

ARBITRATION AWARD SUMMARY

OCB Award Number: 295

OCB Grievance Number: 15-03-890113-01-04-01

Union: FOP 1

Department: Highway Safety - Highway Patrol

Arbitrator: Jonathan Dworkin

Management Advocate: Captain Demaree

Union Advocate: Paul Cox

Arbitration Date: 6/21/89

Decision Date: 6/21/89

Decision: Modified

OCB-OLC CONTRACTUAL GRIEVANCE PROCEEDINGS
EXPEDITED DISCIPLINARY ARBITRATION
MEMORANDUM OF "BENCH" AWARD

In The Matter of Arbitration
Between:

THE STATE OF OHIO
Department of Public Safety
State Highway Patrol

-and-

FRATERNAL ORDER OF POLICE
Ohio Labor Council, Inc.
State Unit I

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OCB No. 15-03-890113-01-04-01

Decision Issued
June 21, 1989

APPEARANCES

FOR THE HIGHWAY PATROL

Captain J. M. Demaree
Anne K. Arena
Lieutenant R. M. Grooms
Sergeant D. B. Brown

Patrol Advocate
Assistant
Post Commander
Assistant Post Commander

FOR THE OHIO LABOR COUNCIL

Paul L. Cox
Edward F. Baker
Renee Engelbach
Trooper W. L. Davis

OLC Attorney
Staff Representative
OLC Paralegal
Grievant

Jonathan Dworkin, Arbitrator
P.O. Box 236 - 9461 Vermillion Road
Amherst, Ohio 44001

THE GRIEVANCE

Grievant is a Trooper stationed at the West Jefferson, Ohio Post of the Ohio Highway Patrol. He protests a ten-day disciplinary suspension imposed upon him for a variety of charges encompassing the period of September 15 through October 24, 1988. The charges pertained to alleged violations of Section 4501:2-6-02 (B)(4), (E), (Y)(1)&(2), and (X)(1) of the Rules and Regulations of the Ohio State Highway Patrol.

Grievant implicitly acknowledged that some of the allegations against him were valid, denied his culpability relative to others, and generally contended that his discipline violated the following contractual standards:

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.

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§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.

The dispute over the suspension was processed through the preliminary levels of the contractual grievance procedure and appealed to arbitration. It was heard in Columbus, Ohio on June 21, 1989. At the outset, the State conceded that the appeal was procedurally arbitrable, and the parties stipulated the Arbitrator's authority to issue a conclusive award. Arbitral jurisdiction is more precisely defined and limited by the following language in Article 20, §20.07-6 of the Agreement:

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.

THE EXPEDITED PROCEDURE

Midway through the hearing, the Representatives of the Highway Patrol and the Ohio Labor Council agreed that this case was appropriate for expedited arbitration pursuant to Article 20, §20.08 of the Agreement. They stipulated that the contractual prerequisites for expedited arbitration were met or waived, and directed the Arbitrator to issue a decision in accordance with §20.08. That Section establishes the following framework for deciding certain disciplinary grievances:

§20.08 Disciplinary Grievances

. . .

5. Disciplinary arbitration hearings will be conducted as all other arbitrations except that at the conclusion of the hearing, the arbitrator may issue a bench ruling sustaining or denying the grievance or modifying the discipline imposed or issue a short written decision within five (5) days of the close of the hearing. If a written decision is issued, it shall include only a statement of (1) the granting of the grievance, or (2) a denial of the grievance or (3) a modification of the discipline imposed, and a short explanation of the reasoning leading to the decision.

When the hearing ended, the Arbitrator took the option of issuing a "bench" decision. He announced Grievant's suspension was

modified from ten working days (two weeks) to five working days (one week). At the mutual request of the parties, this Memorandum of Award is rendered in confirmation of the decision verbally communicated on June 21.

DECISION

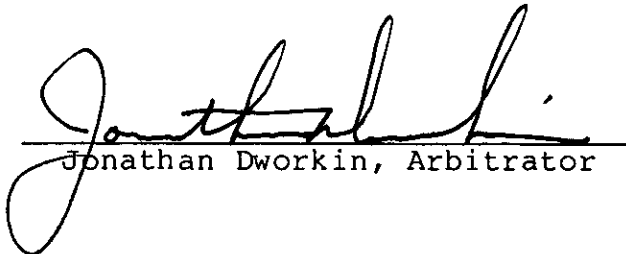
The State's evidence was sufficient to prove some of the charges against Grievant but not all of them. While it is arguable that the reasons for discipline which were established by the evidence were adequate, standing alone, to justify the ten-day suspension, the Arbitrator did not deem it proper to second-guess the Patrol's original rationale. Grievant was suspended ten days for the totality of the misconduct he allegedly committed. Since charges were unproven at the conclusion of the Patrol's case, it stood to reason that support for the full length of the suspension did not exist. That was the basis for the award cutting the suspension in half.

MEMORANDUM OF AWARD

The ten-day suspension was modified by a "bench" decision to a suspension of five working days (one week). The State was directed to reimburse Grievant for lost wages and benefits occasioned by the last half of his original period of discipline and to record the modification in the Employee's records.

Decision Issued:
June 21, 1989

Memorandum Issued:
June 26, 1989



Jonathan Dworkin, Arbitrator