

#687

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING

AND

FRATERNAL ORDER OF POLICE  
UNIT 15

ARBITRATION AWARD

CASE NUMBER: 15 03-910602-0056-07-15  
ARBITRATOR: John E. Drotning

## I. HEARING

The undersigned Arbitrator conducted a Hearing on October 28, 1991, at the Office of Collective Bargaining, 65 State Street, Columbus, Ohio. Appearing for the Union were: Walter Florence, Esq., Renee Engelbach, and the grievant, Sgt. Ted Heiser. Appearing for the Employer were: Anne Arena, Capt. John Demaree, and Paul Kirschner.

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 October 28, 1991. The discussion and award are based solely on the record described above.

## II. ISSUE

The parties did not agree on a mutual statement of the problem. Management asked:

Has the Employer violated Article 40, Sections 40.01, 40.02, and 40.03 of the Collective Bargaining Agreement? If so, what shall be the remedy?

The Union put the issue as:

Has the Employer violated Article 40 of the Collective Bargaining Agreement? If so, what shall be the remedy?

## III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1, #2, #3, and #4.

#### IV. TESTIMONY, EVIDENCE, AND ARGUMENT

##### A. UNION

##### 1. TESTIMONY AND EVIDENCE

Sgt. Ted Heiser of the State Highway Patrol testified he had been with the Patrol for about 22 years. He testified that he was an Assistant Commander at the Eaton Post.

In May of 1990, Heiser testified he received a five day suspension for not meeting health and welfare standards. He went on to say the reason he did not meet standards was that he did not lose enough weight and in addition, he had excessive body fat.

Heiser said he tried working out with weights but the excessive body fat remained.

Heiser testified he had no discipline for job performance and his job notices are all good.

Heiser also testified that he operated as Post Commander when his Lt. was off duty.

The Union called Ms. Anne Arena as if on cross.

Ms. Arena testified that she was a Labor Relations Officer for the State Highway Patrol and she administers the Labor Contract.

Arena testified that she has to administer the health and welfare policy and make sure the employees follow that policy.

Arena was asked whether H.P.F.P. deferrals were given to patrolmen and she said yes and in one case a sergeant had a heart attack and he was deferred.

Arena went on to say that the Health and Physical Fitness Program deals with nutrition and the standards requirement. Arena said the maximum allowable standards were negotiated in late 1985.

Arena noted that the recommended body fat standards are noted on Chart B, page 14 and she also pointed out the various standards noted on Charts A, B, C, D, and E along with the various evaluation stages noted on pages 14 through 29 of Joint Exhibit #3.

Arena went on to testify on cross that if a trooper or an officer is overweight in the first month, then in the second month, they are weighed and if overweight, they go to level one as noted on page 30. The employee either meets standards or if he does not meet standards and makes sufficient progress as noted on Chart F on page 34, they can stay on level one but if there is insufficient progress, they would receive a verbal reprimand and go to level two and the levels operate every ninety (90) days.

Sgt. Heiser's suspensions, said Arena, were implemented prior to the Unit #15 Contract which took place on March 26, 1991.

Arena testified that the first trooper contract was agreed to in April 1986 and it was renegotiated and resolved in April of 1989.

Arena testified that one particular sergeant was given a deferral of a heart attack and she went on to say that the sergeant now meets and exceeds H.P.F.P. standards. She went on to say that she believed one other sergeant was given a deferral

because of a heart attack and she indicated language on medical deferrals noted on page 8 of Joint Exhibit #3.

Arena testified she knows of no deferrals for cancer.

Arena also testified about another sergeant who was permanently disabled and has been in a coma for several months as a result of an individual driver smashing into the sergeant's parked vehicle.

Arena testified that when the Contract first took effect, a number of sergeants had to go through four height/weight standards as noted on pages 13 through 15 and some of them may have had short term deferrals as far as she can recall.

The Union also cross examined Employer witnesses. Capt. John Demaree testified that he has been in the Personnel Section since the Health and Physical Fitness Program was set up. He reiterated Arena's testimony about the sergeants with heart attacks as well as the one seriously hurt in a parked car smashup.

Capt. Demaree testified that some sergeants have been transferred to headquarters if they are disabled for periods of time and he went on to say that people who are physically injured do not necessarily have to comply with the health and physical fitness policy.

