

#817

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING
STATE OF OHIO

AND

FRATERNAL ORDER OF POLICE
UNIT 1

ARBITRATION AWARD

CASE NUMBER: 15-03-920629-055-04-01
ARBITRATOR: John E. Drotning
HEARING DATE: September 23, 1992

I. HEARING

The undersigned Arbitrator conducted a Hearing on September 29, 1992 at the Office of Collective Bargaining, Columbus, Ohio. Appearing for the Union were: Gwen Callender, Esq., Ed Baker, David Simpson, and the grievant, Dean Reinking. Appearing for the Employer were: Lt. Rick Corbin, Paul Kirschner, Anne Arena, and Lt. Mike Megison.

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 September 29, 1992.

The discussion and Award are based solely on the record described above.

II. ISSUE

The parties agreed that the question is:

Was the grievant, Dean Reinking, terminated for just cause? If not, what shall be the remedy?

III. STIPULATIONS

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

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. MANAGEMENT

1. TESTIMONY AND EVIDENCE

Management called Lt. Mike Patrick Megison, a Staff Lieutenant with the State Highway Patrol. Megison testified he had been the post commander at the Delaware Post between October 1991 and March 1992. He said that he knew Dean Reinking.

Megison said he was aware of an incident involving Reinking's marital problems and he testified that Reinking's negative work performance was apparently a function of problems between himself and his wife. Lt. Megison testified he recognized Reinking was somewhat withdrawn, sluggish, and not a pro-active employee and he provided him with some literature outlining the employee assistance program which he thought might help Reinking's problems.

Megison said that he told Reinking that there had been threats of violence between Reinking and his wife and that sort of interaction would affect Reinking's professional life, reiterated Lt. Megison.

Megison testified that Reinking became somewhat more positive after talking to him because he said that somewhere between November of 1991 and December 1991, Reinking apparently sought some counseling, but Megison said the situation with his wife apparently deteriorated.

Megison pointed out that as of December 1991, Trooper Reinking had been with the State Highway Patrol for about one and one-half years.

Megison said that Reinking had continuously used up his leave balance and he was close to the edge. He went on to say that he wrote up the incidents as noted in Management Exhibit #1 identified as B-1 and B-2. Megison said his document noted that Reinking said that his wife was irrational and that she made wild-eyed speeches full of emotion and that she threw articles at Trooper Reinking and made threats against him in the presence of a Sgt. Schultz.

Lt. Megison also cited Management Exhibit #1 (See C-1 and C-2) which are interoffice communications to Capt. Everhardt from Lt. Megison. Apparently on Monday, December 9, 1991, Reinking became involved in a domestic dispute with his wife, Heidi, and threatened to take his life by shooting himself with a rifle. A short time later, he threw himself down the basement stairs, injuring his collar bone and left forearm. As a result, Dr. Charles Hall, a mental health physician, was brought in to observe Reinking's mental condition (see Incident C on Management Exhibit #1). Lt. Megison said that he talked to Reinking about that basement stair incident and he tried to talk to Reinking while the latter was in the hospital and Reinking apparently simply did not respond to any of the questions that Lt. Megison asked.

Lt. Megison said that he returned on more than one occasion to talk to Reinking while the latter was in the hospital and Megison said Reinking seemed happier and Reinking said he wanted to take care of the children and leave his wife and Megison said that he thought Reinking might be "on track".

However, Megison said that on January 16, 1992, Reinking said his wife started another incident in which she threw a toaster at him and in any event, on March 9, 1992, Grievant Reinking returned to work and a psychiatrist said he was okay.

Megison said that he told Reinking that he could be disciplined for his behavior. Moreover, Lt. Megison said a local sheriff told him that Reinking had fallen down the stairs and that there had been an altercation between Reinking and his wife.

On redirect, Megison said that instability of the wife was not the basis for Reinking throwing himself down the cellar stairs.

Lt. Megison then identified incidents E and F which occurred on June 7 and June 16, 1992. Apparently there was a 911 disturbance call from the house and there was some report that shots had been fired at the house where Reinking and his wife lived. In that case, Lt. Megison said that a police report noted that there was a domestic dispute between the grievant and his wife and the grievant threatened suicide and was holding a pistol while hiding in a bedroom closet. Moreover, Management Exhibit #4 notes that a staff lieutenant, Ron Lewis, talked to Grievant Reinking about his domestic problems and suicidal behavior.

The final incident occurred on June 16, 1992 where apparently Grievant Reinking and his wife had a violent physical struggle in front of their apartment and the grievant took his personal vehicle and he was observed and chased by a Delaware police officer at speeds in excess of 100 miles an hour. The police identified the grievant and then terminated the chase in order to avoid any risk to all parties.

Apparently, Reinking at about 6:30 p.m. on 6/16/92 called the Highway Patrol dispatcher and he arrived at the Communications Center and Dispatcher Mills described him as distraught, intoxicated, and paranoid. He apparently said he was concerned about being arrested, handcuffed, and transported back to Delaware in a Highway Patrol car. In any event, a Major Thomas Charles was able to talk the grievant into surrendering and he was arrested, booked, and charged with domestic violence, fleeing and eluding law enforcement officers, and reckless operation of a motor vehicle. Apparently, Grievant Reinking plead guilty and was fined \$750, sentenced to 60 days in jail, and had his driving rights suspended for 180 days, etc.. He only served five days in jail with the remaining time being suspended by the court.

