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In the Matter of Arbitration

Between

Fraternal Order of Police-
Ohio Labor Council

and

The State of Ohio, Department
of Liquor Control

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Case Nos.:

* 21-04-880419-0105-05-02

* 21-04-880419-0106-05-02

Before:

Harry Graham

Appearances: For Fraternal Order of Police:

Walter Florence
Fraternal Order of Police-Ohio Labor Council
3360 East Livingston Ave.
Columbus, OH. 43227-1927

For Ohio Department of Liquor Control:

Edward Morales
Office of Collective Bargaining
65 East State St., 16th Floor
Columbus, OH. 43215

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on October 30, 1989 before Harry Graham. At that hearing both parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Were the Grievants suspended from their law enforcement positions with the Ohio Department of Liquor Control with just cause? If not, what should the remedy be? If so, the suspensions will be upheld in their entirety.

Background: This proceeding involves two people, Andre Smith

and Dwight Johnson, both of whom are Liquor Control Investigators in the employ of the Enforcement Division of the Department of Liquor Control of the State of Ohio. During 1988 it came to the attention of the Department that so-called non-liquor arrests being recorded in the Cleveland, OH. area exceeded those being recorded in other metropolitan areas of the State. The difference between the Cleveland area and other locations was quite substantial. For instance, non-liquor arrests in Cleveland were approximately four times those recorded in Columbus and almost seven times those recorded in Toledo through the first eight months of 1988. In addition to the statistical records, supervisory officials became aware of rumors to the effect that non-liquor arrest figures in Cleveland were being inflated. In order to determine the reason for the substantially higher non-liquor arrest figures for Cleveland an internal inquiry was undertaken. That inquiry indicated that two officers, Andre Smith and Dwight Johnson, had compiled reports that the Department regarded to be false. For instance, they had recorded liquor purchases at times when other records indicated they had been present at arrests made in conjunction with the Cleveland Police Department. They had also indicated meeting with members of the Cleveland Police Department when those officers were out of the office working at a neighborhood carnival. In addition, the Department came to

believe that on July 16, 1988 they reported work actually performed on July 15, 1988. The purpose of this report in the opinion of the Department was to secure for Officers Johnson and Smith a three day weekend. In view of what it considered to be systematic falsification of the daily reporting forms the Department administered discipline to both officers Johnson and Smith. Johnson recieved a 45 day suspension. Smith was given a five day suspension. Those suspensions were grieved and the parties agree that they are properly before the arbitrator for determination on their merits.

Position of the Employer: The investigation by the Department of Liquor Control of the activities of Messrs. Johnson and Smith indicated numerous internal contradictions in reports they filed documenting their daily activities. Thus, for example, Employer Exhibit 3 indicates that Johnson and Smith reported making arrests at 11:50PM on July 15, 1988 and 3:30AM on July 16, 1988. In fact, Officers Johnson and Smith were off duty at that time. In addition, they reported making two arrests at two different locations at 12:30AM on July 16, 1988. Similarly, Employer Exhibit 5 indicates that Johnson and Smith were at work on July 16, 1988 from approximately 10:00PM to 6:30AM. In the disciplinary process both officers indicated they did not work at those times. Rather, they worked on July 15, 1988 and reported it as work performed on July 16, 1988. Smith stated this was done in order that they

both would have a three day weekend off duty. On July 22, 1988 and July 23, 1988 a similar situation occurred. On their daily reports Johnson and Smith indicated work on July 23, 1988 that had actually been performed on July 22, 1988. The ostensible reason for this was to secure a three day weekend.

A great number of internal contradictions on the reports made to the Department of Liquor Control exist. For instance, on July 23, 1988, Johnson and Smith report being involved in an arrest of one Mary Frary in the Fifth District of the Cleveland Police Department. At the same time they report that they were in East Cleveland checking permit premises. As they cannot be in two places at the same time there is some falsification in their reports the Department insists.

