

ARBITRATION PROCEEDINGS

BEFORE  
ARBITRATOR THOMAS MICHAEL

# 414

OCTOBER 12, 1989

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:  
: FRATERNAL ORDER OF POLICE :  
: OHIO LABOR COUNCIL, INC. -- :  
: DAVID K. WEST :

: GRIEVANT :  
: -VS- :

OCB GRIEVANCE NOS.  
15-03-890118-0004-04-01  
15-03-890612-0104-04-01  
15-03-890731-0129-04-01  
EMPLOYER'S POST-HEARING  
BRIEF

: THE OHIO STATE HIGHWAY PATROL :  
: EMPLOYER :

FILED NOVEMBER 3, 1989

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INTRODUCTION

This case was heard before Arbitrator Thomas Michael on Wednesday, October 12, 1989 at the offices of the Ohio Office of Collective Bargaining, 65 E. State Street, Columbus, Ohio. The parties agreed to mail two copies of their briefs to the arbitrator on or before November 3, 1989.

BASIC FACTS

TEN (10) DAY SUSPENSION

The grievant, David K. West, was a State Trooper, assigned to

the Cambridge Post of the Ohio State Highway Patrol. The Arbitration focused on four separate disciplinary matters, considered at arbitration as independent events.

The first grievance presented to the Arbitrator was filed as a result of the imposition of a ten day suspension. The evidence and testimony showed the grievant was off his line assignment conducting personal business for at least 30 minutes. When contacted by radio for a "check-up", he testified he gave a false location in order to conceal the fact he was off his patrol assignment.

The grievant knowingly violated the Highway Patrol Rules and Regulations. He had previously been disciplined for making false statements three times. The grievant's supervisor was available on the night in question; he testified he would have granted the grievant emergency leave to take care of any personal crisis. Instead, the grievant used poor judgement, and attempted to remain in active pay status while conducting personal business. When he became aware his unethical and proscribed actions were possibly going to be discovered, he lied, as he testified in the hearing.

The grievant has no explanation for his actions in this case. Through testimony he admitted he was dishonest; he admits he conducted personal business while in active pay status and he admits he knew his actions were a violation of the Rules and Regulations. Based on the proven facts of this case and the grievant's disciplinary record there can be only one finding. The grievant's ten day suspension was for just cause.

The grievant was afforded all of his contractual rights at each step of the investigation and resulting disciplinary action. The Employer met the "just cause" standard established by Article 19 of the collective bargaining agreement prior to the imposition of discipline.

### THREE DAY SUSPENSION

In January, 1989 the Employer initiated an administrative investigation to determine if the grievant had transported unauthorized passengers in his patrol car while on duty. The investigation revealed the grievant had in fact allowed "friends" to accompany him in his patrol car while he was on duty on at least two occasions.

The Highway Patrol Rules and Regulations specifically prohibit the transportation of passengers in patrol motor equipment unless it is necessitated by official duties.

The grievant admitted the basic facts of this case during cross-examination at the arbitration. The grievant testified he had stopped at his residence for a lunch break and did not want to leave two acquaintances of his at the residence. He offered to transport them back to Cambridge in his patrol car. The grievant was on duty, subject to call at the time. He testified he knew transporting his friends in his patrol car was a violation of the Highway Patrol Rules and Regulations. Once again, using his own poor judgement, he chose to violate the rules.

The grievant claims he did not intend to let his friends ride with him on patrol. However, there is obvious ambiguity between his actions and his testimony. He received a radio call to report to the truck weigh station on IS70 in Guernsey County to issue an overload citation to a violator. Instead of dropping his passengers off he allowed them to accompany him to the weigh station. Both of his friends were present during the time he was issuing the traffic citation.

The grievant testified he took his friends to their home after leaving the scales. However, one of his passengers, 18 year-old Tony Neff, testified he and his friend rode with Trooper West for approximately four hours. After leaving the scales they drove to the scene of a traffic crash. They were told by the grievant to stay with the patrol car while West walked some 100 yards to scene of the crash.

