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In the Matter of Arbitration

Between

Fraternal Order of Police-  
Ohio Labor Council

and

The State of Ohio, Department  
of Natural Resources

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Case Numbers:

25-17-(8-15-91)-23-05-02  
25-17-(12-12-91)-25-05-02

Before: Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

Paul Cox  
Fraternal Order of Police-Ohio Labor Council  
222 East Town St.  
Columbus, OH. 43215

For Ohio Department of Natural Resources

Greg Rees  
Carolyn S. Collins  
Ohio Department of Natural Resources  
1930 Belcher Dr., D-2  
Columbus, OH. 43224

Introduction: Pursuant to the procedures of the parties a hearing was held in Sandusky, OH. on January 27, 1992 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in these cases was closed at the conclusion of oral argument. As will be apparent from the text below this dispute involves two Grievants, with differing amounts of discipline at issue. As many of the events at issue in this proceeding are common to both grievants they are treated together for purposes of this decision.

Issues: At the hearing the parties agreed upon the issues in dispute between them. Those issues are:

Was the three (3) day suspension imposed upon Mr. Joe Yingling for just cause? If not, what shall the remedy be?

and

Was the five (5) day suspension imposed upon Mr. Joe Holly for just cause? If not, what shall the remedy be?

Background: While certain aspects of the events that prompt this proceeding are disputed between the parties the central elements that moved the State to discipline the Grievants are not a matter of controversy. Both Grievants are Watercraft Officers with the Division of Watercraft of the Ohio Department of Natural Resources. Both are based in Sandusky, OH. and they were involved together in the incident which is central to this dispute.

On May 27, 1991 Officers Yingling and Holly, together with a volunteer, Robert Dankelfson, took over the operation of Boat No. 603 at the start of the second shift. That vessel is powered by two Evinrude outboard engines. The engines are fueled and lubricated by a VRO system. That system involves a mixture of oil and gasoline. When they took over the boat from the previous crew they received an emergency call. They were informed of a possible drowning at East Harbor. They proceeded to the harbor and assisted in the search for the victim. In due course they were informed no drowning had occurred. Accordingly, they commenced their patrol towards

Put-in-Bay. During the course of the shift a number of incidents of routine nature occurred. While en-route to Put-in-Bay an abnormal noise was heard. A search for the cause found a loose hour meter on the starboard engine. The crew believed the cause of the strange noise had been found. In fact, the noise was not heard again.

Later in the patrol, as the shift was coming to an end and the crew was proceeding back to Sandusky, another noise was heard from the starboard engine. The noise was perceived as signifying mechanical problems. The engine was again shut down and a search for the cause undertaken. It was discovered that the oil reservoir which supplies oil for the VRO oil/gas mixture was dry. It was instantly apparent to Officer Holly that they had "fried an engine." Upon return to port the mechanic responsible for maintenance was informed of the incident. The following morning he started both the port and starboard engines. The mechanic, Mr. Hathaway, immediately heard the improper noise from the starboard engine. He also heard the alarm signifying no oil sound. Thereupon he proceeded at idle speed to the local boat yard, Portage Entry Marine, Inc. The boat yard was instructed to inspect the engines to determine where the problem was occurring. Both port and starboard engines were checked out by the boat yard and it was found that they had been damaged. In the opinion of the mechanics at Portage Entry Marine, there was the

possibility that the engines had been operated without oil. The total bill for repair of the engines was \$4,475.00.

For his role in this incident Officer Yingling received a three day suspension. Officer Holly was administered a five day suspension for his role in this incident plus additional incidents which will be set forth further below. Both Officers Yingling and Holly grieved to protest the discipline administered to them. Those grievances were not resolved in the procedure of the parties and they agree that they are properly before the Arbitrator for determination on their merits.

Position of the Employer: In addition to Boat 603 there is in service at Sandusky another boat, 601. Boat 601 is powered by Yamaha engines. Boat 603 utilizes Evinrude power. Both sets of engines utilize the VRO oil/fuel system. There are some differences between them though they are fundamentally alike. For instance, the system on Boat 601 utilizes a gauge system with green, yellow and red markers to indicate a oil problem. That system is supplemented with an audible alarm. Boat 603, the craft involved in this situation, uses an opaque oil reservoir placed on the deck in front of the engines. Operators can see the oil level merely by observing the tank. That system is supplemented by an audible alarm which gives different signals depending upon the problem, eg. low oil level or no oil. Messrs. Yingling and Holly had received

extensive training on boat 601. They were familiar with the VRO system. They should have been alert to the developing problem on May 27, 1991. Both officers had been instructed to read the operators manual for boat 603. Both had operated it frequently prior to this incident. It was their inattention that permitted the low oil level to develop and result in the damage that occurred in this situation. Consequently, discipline is warranted according to the Employer.

At the time of this incident Officer Yingling had a one day suspension on his record. By the terms of the Agreement it had not yet been expunged from his personnel file. It was alive. The State acted properly in taking that discipline into account. When doing so, it concluded that more severe discipline was justified. Accordingly, it administered the three day suspension at issue in this proceeding.