Capt. Demaree testified there was a sergeant in New Philadelphia who had a back injury as a result of a car accident and he was on occupational injury leave for a while. However, since the Contract took effect, Demaree testified that the sergeant's back cleared up, thus he gets the \$50/month and he meets H.P.F.P. standards.

## 2. ARGUMENT

The Union asserts that the question is whether Article 40 was violated and the Union focuses on 40.01 and 40.04. The Union states that the Highway Patrol has always given deferrals for medical conditions and the Contract itself prohibits permanent deferrals but it can add deferrals for sergeants.

The Union argues that in the case of the sergeant who was in coma, there is the possibility that he may never be able to comply with H.P.F.P. standards and therefore, the Union questions how long must this situation go on without him having a permanent deferral?

The Union asserts that Sgt. Heiser has been unable to comply with the H.P.F.P. and therefore, he ought to get a permanent deferral since he is unable to lose weight.

For these reasons, the five day suspension given Sgt. Heiser should be rescinded and he should be made whole.

B. EMPLOYER

1. TESTIMONY AND EVIDENCE

Capt. John Demaree testified that he was the Executive Officer for the Personnel Office and he went on to say that he was involved in the Unit 15 Contract negotiations. In addition, Demaree testified that he is aware of the H.P.F.P. program as noted on Joint Exhibit #3.

Demaree noted Article 40.01 states in part that the program:

...must also provide a systematic standard for progressive discipline.

He went on to say that 40.02 and 40.03 are not part of the H.P.F.P. policy.

Demaree testified that Management wanted to stop paying dues for sergeants to work out at various health facilities mainly because sergeants were not using these facilities. As a result of negotiations over the Contract, a Fact-finder said that Management would agree to give employees a \$50/month supplement if they were in compliance with the health program. Thus, if the sergeant is in compliance with the health program, he gets \$50 a month and Management no longer pays dues to the health fitness club.

Demaree testified that the Union was concerned about people who did not meet requirements and, therefore, Management agreed to pay for the health care facilities for those who were not in compliance with the health program between March 1991 and December 1991 but once they met the requirements, they get \$50 a month. If they fall back and are unable to meet the physical requirements, they do not return to the health facility but must

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## V. DISCUSSION AND AWARD

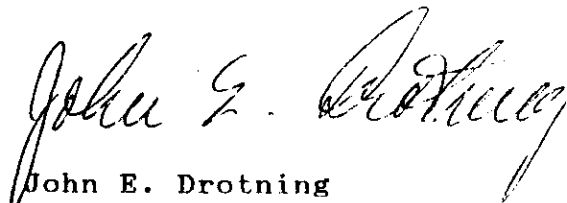
The parties disagreed on the issue but it is essentially whether the Employer violated the Contract, specifically Article 40. More specifically the Union argues that Sgt. Heiser, for various reasons, is unable to comply with the H.P.F.P. policy as noted in Joint Exhibit #3. There was some testimony about other officers who were injured or had heart attacks but in this case, there is no doubt that Sgt. Heiser was not injured nor did he have a heart attack or any other medical problem. The specific question is whether or not he can reach the H.P.F.P. standards. In short, the Employer asserts that Sgt. Heiser is overweight under H.P.F.P. language. That overweight condition means that he is unable to meet the standards as testified on pages 17 through 30 which talks about levels one, two, three, and four.

The only argument supporting Sergeant Heiser's claim is that for whatever reasons, Sgt. Heiser is totally unable to meet the H.P.F.P. standards and therefore, he should receive a permanent deferral. Moreover, he should receive no more reprimands from the Employer under H.P.F.P. language.

The Employer argues that the Contract was not violated and the testimony and evidence does not allow a conclusion that Sgt. Heiser should be recompensed for the five day suspension beginning in 1988.

Sgt. Heiser received a verbal reprimand, a written reprimand, a one day suspension, a three day suspension, and a five day suspension and all of these suspensions are a function of his inability to meet H.P.F.P. standard as noted on Joint Exhibit #3.

The H.P.F.P. standards are reasonable and they allow for significant weight differences as a function of height, etc.. Thus, the Employer's decision to dock Sgt. Heiser because of his inability to meet H.P.F.P. standards is persuasive. Therefore, the grievance must be denied.

  
John E. Drotning  
Arbitrator

Cuyahoga County, Ohio  
November 7, 1991