Tony Neff testified David West picked up he and his friend at their residence on the day in question. He stated this is the first and only time he ever rode in a patrol car, which based on his testimony was a significant event in his life. Undoubtedly, his recollection of the event was much clearer than the grievant's muddled, confusing version.

The grievant once again knowingly violated a Highway Patrol rule. The organization strives to limit the potential for civil liability in all aspects of patrol car operation. The grievant

not only allowed "friends" to accompany him in his patrol car, but allowed them to be present during the issuance of a traffic citation, as well as at a crash scene.

Clearly, any potential arrest situation may become violent. The presence of untrained, civilian observers in patrol cars, especially during the issuance of citations, creates an unnecessary liability for all involved, but especially for the State of Ohio.

The grievant's testimony in this case exemplifies his propensity to violate rules and then attempt to lie when confronted with his indiscretions. The Employer based the level of discipline on the grievant's extensive disciplinary record, dating back to November, 1986. As is the practice of the Employer discipline was imposed as a corrective tool to change the grievant's abhorrent behavior. Unfortunately, the effort, as evidenced by future events, was futile.

#### TERMINATION - OFF DUTY CONDUCT UNBECOMING AN OFFICER

On May 11, 1989 the grievant was off duty and involved in what began as a minor dispute over the right of way at a four-way stop sign. The grievant was driving his personal car when a second driver, later identified as Dan Young, apparently believed the grievant had made an improper turn. An occupant in the Young vehicle made a gesture the grievant perceived as offensive.

The grievant turned his vehicle around and followed the other vehicle to its destination, the home of John and Bonnie Harper, the parents of the passengers in the Young vehicle. He proceeded to get out of his vehicle and exchange verbal threats and vulgarities with the occupants of the other vehicle. He then departed the area of the Harper residence.

Trooper West testified he was very angry because he was offended by the conduct of the Harpers. He stated he drove to his wife's place of employment, delivered an article and told her of his confrontation with the Harpers. West testified he then began driving aimlessly around Cambridge, still very angry.

Based on his testimony, it is clear the grievant's emotions were in control of his actions at this point. He had already left the scene of the confrontation and had time to re-evaluate his behavior. Instead he describes his mental state as agitated and angry. He did not act in the manner expected of a trained, experienced law enforcement officer.

The grievant already knew where the other parties involved in this immature confrontation lived. He knew the Cambridge Police Department could investigate the matter further. He knew he could contact the City Prosecutor to discuss the possibility of filing charges. Instead, the grievant testified he wandered around Cambridge and "just happened upon" a friend of his. This friend, Chris Harris, according to the grievant, might have known who the people were, "because he knows a lot of people".

The grievant's only response to why he wanted to return to the Harper residence was to find out "who he was dealing with". If there is any logic to this interest, it escapes the Employer.

The grievant, still extremely agitated, decided to return to the Harper residence with Chris Harris. Not unexpectedly, the two get into another confrontation with the Harpers and a number of others in front of the Harper residence. This scenario has now reached the point of potentially being a neighborhood tragedy.

The grievant's and Chris Harris's testimony at this point becomes rather disjointed and confusing. Chris Harris testified one of the men with whom he and West argued had a shotgun. West did not mention a shotgun. West testified he had a can of mace in his car. The only other weapon, West mentioned, was a bottle of "Gatorade", held by one of the other men.

This soap opera story which began with a traffic related disagreement escalated to a confrontation with the potential for serious injury or death. In the middle of all of this is the grievant's friend, Chris Harris, who further testified he was not concerned when confronted with a shotgun, because, "I don't scare easy".

Someone at the Harper residence called the Cambridge Police. The police arrived while the grievant and Harris were in the area of the Harper residence. The police managed to diffuse the situation and informed all parties involved to contact the prosecutor.

