

IN THE MATTER OF ARBITRATION

BETWEEN

OHIO STATE HIGHWAY PATROL

AND

THE FRATERNAL ORDER OF POLICE

OHIO LABOR COUNCIL, INC.

UNIT 1

KEVIN H. KEIFER, GRIEVANT

THOMAS P. MICHAEL, UMPIRE
COLUMBUS, OHIO

Grievance Nos. OCB 89-141, Kevin H. Keifer

This is a proceeding pursuant to Article 20, Sections 20.07 and 20.08, Grievance Procedure and Arbitration, of the 1989-1992 Contract between the State of Ohio, Ohio State Highway Patrol (hereinafter "Employer") and The Fraternal Order of Police of Ohio, Ohio Labor Council, Inc., Unit 1, (hereinafter "Labor Council").

Pursuant to the Contract, the parties selected Thomas P. Michael as the Arbitrator. A formal hearing was held at the Office of Collective Bargaining. This matter has been submitted to the Arbitrator on the testimony and exhibits offered at the hearing. The parties agreed to the tape recording of the arbitration hearing as well as to publication of this Opinion and Award.

APPEARANCES:

For the Employer:

SERGEANT RICHARD A. CORBIN
Labor Relations
Ohio State Highway Patrol

For the Labor Council:

ELLEN DAVIES
General Counsel
Fraternal Order of Police
Ohio Labor Council, Inc.

ISSUE

The parties have agreed that this matter is properly before the Umpire for decision. The parties have agreed to the following statement of the issue:

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?

PERTINENT STATUTORY PROVISIONS

§2935.26 Issuance of citation minor misdemeanor.

(D) A law enforcement officer who issues a citation shall complete and sign the citation form, serve a copy of the completed form upon the offender and, without unnecessary delay, file the original citation with the court having jurisdiction over the offense.

§4117.08 Subjects appropriate for collective bargaining.

(A) All matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section.

(B) The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the original appointments from the eligible lists are not appropriate subjects for collective bargaining.

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

(1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget,

utilization of technology, and organizational structure;

(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;

(6) Determine the adequacy of the work force;

(7) Determine the overall mission of the employer as a unit of government;

(8) Effectively manage the work force;

(9) Take actions to carry out the mission of the public employer as a governmental unit.

The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement.

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

ARTICLE 34 - STANDARDS OF PERFORMANCE

The Employer and the Labor Council are committed to providing the highest level of service to the citizens of the State of Ohio. Employees' performance will be measured utilizing standards which account for both law enforcement and administrative duties. Employees will be apprised of the relative standards of performance of their job, based upon the employee's duty assignment, hours of work and other relative criteria, and counseled if the employee does not meet these standards. The Employer shall not establish a quota system for the issuance of law enforcement violations.

Time spent engaged in activities approved by a supervisor of a non-enforcement nature shall be considered in measuring job performance.

OHIO ADMINISTRATIVE CODE

4501:2-6-02 Performance of Duty and Conduct

(B) Performance of duty

* * *

- (4) Members who fail to perform assigned duties because of an error in judgment or otherwise fail to perform satisfactorily a duty of which such member is capable, may be charged with inefficiency.

* * *

FACTUAL BACKGROUND

Kevin H. Keifer has been employed as a State Highway Patrol Trooper since September 9, 1988, assigned at the Findlay Post in Hancock County. In the early morning of May 23, 1989, the Grievant incarcerated a traffic violator at the Hancock County

Jail. The violator had been arrested for failing to wear a seatbelt and she refused to post a surety bond. However, while the Grievant gave the arrestee her copy of the charge affidavit he failed to file a copy of the affidavit with the court.

Early in the afternoon of the same day a clerk from the court telephoned the Grievant's post commander, Sergeant R.E. Strunk, to inform him that the arrestee was to be arraigned but no affidavit was on file. When Sergeant Strunk was unsuccessful in his attempt to contact Trooper Keifer he proceeded to the court and was permitted by the judge to file a charge on the seat belt violation in lieu of the grievant's affidavit.

On August 23, 1989, the Grievant was issued a one (1) day suspension without pay for violation of Highway Patrol Rule 4501:2-6-02 (B)(4) (i.e., inefficiency). While the Grievant and the Labor Council admit that Trooper Keifer's conduct constitutes a violation of the subject rule, the Labor Council contends that the Grievant's error was minor and harmless and that the penalty assessed was too harsh, contrary to the principles of progressive discipline and without just cause. The grievance (Joint Exhibit 2-5) requests reduction of the penalty to a written reprimand.

POSITION OF THE EMPLOYER

The Employer has shown through evidence and testimony that the Grievant's one day suspension was for just cause. The Grievant violated an established work rule (Joint Exhibit 4) due to his inefficiency in this court related incident.

The facts leading to the Grievant's suspension are not in dispute. The Grievant has admitted he violated the rule in

question. In addition, the Labor Council has made no claim of procedural error during either the disciplinary process or the grievance procedure. Nonetheless, the Labor Council argues that a one (1) day suspension was too harsh a penalty. If the court had refused the supervisor's affidavit the case would have been dismissed. In addition, the court could have disallowed any future filing of the seatbelt charge by the Grievant. This would have subjected the Employer to potential liability in civil litigation alleging false arrest and false imprisonment.