While Officer Yingling received a three day suspension for his role in this incident, Officer Holly was administered a five day suspension. The State asserts that the additional two days off duty without pay were justified by other occurrences. Not only should Officer Holly, along with his colleague, Officer Yingling, have noticed the low oil level and rectified the situation prior to damage occurring, he engaged in unacceptable behavior related to this incident. On May 27, 1991 it was Officer Holly who came to discover the low oil level and who immediately concluded it was this that

had damaged the engine. (He was aware of damage only to the starboard engine. Only upon further inspection was it discovered that the port engine was damaged as well.) After exclaiming "we fried an engine" Mr. Holly lost control of himself. He hit the boat with his fist and generally manifested symptoms of a fit of anger. This conduct is unbecoming a Watercraft Officer in the opinion of the State. In addition, subsequent to this event the volunteer, Bob Danklefson, himself an officer in the Sandusky Police Department and a trained observer, wrote a lengthy memo to the Department detailing his observations of Mr. Holly's behavior. He refused to work anymore with Officer Holly as he regarded him to be hyperactive and subject to mood swings. He concluded that Mr. Holly was unprofessional. This view was seconded by Officer Yingling who wrote a memo complaining of Officer Holly's performance to their supervisor.

In addition, the State suspended imposition of discipline to Mr. Holly. It urged that he enter an Employee Assistance Program. One of the terms of that EAP Agreement was that Officer Holly refrain from further actions that might give rise to discipline. Subsequent to the boat incident Officer Holly was involved in an accident with his State automobile. Some \$624.10 worth of damage was sustained by Officer Holly's car. Officer Holly acknowledged that the accident was his fault as he did not allow enough clear

distance. When completing the accident report form at the Watercraft Office in Sandusky Officer Holly was agitated and upset. He was not in control of his emotions. The State asserts no reason exists for it to tolerate such behavior. Hence, the more substantial discipline administered to Officer Holly is justified it asserts. In the State's opinion, the grievances of Officers Yingling and Holly should be denied in their entirety.

Position of the Union: The Union asserts that the discipline under review in this situation does not meet the test of just cause. Hence, it should be removed from the records of both officers in its view. When boat 603 came into service with the State officers did not receive any special training. This was in contrast to the situation that occurred when boat 601 was activated. Officers received two days of training on 601. Conversely, when 603 was placed into service, officers were merely urged to read the operator's manual. The two boats are different. They have different engines. While the VRO systems are fundamentally similar, there are differences as well. Boat 603 has an alarm system to warn of oil difficulties. Boat 601 utilizes a gauge system as well as an alarm. Officers operating 603 were never specifically directed to check the oil level. Furthermore, during the shift in question, the oil alarm did not sound. There is no testimony from any of the three crew members to the effect they heard

anything remotely resembling the alarm. They heard an unusual noise. They checked it out and found the loose hour meter on the starboard engine. There was no reason not to operate the engine with that deficiency.

When the noise was reported to the mechanic, Hathaway, he started the engines. He heard the noise and concluded it meant trouble existed. Thereupon he did not shut the engines down. To the contrary, he drove the boat some distance to the boatyard. In the Union's view it is impossible to hold Officers Yingling and Holly responsible for causing some \$4500.00 worth of damage as Hathaway operated the boat when he knew that there was trouble with the engines.

On the day in question there was no oil on board. Even if the crew had been aware of the low oil level, which they were not, they would have been unable to do anything about it. Furthermore, it is unrealistic for the State to assert that the officers should have checked the oil level upon commencement of their shift. They departed Sandusky harbor on an emergency call. They cannot be expected to delay departure from the dock to check the oil when responding to a reported drowning.

At the hearing one of crew members from the first shift on May 27, 1991, Rodger Norcross, testified that when they tied up at the dock at the conclusion of the shift and refueled a check of the oil level showed that the reservoir



was one-half full. That was more than sufficient oil for the next shift. Had there been any indication of low oil the crew going off duty would have added oil as part of the refueling process. In the final analysis, the oil level was low, but Officers Yingling and Holly had no reason to be concerned about it when the boat was turned over to them for the start of their shift.

That Officer Holly was upset on several occasions as this incident unfolded cannot serve as grounds for discipline in the Union's eyes. Naturally he was concerned when he concluded that an engine had experienced substantial damage while entrusted to him and his colleagues. Furthermore, to meet out discipline to an individual who was upset and indicated that to be the case after an auto accident is inappropriate. The Union poses the rhetorical question, who is calm after an auto accident? Mr. Holly was in the Employee Assistance Program. He knew his behavior was under close scrutiny. When he had the accident he was understandably concerned. In fact, Mr. Holly's supervisor recommended he receive a written reprimand for the auto accident. To add two days off to the discipline is inappropriate under the circumstances according to the Union. Furthermore, the State asserts that the three day suspension administered to Officer Yingling is appropriate because he had a live one day suspension in his file. Mr. Holly had no live discipline at

the time the State administered the five day suspension at issue in this proceeding. As that is the case, the Union asserts the discipline is clearly excessive. It urges that the grievances of both officers be sustained and that they be made whole for their lost wages.