Employer Exhibit 8 indicates that Johnson was working with Detective Gregory Hunter of the Cleveland Police Department between 8:00AM and 1:30PM on July 24, 1988. Detective Hunter did not report to work until 1:00PM on that day and his report reflects no work with Johnson. Employer Exhibit 9 shows that Johnson and Smith reported on their daily report form that they were doing reports at the Department's Cleveland office from 11:00PM to Midnight on October 7, 1988. Their arrest form shows that they participated in the arrest of one Bridget Thomas during that period. They later admitted their report of involvement in Thomas' arrest was false. On March 11, 1988 Johnson reported working with the Cleveland

Police Department, 5th District Vice Unit, and being involved in 4 prostitution arrests. The report of Sergeant Vazquez of the Cleveland Police Department indicates he was working with Johnson but does not reflect any arrests. A similar situation occurred on April 2, 1988. Johnson reports making arrests with the Cleveland Police Department on that date. Cleveland Police Department records do not indicate that to be the case.

Employer Exhibit 12 shows that Johnson was working at Lancers, a bar in Cleveland, during the hours of 11:00PM and 12:00 midnight on April 16, 1988. He indicates he was involved in joint action with the Cleveland Police Department concerning drugs. According to Cleveland Police records, its officers were at a neighborhood carnival, checking for gambling and liquor violations during that time. This inconsistency is further evidence of false reports being filed according to the State. Yet another incident of false reports occurred on April 17, 198 when Johnson indicated he was at Lubna's Supermarket in Cleveland from 2:10 to 3:15PM checking for sales of liquor to minors. At the same time he indicated on his arrest log being involved in arrests of Leaketa Miles and Sharon Hall at 2:35PM. Cleveland Vice records on its report the arrests of Miles and Hall at 2:35PM on April 17, 1988 but makes no reference to Johnson or Smith being involved. On April 23, 1988 Johnson makes

repeated references to joint activity with the Cleveland Police Department on his daily report. No such references are made by officers of the Cleveland Police Department for the same period. On May 21, 1988 Johnson reported working with the Cleveland Police Department, 5th District Vice. He indicated he was at a permit premises from 5:30PM to 7:30PM and made a \$1.00 liquor purchase. He indicates making two arrests during that period. On his arrest report for that day he indicates participating in an arrest with the Cleveland Police Department at 6:40PM, a fact confirmed by Cleveland Police Department records. He also participated in an arrest at 6:30PM at 71st St. and Carnegie Ave. in Cleveland. Either Johnson was involved in the arrests, which both he and the Cleveland Police Department indicate to be the case, or he was in the Lee Road supermarket and JT's in Cleveland, checking for improper sales to minors. He could not be in two places at the same time. The reports for May 21, 1988 are further evidence of report falsification according to the State. On May 28, 1988 Officer Johnson reported on his daily report form that he was meeting with officers of the Cleveland Fifth District Vice Unit from 10:00PM to 11:20PM. He also reported an arrest of Sheila Jones at 10:45PM. Upon being confronted with this discrepancy Officer Johnson could not explain it. In the State's view, this represents another instance of falsification of reports and warrants the

discipline imposed in this situation.

For the date of July 8, 1988 Johnson reported being at 5612 Luther from 3:45-4:30AM together with an officer from the Cleveland Police Department. They were investigating illegal sales activity. His arrest report shows an arrest at 3:50AM on Euclid Ave. in Cleveland in conjunction with the Cleveland Police Department. The Cleveland Police Department does not show any activity at 5612 Luther, though it does reference an arrest on Euclid Ave. at 3:50AM. This represents yet another inconsistency in Johnson's reports which is indicative of the falsification at issue in this proceeding. In the opinion of the State the evidence is overwhelming that there occurred the falsification of reports at issue in this proceeding. This is a serious offense as the Department relies upon its internal reports to support such activities a budget requests and promotion decisions. In the opinion of the State, the Cleveland Police Department keeps good records. Those records are inconsistent with the reports filed by Johnson and Smith. There are sufficient instances of discrepancies between the daily activity reports and arrest reports made by Johnson to the Liquor Control Department to support its action in this case. Taken with the discrepancies reflected on reports made by officers of the Cleveland Police Department it must be concluded that false reports were filed. As that is the case, the State urges that its action

in this instance be sustained.

