized check on a member of the grievant's family, her failure to properly log her activities as required by Divisional policy, and her contacts and conversation with other law enforcement personnel which conveyed the impression that members of other agencies had improperly conducted a C.C.H. check on the grievant's son, consitituted in a cumulative sense more than minor infraction, and that, the totality of the grievant's infractions warranted utilization of "more severe discipline" as contemplated by Section 19.05. The two day suspension fully conforms to the standard of "just cause" (Section 19.01 - Standard).

In the judgment of the Arbitrator the conclusions arrived at by Hearing Officer Demaree have been fully substantiated by the evidence:

"The facts of the case indicate the grievant, on August 16, 1987, while on duty as a dispatcher at the Ironton patrol post, accessed the Computerized Criminal History file in order to obtain the file of her son. This action was for other than official business purposes. It is specifically in violation of departmental procedures,

as well as in violation of the Ohio Law Enforcement Advanced Data Systems (LEADS) rules. Violation of these rules may lead to revocation of an agency's rights to access the LEADS system.

In summary, the grievant knowingly violated established departmental and extra-departmental rules and procedures by conducting an unauthorized check in the Computerized Criminal History file for personal reasons. She then conducted personal business while on duty by conversing with the Sheriff. During that conversation, she made false, accusatory statements which lead to discredit to the division."

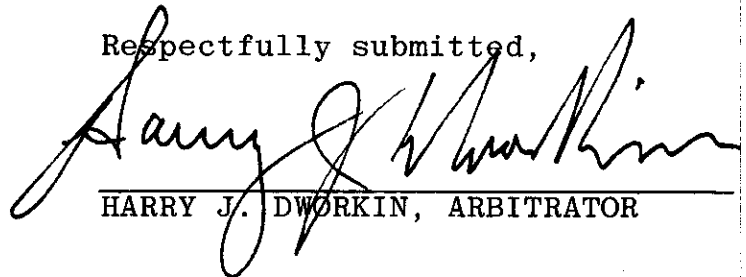
The fact that the contract language, as is here the case, contains a schedule of progressive disciplinary penalties does not preclude more severe penalties in appropriate cases, where the circumstances warrant, as is here the case.

Pursuant to Divisional policy, employees are prohibited from accessing the C.C.H. files, except for official business purposes, and such use must be specifically logged, and recorded. The grievant acknowledged that she was fully aware of these policies. In fact, she had observed the rules and regulations throughout her many years of service as a dispatcher assigned to the Ironton Post.

The Arbitrator concludes that the totality of the grievant's infractions were such as to constitute them above the level of "minor", and warranted a more severe penalty than reprimand. The two day suspension was warranted by the seriousness of the grievant's offenses, and was well within the Employer's

authority and responsibility. The two day suspension was consistent with the facts, conformed to the agreement, and was for just cause.

Respectfully submitted,



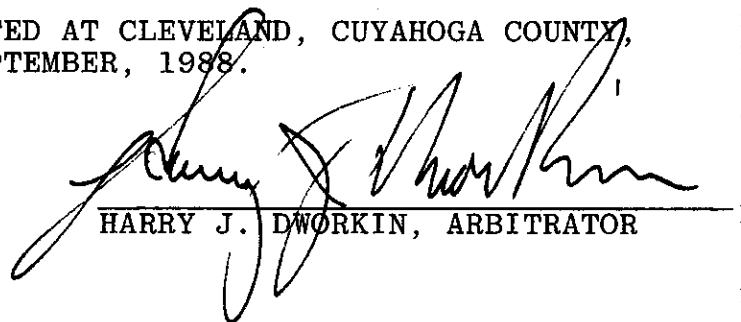
HARRY J. DWORKIN, ARBITRATOR

A W A R D

I.

The evidence establishes that the grievant, while on duty as a dispatcher at the Ironton Post, engaged in unauthorized access to the confidential criminal records of a member of her family; that she violated Divisional policy which prohibits use of the security equipment for other than official police functions; that she failed to properly log the information; that she used the security equipment for personal benefit unrelated to her official duties; that the two day suspension was fully warranted and for just cause.

AWARD SIGNED, ISSUED AND DATED AT CLEVELAND, CUYAHOGA COUNTY, OHIO, THIS 15th DAY OF SEPTEMBER, 1988.



HARRY J. DWORKIN, ARBITRATOR