The Employer argues the grievant's conduct throughout this incident was juvenile and at the very least unbecoming a Highway Patrol Trooper. The reputation of the organization was negatively impacted by an article which later appeared in the local Cambridge newspaper spelling out the details of the this incident and identifying David West as a Highway Patrol trooper. In addition, West was recognized as a State Trooper by one of the persons at the Harper residence during the confrontation.

The grievant is well aware of the organization's reputation as a professional law enforcement agency. As shown through evidence and testimony, the grievant's training at the Ohio Highway Patrol Academy stressed the importance of a trooper conducting his professional and personal life in a manner which exemplifies stability, fidelity and morality. He was made aware of the fact State Troopers are held to a higher standard of conduct by the public they are sworn to serve, and by the Employer.

David West was aware of what was expected of him. As proven by his testimony and that of his supervisors, his lack of common sense and poor judgement make it impossible for him to conform to the Highway Patrol Rules and Regulations. Although he now admits he should have handled the incident differently, his behavior was totally unacceptable.

The Ohio Highway Patrol is obligated by statute to promote societal harmony through enforcement of the laws of the State of Ohio. Society functions only if citizens respect the organizations empowered to enforce the law. The grievant through



his knowing violation of the rules has done irreparable harm to the organization's reputation in the Cambridge area.

TERMINATION - ILLEGAL TRAFFIC STOP/INVOLVING HIS SPOUSE

Evidence and testimony showed that on the evening of July 9, 1989, while on duty and in uniform the grievant had occasion to stop his wife's motor vehicle. The grievant testified he initially checked the speed of a vehicle at "some" speed over the posted limit. The grievant's testimony was extremely confused and evasive on the traffic stop. He could not remember whether his patrol car was moving or stationary, a key factor in any radar citation. He could not remember how fast the other vehicle was going and gave two separate speeds during the investigation of the incident.

The grievant testified that after he recognized his wife's car the traffic stop became a purely personal matter. What he lost sight of was the fact the driver, James E. Bailey, was also a citizen of the State of Ohio and the United States, protected by the United States Constitution.

The grievant failed to inform Mr. Bailey of the reason for the stop and obviously gave him the impression he was in custody. Mr. Bailey even asked the grievant for permission to walk away from the scene of the stop to make a phone call. The grievant refused this request and ordered Bailey to return to Mrs. West's car. The grievant had no right to detain Mr. Bailey. His preoccupation with his wife's intoxicated condition and the anger he felt toward Mr. Bailey resulted in him losing sight of his law enforcement obligations.

The grievant failed to properly call in the traffic stop. He failed to determine if Mr. Bailey was a licensed driver. Both of these failures violate Highway Patrol policies and procedures designed to protect the officer and carry out the highway safety function of the organization.

Trooper West, without direction, knowledge, or permission of his supervisor, halted his sworn duties and used his position as a sworn law enforcement officer to pursue a personal matter.

The actions of the grievant in this incident resulted in a complaint being filed by Mr. Bailey. The grievant testified he conducted himself in an unprofessional manner. He testified he did not allow Mr. Bailey to contact anyone at the scene or tell him why he had been stopped. Additionally, he testified he did not issue any type of citation or warning to Mr. Bailey.

Trooper David West's unprofessional behavior got him involved in a "no win" situation. He did not seek guidance from a supervisor, who was on post, to attempt to resolve the situation. He lost control of his emotions. In so doing, he violated a number of Highway Patrol rules, regulations, policies and procedures; and the Constitutional rights of James Bailey by illegally detaining him. The grievant ignored his training and allowed his poor judgement to rule his behavior.

The termination of the grievant as a result of his violation of the Rules and Regulations in this incident was entirely warranted. Termination is the only discipline commensurate with the seriousness of this proven offense when considered in conjunction with the grievant's extensive disciplinary record.

ISSUE

The issue, as stipulated for all four cases by the parties at the onset of the hearing, is as follows.

