

IN THE MATTER OF ARBITRATION

BETWEEN

THE STATE OF OHIO

AND

THE FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.
UNIT 1

ARBITRATION AWARD

#528

CASE NUMBER: 15-03-901024-076-04-01
ARBITRATOR: John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on November 20, 1990 in the Office of Collective Bargaining, 65 E. State Street, Columbus, Ohio. Appearing for the Union were: Paul Cox, Esq., Ed Baker, Renee Engelbach, and the grievant, Brigitte Foley. Appearing for the Employer were: Sgt. Richard Corbin, Valerie Butler, Esq., and Lt. James Riggleman.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. No post hearing briefs were filed and the case was closed on 11/20/90. The discussion and award are based solely on the record described above.

II. ISSUE

The parties jointly asked:

Was the grievant suspended for just cause as mandated by Article 19, Section 19.01? If not, what shall the remedy be?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1 through #7.

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. EMPLOYER

1. TESTIMONY AND EVIDENCE

Lt. James D. Riggleman testified that he investigated the incident and interviewed Foley as noted on Management Exhibit #1 dated 7/11/90. He went on to say that he was told by the District Captain that the Sheriff in the area was concerned over Foley's interaction with some local individuals. Riggleman testified that Foley had a grievance chairperson with her and she was alleged to have discussed confidential information with local citizens at a local service station. Riggleman said that this may have harmed a drug enforcement program going on in that county.

Riggleman testified that Edgerton is small as is Williams County which is right next to Indiana. He went on to say that people interviewed were locals and the four men who were involved in the discussions at the service stations, apparently with Foley, knew about an individual by the name of Compo.

Lt. Riggleman was recalled and he testified about Management Exhibit #2 which shows law enforcement personnel killed in 1988 and 1989 at both the national, city, county, and local levels.

Management called Trooper Brigette Foley who testified that she worked in Williams County and she noted that it was rural and that Edgerton is a village and in that little town, there may be three gas stations.

Foley testified that she went to the Ohio State Highway Patrol Academy for 23 weeks and received rules and regulations. She testified that she was aware of the rules and regulations that she was charged with. Foley went on to say that she was trained on safety and investigations.

Foley testified that she knew a Laura Manon an assistant prosecutor in Defiance County. She said Kenneth Compo was involved in various traffic offenses and he apparently was raised in Edgerton. Foley said that Compo and Manon may have been related.

Foley testified that on June 15, 1990, she worked the 12:00 midnight to 8:00 a.m. shift. She said she stopped at a gas station and talked to a number of locals and learned that Compo lived near the railroad tracks. Compo had been arrested for traffic violations, said Foley.

Foley went on to say that she was talking to a service station attendant and a man came in a car and told the attendant that he could not go right to his house because Compo was at his house with his girlfriend. Foley said that she talked to the service attendant to find out the location in order to pick Compo up. She went on to say she learned where Compo lived and she knew that there had been a warrant out for him and she contacted the local police and they served the warrants and she stayed outside. Foley said that she transported Compo to jail.

Foley testified that she talked to Laura Manon who said that Compo might get six months.

Management Exhibit #1, said Foley, is a statement she gave to Lt. Riggleman.

Foley testified that she went to the gas station on or about 6/20/90 and stayed there about 45 to 60 minutes waiting for her car to be washed and there was some problems with the car wash equipment.

Foley testified that there were about five individuals and they were fascinated with her because she was a State Police officer.

Foley said that she does not randomly make 45 minute stops and it is not okay to stay 60 minutes at a gas station. She went on to say that she knew the people at the gas station and she thought that two of the individuals worked at the gas station and the others worked in the area. Foley said she knew the backgrounds of the people and the fact that all of the individuals at the service station knew Compo.

Foley was asked to read the bottom of page 4 and the top of page 5 of Management Exhibit #1. That testimony is as follows:

Young Man: Hey I heard you were in town last night, or the other night.

Foley: Yeah, we got your buddy, Mr. Compo. When he came, he came without resistance, no problem.

The Group: Well, what's he going to do now?

Foley: Well, I don't know.

One of group: Well, we hear he's going to get out of jail.

Foley: If he does, he's got to pay a big bond to get out of jail.

They: He can get out of jail another way.

Foley: Well, you know, if he wants plea bargain, if he wants to help out the police in any way, he could probably get out of jail.

They: Yeah, he, Kenneth Compo's a guy who knows a lot about a lot of things.

Foley: What do you mean?

They: He knows a lot about weapons, he knows a lot about drugs, he's done a lot of drugs. He knows a lot about alcohol, he knows a lot about stealing, so forth.