Discussion: When boat 601 was placed into service officers at Sandusky were given two days of training. When boat 603 was activated no formal training was provided. The VRO oil/lubrication systems on the boats are similar. Nonetheless, there are differences between them. Why the State regarded two days of training to be necessary for operators of 601 and no formal training to be required for crew of 603 is a mystery. Employees cannot be held entirely responsible for damage to equipment when they have not been trained in its operation.

When the damage was reported to supervision at Sandusky the mechanic, Mr. Hathaway, was directed to investigate the problem. Upon starting the engines of boat 603 he perceived that they were indeed operating improperly. Thereupon he drove the boat to the boatyard, some distance away. His passage was made at low speed. Nonetheless, the fact remains that it was apparent to him that the engines were malfunctioning and that he then proceeded under power to the boatyard. Repair of the engines cost approximately \$4500.00. It is impossible to determine what amount of damage occurred

on the patrol conducted by Officers Yingling and Holly and how much occurred on the voyage to the boatyard. For the Grievants to receive substantial discipline for their role in this affair when that role has not been precisely determined is improper.

No testimony or evidence whatsoever came on the record to indicate that the alarm designed to indicate problems with the oil supply was ever heard by any of the crew members. The volunteer, Officer Danklefsen, who obviously dislikes one of the Grievants, Officer Holly, testified that no crew member heard the alarm at any time during the shift. His testimony corroborates that of the Grievants. When the strange noise was heard on the passage to Put-in-Bay it was checked out. A loose hour meter was found. That situation had occurred on the starboard engine before. It did not provide occasion to cease the patrol or to continue it solely on the operation of the port engine.

The State cannot seriously assert that Officers Yingling and Holly should have remained at the dock and checked the oil level when they were in receipt of a call for assistance involving a possible drowning. That assertion is ill-founded. A life threatening incident had occurred. Assistance was required. Speed was of the essence. Had the officers remained in port checking the oil and thereby delayed their response the potential for loss of life would have been magnified. No

discipline can be meted out to officers who responded with alacrity to an emergency situation.

Those observations must be tempered with the observation that any problem with the oil level should have been obvious to the crew members. As will be recalled, the hearing in this matter was conducted in Sandusky for the express purpose of showing the Arbitrator boat 603. The oil reservoir on boat 603 sits in plain view. It is opaque. Even a cursory glance at the tank would have shown that the oil level was low. Had that observation been made it requires no stretch of the imagination to conclude that the officers would have rectified it by securing oil at one of the ports visited on their patrol. Officers Holly and Yingling are veterans of service with the Department. There are certain aspects of job performance that may be taken for granted by the Employer. The Department is not unreasonable in expecting that operators of its vessels will check the oil as a matter of routine. This is especially true in the case of boat 603 where the oil level can be checked visually.

As is often the case, this dispute presents a situation where there is sufficient fault to go around. The officers were not trained on the specifics of operating boat 603. The engines were operated after it was known they were experiencing mechanical difficulty. No alarm was heard. Set against these facts is the overriding fact that operators of

mechanical equipment must take fundamental precautions to ensure that it is operated properly. Checking the oil level, particularly when to do so was as easy as it was in this situation, is such a fundamental precaution. Notwithstanding the mitigating circumstances set forth above, the Grievants must be held accountable for some, indeterminate, portion of the damage experienced by the engines that powered boat 603.

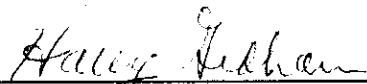
It is obvious from the memo's of Officer Yingling and Officer Danklefsen, the volunteer, that Officer Holly's behavior is not highly regarded. That was confirmed by their testimony at the hearing. Officer Holly received two more days off duty without pay for his behavior after being involved in an automobile accident. The rhetorical question of the Union is well posed. Who indeed is calm in such situation? Holly's mental distress was amplified by the fact that he knew full well that he was on thin ice due to the incident involving boat 603. In essence, Holly received two days off for being agitated after being involved in an accident while driving a state vehicle. It was not unreasonable for him to be upset under the circumstances. That this was the case was recognized by his supervisor who recommended that he receive a written reprimand for the incident.

When discipline was administered to Officers Yingling and Holly Officer Yingling had a current one day suspension

on his record. No such live discipline was on Officer Holly's record. To impose additional discipline upon him in such circumstances is inappropriate.

Award: The grievance is denied in part and sustained in part. As the Grievants do not bear sole responsibility for the damage sustained by the engines of boat 603 it is not possible for the three and five day suspensions administered to Officers Yingling and Holly to be completely sustained. As they bear responsibility for not giving even the most cursory examination to the readily visible oil reservoir, discipline is appropriate. The three day suspension administered to Officer Yingling is to be reduced to a one day suspension. No consideration may be given to the behavior exhibited by Officer Holly in the aftermath of his automobile accident. Accordingly, the five day suspension administered to Officer Holly is to be reduced to a one day suspension as well.

Signed and dated this 11<sup>th</sup> day of February, 1992 at South Russell, OH.

  
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Harry Graham  
Arbitrator