Was the grievant disciplined for "just cause" in accordance with Article 19, Section 19.01 and Section 19.05 of the collective bargaining agreement between the parties?  
If not, what shall the remedy be?

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RELEVANT CONTRACT PROVISIONS

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 Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

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

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## THE UNION POSITION

The Union argues management has violated the contractual rights of the grievant by failing to establish just cause for discipline as required by Article 19.01. The Union argues each of the disciplinary actions were not commensurate with the rule violations and that the grievant has been treated in a discriminatory manner.

As a remedy, the Union seeks expungement of all records related to the relevant disciplinary actions and the grievant be made whole.

## DISCUSSION

The Employer contends there has been no violation of the contract. The Employer based the discipline, associated with each of the cases heard, with the just cause standard mandated by the collective bargaining agreement. The penalty was considered proportionate to the seriousness of each rule violation. The Employer based the termination of the grievant on the seriousness of each of the related rule violations but also on the totality of the grievant's inexcusable past disciplinary record.

The Union stipulated to the procedural aspects of the disciplinary process required by the collective bargaining agreement. Each of the case presentations demonstrated little dispute over the basic facts of each case.

The grievant admitted he had prior knowledge of the rules in question. He admitted he had received training on the rules at the Highway Patrol Academy and was aware of the behavioral standards expected of him. The grievant did not have an explanation for any of violation of the rules. He only offered excuses.

The only argument the Union attempted to offer for the grievant's abhorrent behavior was discrimination. The grievant testified he thought he had been singled out to be disciplined by his supervisors because he is black. He claimed his supervisors had conspired to get him fired by following him around and refusing to offer him assistance.

Testimony from his supervisors painted a completely different picture. Lt. Quinn, Sgt. Requardt, and Sgt. Peters all testified about their willingness to assist David West with his on and off duty problems. They pleaded with David West to allow them to help, stressing the fact they could not do so with out him being honest and open.

Sgt. Requardt testified he did have discussions with David West concerning his problems. Sgt. Requardt offered to put Trooper West in touch with his minister to help him deal with his continuing personal problems. David West did not take advantage of the offers for assistance. Instead he indicated he had solved the problems himself.

The grievant is unwilling to take responsibility for his actions. He has attempted to convince the arbitrator he was the victim of racial discrimination which resulted in his termination from the employ of the State of Ohio. However, missing from his argument is any evidence of discrimination.

He claims Lt. Quinn was sent to the Cambridge Post to get rid of some people. The Employer's witnesses testified to the absurdity of this charge. It should be noted, David West was not assigned to the Cambridge Post when Lt. Quinn arrived.

Trooper West testified after his 60 working day suspension, which was for failing to protect the scene of an accident, Lt. Quinn threatened him. Lt. Quinn testified what David West now purports to be a threat, was merely the Lieutenant informing him his performance should improve to a minimum acceptable level. Lt. Quinn also offered him assistance in meeting the minimum expected performance level. David West also labeled Lt. Quinn's direction and offer of assistance as discrimination.

All of the discriminatory acts described by the grievant are based on his perceptions and personal conversations about what his supervisors intended. He has rationalized his behavior by blaming others for his poor performance and blatant rule violations.

David West apparently believes it is acceptable to break the rules as long as you do not get caught. It is apparently acceptable to lie to cover up rule violations. It is apparently acceptable to do personal business while in active pay status. It is apparently acceptable to engage in off duty conduct which



brings public discredit to himself, his fellow troopers and the Ohio State Highway Patrol. Finally, it is apparently acceptable to ignore Highway Patrol policies and procedures, the constitutional rights of citizens of this State, and abuse a position of authority in order to force his will upon his estranged wife.

The grievant has received ample training in the methodology employed to meet the minimum performance levels expected of a State Trooper. He knows what the Rules and Regulations are and what associated behaviors are expected. He knows them so well he lies when he knows his behavior may result in discipline.