Foley: Well, maybe he can tell the Police information about people in the area and that way, he can get out of jail.

This conversation lasted about two minutes.

Foley said that she was aware that Compo was to be released in order to work on an investigation because she had talked to Laura Manon about that situation. She went on to say that she did not know about the drug task force in the area, but she knew that there were unmarked cars that were used by deputies. She testified that she never told any of the individuals at the gas station that she knew about the deputies' cars.

Foley admitted that she has not been trained to spend sixty minutes in a gas station on public relations.

Foley testified that the Highway Patrol interdicts couriers; that is, individuals who carry drugs and she has had such training in interdiction. She went on to say that she was aware that couriers can be dangerous and she knows that undercover work is dangerous and undercover people should not be identified.

Foley was asked whether she would act differently now than she did in the past and she said that she did not do anything that was incorrect and she would discuss Compo today just the way she did in the past. Foley said she did not release any information by talking to the local people about Compo.

The Employer also cross examined Brigitte Foley after she was called by the Union. On cross, Foley said that she was surprised that the individuals she talked to told her that Compo was going to be out of jail or was out of jail. She said she knew that, but she was surprised that they knew it. Foley said that Laura Manon told her that Compo would be used in some sort of investigations.

2) ARGUMENT

Management asserts that the case involves a dispute over the meaning of the grievant's word, even though there is no dispute over the actual language used as noted in the interview, Management Exhibit #1.

Management points out that Compo was arrested on 6/15/90. At the same time, Foley knew Laura Manon who was to press the case. Management pointed out that Edgerton is a very small town and Foley then talked with some local people at a gas station.

Management indicates that Manon and Foley had talked and the former indicated to Foley that Compo was to be released in order to provide information.

The Employer asserts that Foley repeated information to the group at the gas station and, in effect, she was giving away information about Compo. Management claims that Foley knew Compo was to be released and this was not a plea bargain but was a much more difficult and controversial agreement between the parties which allowed Compo to be released.

The Employer points out that when employees or troopers give away information, there is a great danger and it cites Management Exhibit #2 which identifies the number of law enforcement officers killed in 1990, 1989 and 1988 throughout the U.S..

The Employer asserts that Foley was in the gas station for about fifty minutes and that is way too long. She was acting in an inefficient manner waiting for her car to be washed and in addition, she is charged with discussing information which should not have been put forth by her to these various persons at the service stations, argues the Employer.

The five day suspension is commensurate with her offense even though the grievant had no prior record.

B. UNION

1. TESTIMONY AND EVIDENCE

The Union called Brigette Foley who testified that she was aware of the individual named Compo. She said she knew some of the people at the gas station and was aware that they knew Compo. Foley testified about the interaction that went back and forth between herself and the individuals which is noted on the bottom of page 4 and top of page 5 on Management Exhibit #1. At one point, Foley was asked what she meant by her statement on page 5 of "What do you mean?" and she said that was a way for her to obtain information about Compo from the other individuals at the gas station. She testified that the people she was talking to at the gas station may have had information which would have been useful to her.

She said that she did not have any other conversations with these individuals and it all took about two minutes.

On redirect, Foley said that she went to see Manon because the latter was going to prosecute Compo and she told Manon what the individuals at the gas station told her.

The Union did not cross examine Lt. Riggleman and Foley was not cross examined by the Union; rather she was called by the Union as their own witness.

2. ARGUMENT

The Union asserts that it should not even be in a Hearing. The Employer acknowledges that the dispute is over Foley's words and Management views the meaning one way and Foley views it another.

Joint Exhibit #6, mainly the first paragraph, states that Foley while off duty and in patrol uniform failed to:

...keep in confidence, knowledge and information acquired in the performance of your duties; to wit: openly discussed information which was damaging and embarrassing to persons and law enforcement agencies.

The Union asserts that there is no way that Management can prove that Foley's interaction with the employees at the gas station was damaging and embarrassing. The information that was discussed was not confidential and, in any event, she disclosed nothing that they were not aware of.

The Union argues that the language of 4401:2-6-02H(1) is an unconstitutional rule. Moreover, one cannot muzzle an officer's statement.

The Union asserts that Management is alleging that Foley said Compo was an informant, but she never said that.

The Union points out that in the conversation noted on Management Exhibit #1, Foley is talking to people who gave her information about Compo.

The Union goes on to say that Foley's comment about a plea bargain on the part of Compo disclosed no information at all since that process is already known. If it was not already known

by the persons she talked to, it would have been known by the public.

What occurred in this case was that Foley got information from these individuals but she provided no information to them. She disclosed nothing and did not give them information and nothing she did violated H(1).