The Grievant received training at the Highway Patrol Academy on the laws of arrest as a cadet. (Joint Exhibits 8, 10 and 11) His training stressed the tremendous responsibility involved in depriving a citizen of his freedom.

The Employer was obligated to take disciplinary action in an effort to reinforce proper court procedure. The Grievant knew how to file an affidavit with the court and knew it was necessary to file a charge immediately upon incarcerating a suspect. The Grievant simply forgot.

The Employer imposed corrective discipline after careful investigation and consideration of the rule violation. The level of discipline was directly related to the seriousness of the proven offense and the Grievant's past disciplinary record, which includes two previous violations of the same rule:

Rule 4501: 2-6-02 (B)(4)

1. Written Reprimand 3/23/90 Failed to appear in court in response to a subpoena arising from his employment

Rule 4501: 2-6-02 (B)(4)

2. Written Reprimand 3/23/89 Failed to properly secure evidence by leaving a small baggie of confiscated marijuana laying on the sergeant's desk
3. Suspension (2 days) 4/21/89 Traffic crash, fell asleep while operating a patrol car
4. Written Reprimand 4/28/89 Traffic crash, chargeable

(See Joint Exhibit 9).

The Labor Council would prefer their judgment on the level of discipline be imposed in this case. Prior to today's hearing, the only element of just cause argued by the Council related to the level of discipline and not whether discipline was justified. The Grievant's history of minor rule violations coupled with the serious neglect of duty in this case warranted a one day suspension.

The goal of discipline in this case is corrective. In addition to the suspension, Trooper Keifer received individualized training on relevant rules concerning search and seizure. There was also a unit on memory skills. (Joint Exhibits 8, 10 and 11).

The Employer has imposed progressive discipline. The Grievant did violate the Employer's rule regarding inefficiency. The grievant knew the proper procedure for filing charges at the court. He simply forgot. Careful consideration of past discipline demonstrates the Grievant's propensity to forget details. He has the ability, he has been properly trained and properly disciplined in a progressive, corrective manner. There

has been no violation of Article 19, Section 19.01 or 19.05.

The grievance must be denied.

POSITION OF THE LABOR COUNCIL

The Employer has failed to demonstrate just cause for the one (1) day suspension of the Grievant, as required by Article 19 of the Contract. Trooper Keifer is a relatively new trooper of limited experience. While it is undisputed by the Labor Council that the Grievant neglected a basic duty that neglect was due to the press of heavy paperwork which contributed to his forgetting to file an affidavit. In light of the court's agreement to accept a charge from Sergeant Strunk no harm came of that minor infraction. The grievance should be granted and the discipline imposed by the Employer modified to a written reprimand.

OPINION

The Employer bears the contractual burden of proof to establish just cause for the one (1) day suspension of the Grievant (Article 19, §19.01). Additionally, the Employer is constrained to follow the principles of progressive discipline in disciplining a member of the bargaining unit (Article 19, §19.05). The facts of this case overwhelmingly establish that the Employer has met both contractual requirements.

Trooper Keifer had completed 24 weeks of training at the Ohio State Highway Patrol Academy and had begun his service as a trooper a scant nine months prior to the incident giving rise to this disciplinary action. By his own testimony that recent training included instruction on civil liability and federal civil rights (Joint Exhibit 11), as well as the Ohio statutes

regarding the laws of arrest (Joint Exhibit 10).

Even more damaging to the Labor Council's position is the evidence that Trooper Keifer had been disciplined by written reprimand two months prior to the affidavit incident for two prior violations of the same rule (Joint Exhibit 9). One of those violations also related to the Grievant's failure to follow prescribed court procedures by failing to obey a subpoena to appear for testimony. Neither of those prior disciplinary actions was grieved by Trooper Keifer.

Trooper Keifer admitted in his testimony to a violation of Rule 4501: 2-6-02(B)(4) and further admitted that he expected some form of disciplinary action to result. This neutral is convinced by the testimony of the Grievant and Sergeant Ronald Strunk that this third violation of the same workrule unduly inconvenienced both Sergeant Strunk and court personnel in the performance of their duties. Agreement by the court to accept Sergeant Strunk's charge in conjunction with a copy of the Findlay Post's teletype entry to Columbus of the arrest saved the Employer from an embarrassing and potentially costly predicament. The testimony of Captain Charles Ireland further establishes that the Employer fully considered Trooper Keifer's disciplinary history and had counseled him in the past regarding his neglect. The judgment of the Employer to impose a one (1) day suspension is well within the bounds of just cause.

AWARD

The grievance is denied and dismissed.


Thomas P. Michael, Umpire

Rendered this 1st day of August, 1990,
at Columbus, Franklin County, Ohio.

CERTIFICATE OF SERVICE

I hereby certify that the original has been mailed to Eugene Brundige, Deputy Director, Department of Administrative Services, Office of Collective Bargaining, 65 East State Street, 16th Floor, Columbus, Ohio 43215, with copies by regular, U.S. mail, postage prepaid to Ohio State highway Patrol, Labor Relations Department 660, East Main Street, Columbus, Ohio 43205, and Ellen Davies, General counsel, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215, this 1st day of August, 1990.


Thomas P. Michael