Position of the Union: According to the Union Johnson, the more senior of the two grievants in this situation, is an outstanding officer. He has no prior discipline on his record. He routinely works overtime without compensation. The discrepancies between the reports made to the Liquor Control Commission and those filed by officers of the Cleveland Police Department are readily explainable. As Cleveland Police reports are public documents, they are kept somewhat imprecise so as not to alert potential miscreants of all Department activities. Johnson and Smith, not members of the Department, are often omitted from reports deliberately in order to conceal their identities. Furthermore, the Grievants in this case work the street. They are tired at the end of the shift and do not generally complete their paperwork at the conclusion of the work day. It is normally completed several days after the fact, from memories that may have faded a bit. Johnson and Smith are good officers. During his tenure in the Department Johnson has lost only one case. Smith has received a commendation for taking a gun away from a parolee. Given their outstanding work records the discipline at issue in this proceeding is inappropriate according to the Union.

In the opinion of a twenty year veteran of the Cleveland Police Department Officers Johnson and Smith are outstanding

officers. Johnson is the only officer he would work with from outside of the Cleveland Police Department. He has literally trusted Johnson with his life. The practice in the Cleveland Police Department is to omit reference to Ohio Liquor Control Agents in the daily reports. This is done to protect Liquor Control Agents from becoming widely known in the Community. Johnson has acted as his partner on occasion with no reference being made to that fact in the daily report. Given the discipline-free history of the grievants and the severity of the punishment they received in this situation the Union urges the grievance be sustained.

Discussion: Examination of the Daily Activity Reports and Arrest records completed by Officer Johnson indicates numerous inconsistencies. For example, on April 17, 1988 Officer Johnson's Daily Activity Report shows him to be at Lubna's Supermarket in Cleveland from 2:18 to 3:15PM. His arrest report shows him to have participated in the arrests of two alleged prostitutes at 2:35PM. The Cleveland Police Department daily report indicates two arrests for prostitution at 2:35PM on that date. No reference is made to joint action with the Ohio Department of Liquor Control in that arrest. Even giving weight to the assertion of the Union that the Cleveland Police Department does not consistently indicate joint action on its reports to guard the identity of the Liquor Control agents, this still leaves the

contradiction between the two reports filed by Johnson for the Department of Liquor Control.

On April 23, 1988 Johnson reported being involved with the Cleveland Police Department in arrests for prostitution at 10:00PM and 10:10PM. This is confirmed by documents on file with the Cleveland Police Department representing their activity for that date. Johnson's daily report indicates he was in Club 66 in Cleveland at that time, making a liquor purchase while engaged in joint action. As the State points out, Johnson could not be in two places at once. Either the daily report or the arrest report is correct, but not both.

Similarly, on May 28, 1988 Johnson's daily report shows him to be meeting with officers of the Cleveland Police Department from 10:00-11:20PM. His arrest report shows him to be making an arrest at 10:45PM. Once again, the contradiction is apparent.

What emerges from examination of the evidence presented by the State is a pattern of inconsistencies among the daily activity and arrest reports completed by Officer Johnson for the Department of Liquor Control and the analogous reports completed by the Cleveland Police Department. The number of discrepancies are sufficient to require the conclusion that more than occasional errors were involved in this situation. It is simply asking too much to expect any outside observer to believe that the numerous contradictions in the

documentation were all due to honest mistakes. Even crediting that some joint activity is unrecorded on the reports made by the Cleveland Police Department in order to protect the identities of Liquor Control Officers there is sufficient evidence to convince this arbitrator that a pattern of conduct subject to discipline exists in this situation.

Even making allowance for the factor of fatigue at the end of the shift and the fact that on occasion the officers complete their reports several days late, the pattern revealed by the evidence is indicative of more than error or mistake. The occasional discrepancy may be overlooked. In this situation there exists more than the occasional discrepancy. There is an overwhelming amount of evidence support the position of the State.

At the hearing the parties agreed upon the issue. Their agreement indicates that if the State had "just cause" to suspend the grievants from their positions that the suspensions would be upheld in their entirety. The parties took away from the arbitrator by their agreement any discretion to modify the penalty imposed by the State. If discretion had been afforded to the arbitrator it might well have been used. As no flexibility was afforded the neutral and the State has demonstrated the requisite just cause to discipline the grievants the Arbitrator has no choice but to deny the grievances in their entirety with no modification of

the penalty.

Award: The grievances are denied.

Signed and dated this 13th day of November, 1989 at
South Russell, OH.

Harry Graham
Harry Graham
Arbitrator