The Employer should no longer be expected to tolerate the grievant's behavior and performance. Based on the facts demonstrated through evidence and testimony the disciplinary action taken in these four cases stand independently. The grievant was disciplined and subsequently terminated for just cause.

## SUMMARY

The management of the Highway Patrol has not been discriminatory, unreasonable or excessive in the amount of discipline imposed upon the grievant. In each of the four cases the Director of Highway Safety decided upon the level of discipline after careful review of the facts, the grievant's past disciplinary record and the seriousness of each proven offense. There was no discrimination in this case. If the Employer erred in the treatment of Trooper David West, the error was in being too tolerant.

The grievant has established a extensive disciplinary record. He has repeatedly demonstrated an inability to follow the Rules and Regulations of the Employer and now readily admits he knowingly violated the rules.

The Union does not claim any of the grievant's due process rights granted under the collective bargaining agreement were violated. There is no major dispute of fact in any of the four cases presented to the arbitrator. In fact, the grievant admitted the basic facts of each case were true and that he knowingly violated the rules and lied to cover them up.

The Employer carefully guarded the grievant's rights by conducting thorough, fair investigations of all the rule violations. Substantial evidence was gathered during each investigation which proved the violations occurred. The rules

violated were shown to be necessary for the safe and efficient operation of the organization. The Employer demonstrated the grievant was treated in a non-discriminatory manner. The Union can not produce one shred of evidence to indicate the grievant was treated differently from other troopers because of his race.

The grievant was terminated from his employment based upon the totality of the circumstances surrounding his behavior and performance while a member of the Ohio State Highway Patrol. The Employer has, since November 1986, attempted to combine discipline with training and counseling to correct the grievant's abhorrent behavior. The grievant has knowingly refused to comply with the organization's rules, policies and procedures. The grievant has personally destroyed his credibility with supervisors, fellow employees, the Cambridge Police Department, the court's and the citizens he is obligated to serve in the Guernsey County area.

The grievant's willingness to lie is evident throughout each of the disciplinary investigations presented to the arbitrator. Clearly, as evidenced by his testimony at arbitration, the grievant continues to forget, twist or weakly explain key incriminating factors of each case. Tony Neff's testimony clearly demonstrated the fact the grievant finds it impossible to tell the truth.

The forthright testimony of the Employer's witnesses Lt. Quinn, Sgt. Peters, and Sgt. Requardt demonstrates the good faith effort put forth by the grievant's supervisors to help him overcome his job related and personal problems.

The grievant refused to accept assistance and did not make any effort to change his reprehensible pattern of behavior. The State of Ohio, its citizens and the grievant's fellow employees should not be expected to accept the tremendous liability the grievant poses through continued employment as a State Trooper.

The highway safety mission of the organization is not forwarded through the expenditure of man-hours on endless administrative investigations. The very independent nature of a troopers job requires the individual to use common sense, good judgement and a wealth of training to contribute to the overall effectiveness of the organization. The grievant's conduct only serves to waste valuable State resources and limit the effectiveness of the organization.

The Employer has provided the grievant with ample opportunities to demonstrate a minimum level of performance. He has been treated in an overall lenient manner in the imposition of progressive discipline. The grievant simply refuses to conform his behavior or perform his sworn duties in a responsible manner.

The "just cause" standard, as mandated by Article 19 of the collective bargaining agreement, has been met. The discipline imposed in each of the four cases stand alone. The totality of the relevant circumstances demonstrate overwhelming cause to terminate the grievant from his employment with the Ohio State Highway Patrol.

\* \* \* \* \*

Respectfully submitted,



Captain John M. Demaree

and



Sgt. Richard G. Corbin  
Personnel/Labor Relations  
Ohio State Highway Patrol  
660 East Main Street  
Columbus, Ohio 43266-0562  
(614) 466-2590

November 3, 1989

ADVOCATES FOR THE EMPLOYER