The second issue raised in Joint Exhibit #6 deals with the fact that she remained at the service station for 50 or 60 minutes. The grievant agrees that she should have been on the road and that might have been worth a comment from her boss but it certainly does not warrant a five day suspension.

The Union asserts that this is not a serious case and it is clear Foley did not do anything inappropriate as noted in the first paragraph of Joint Exhibit #6 and clearly, while she perhaps stayed too long at the service station, certainly there is no basis to suspend the grievant for five days for waiting to get her car wash and at the same time, apparently talked to some people for a very short period of time.

For these reasons, the Union asks that the grievance be denied and that Foley be awarded five days back pay.

V. DISCUSSION AND AWARD

The parties agreed on the question:

Was the grievant suspended for just cause as mandated by Article 19.01? If not, what shall the remedy be?

Article 19.01 states that:

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause.

The question is whether there was just cause to give Trooper Foley a five day suspension.

Management asserted that Foley failed to keep in confidence knowledge and information acquired in her duties and discussed information which was damaging and embarrassing to persons and law enforcement agencies. The rule concerning performance of duty and conduct which the Employer alleges Foley violated was H(1) which is as follows:

Release and control of information

(1) A member shall keep in confidence any knowledge or information acquired in the performance of duties when the release of such information might be embarrassing or damaging to any person. A member shall divulge such information only when necessary to do so by reason of subpoena, or other court action, or upon the order by the superintendent.

The interaction between Foley and the people at the service station took about two minutes and occurred on 6/19/90 around 6:00 p.m. while Foley was on her 4:00 p.m. to midnight shift. The taped transcript, as noted earlier, indicates that in the interaction between Foley and the young men to whom she was talking that evening, Foley said the following:

Yeah, we've got your buddy, Mr. Compo. When he came, he came without resistance. No problem.

Foley went on to say that she was asked by them what he was going to do and she said:

Well, I don't know.

and she went on to say:

To get out of jail, he would have to pay a big bond.

She went on to say that he may want to plea bargain and if he helped the police in any way, he probably could get out of jail and she essentially repeated that statement again.

In what way do those statements damage or embarrass law enforcement agencies or in what way did those statements destroy confidence and produce knowledge and information to the individuals she talked to that evening?

The interaction between Trooper Foley and the other individuals on pages 4 and 5 of Management Exhibit #1 contains no discussion of confidential information. Foley produced no information which these individuals were not already aware of. In fact, the individuals knew about Compo; they knew that he could get out of jail one way or the other and they also knew a lot about what he had done as noted in the above statement. The individuals commented to Folry on the incidents involving Compo but she did not respond by adding any information to what these individuals already knew. The most that she said was that if Compo wants to plea bargain, he could probably get out of jail or he could provide the police information and, therefore, get out

of jail that way. However, the people Foley was talking to were already aware of those possibilities.

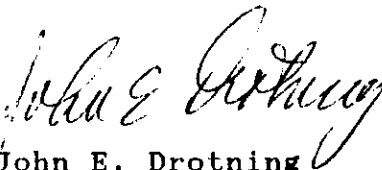
Foley's testimony was that she had knowledge that Compo was, in fact, going to be released to cooperate during some investigation. Her conversation, however, with the group at the service station did not reveal that he was going to be released or the basis for his release. It was the individuals who brought up the gossip that Compo was getting out of jail. Foley neither denied nor affirmed this presumption. Comments of the individuals indicated they knew of Compo's activities and reputation. Foley did not discuss Compo's case. Foley's responses were general in nature and contained suppositions about paying bond and/or plea bargaining to get released from jail and revealed nothing specific or detailed pertaining to Compo's situation. She did not "give away information" concerning Compo. Thus, her discussion did not contain comments concerning confidential information.

The Employer further argues that her discussion with locals constituted an embarrassing and damaging situation. The Employer failed to present testimony or evidence showing how this two (2) minute discussion concerning Compo was embarrassing or damaging. In fact, one might argue that her reactions and interactions with those individuals were designed as a ruse to acquire more information.

However, Foley did not have to be at the gas station for fifty minutes. Thus, as she admits, she should not have spent fifty minutes at a gas station chatting with a bunch of locals; some of whom were aware of Compo's problems. As she herself acknowledged, she should have gotten the car washed and gone on assignment.

However, having said that, there is no way that one could conclude that a two minute conversation regarding Compo during her interaction with the gas station employees and others justifies a five day suspension. The Employer has not proven that the discussion itself or the contents of the discussion violated the rules.

Therefore, the arbitrator rules that the suspension be overturned and that she be given back pay and her file be cleared of that offense.


John E. Drotning
Arbitrator

Cuyahoga County, Ohio
December 3, 1990