Management cross examined Grievant Dean Reinking who testified that he was 25 years old and that he was first married when he was 18. He testified he and his wife, Heidi, always had fights even before they were married when they knew each other in school. Reinking said that while he was in the service, he once had to move into the barracks and stay there one week because of

problems between himself and his wife. Reinking said he had been a military police officer and he was to operate at a high standard. Reinking said he went through State Highway Patrol training and he understood the Code of Ethics and he cited Management Exhibit #2. Reinking reiterated that State Highway Patrol officers are held to a higher standard than the public and he became a trooper in June of 1990.

Reinking said that he had talked to Sgt. Baird and he told him that his wife was the cause of his problems.

Reinking was asked whether he alleged suicide on September 16, 1991 and he said No but that his wife told him that she wanted him dead.

Reinking said that Lt. Megison was very fair to him and the latter tried to give him assistance and help.

Reinking said that on December 9, 1991, he did throw himself down the stairs. He was asked whether it was a suicide attempt or an attention getter and he did not respond to that question.

On March 1992, Reinking said he returned to work and he did not live with his wife as of June 1, 1992. He was asked whether he was hiding in the closet with a weapon on about June 7th and he was asked whether the reason for hiding was to threaten his wife as an attention getter or was it a suicide attempt and he did not respond to the questions.

Reinking said that he talked to Capt. Anderson and he was put on administrative leave and he knew he could be terminated.

Reinking said that he lived with his wife between June 7, 1992 and June 16, 1992. He went on to say that he had been drinking on June 16th and he fled in his car and he was guilty of that crime. He was asked whether he was concerned about his job at that time and he said not really but was concerned about his wife as he fled from his house and drove almost 100 miles an hour.

2. ARGUMENT

Management notes that the facts are not in dispute. The State Highway Patrol officers must be above and beyond the call of duty. Management reiterates that the initial hiring requirements for State Highway Patrol officers are very clear. Moreover, all new officers go through six months of training and they are subjected to a higher level of work.

Management notes that if a law officer violates the laws then the problems speak for themselves. It is not only embarrassing to the State Highway Patrol but such behavior reduces the quality of State Highway Patrol officers.

In this case, the testimony and evidence shows that Reinking's wife, Heidi, reported to the Delaware police that he had threatened suicide during a domestic dispute. Moreover, apparently, the local police had responded to the Grievant's residence because of domestic disturbances on a number of occasions.

Management reiterates that the problems between Reinking and his wife continued and it cites the threatened suicide on December 9, 1991 and even though he was on disability leave for a thirteen week recovery after falling down the basement steps and had actually received professional counseling, the grievant's domestic problems continued.

Management notes that both the Delaware Sheriff's Department and the State Highway Patrol had a close working relationship and they were aware of the grievant's problems.

Management indicates that on June 7, 1992, the grievant was involved in a third suicide threat.

Management notes that Highway Patrol employees can be disciplined for off-duty behavior as noted under Article 18.09.

Management notes that throughout all of the testimony, evidence, and documents, the State Highway Patrol tried as much as possible to help the grievant deal with his marital problems.

Management notes that Trooper Reinking was aware that his behavior could not continue and he knew that he must shape up or else there would be no way he could operate as a State Highway Patrol officer.

Management goes on to state that neither State Highway Patrol officers nor the union can fault the Employer for trying to give Reinking help necessary to shape himself up.

Trooper Reinking, notes Management, was a very short term employee and he had a host of problems with time off apparently as a result of his marital situation and the Employer did not overreact to Reinking's problems.

Management states that the Union wants to put all the blame on Reinking's wife but that is not persuasive because it is the trooper's job to do well in such difficult situations.

Management asserts that the Union asks that the grievant be given another chance but to do so means that the Arbitrator substitutes his judgement for that of the State Highway Patrol staff and if that were persuasive, that in effect means the Arbitrator would be overriding the Contract. In short, Management argues that for the Arbitrator to rule in favor of Grievant Reinking would require a decision that is inaccurate and inappropriate.

Management reiterates that what a trooper must be able to do is deal effectively with people on the road and in this case, the decision is clear and reasonable and the grievance must be denied.

B. UNION

1. TESTIMONY AND EVIDENCE

Dean Reinking testified that he had been with the Ohio State Highway Patrol for two years and six months and he now lives in Fayette, Ohio with his brother-in-law and sister and has been there since June 16, 1992.

Reinking said he lived at 1183 Rivercrest Drive in Delaware, Ohio in June of 1992. He said he had been separated from his wife since December of 1991; that is, his wife had left him.

Reinking said the gun shot of the pistol shooting and his wild driving were the results of his termination in June of 1992.

Reinking acknowledged that he had marital problems and he was terminated as noted on Joint Exhibit #3.

Reinking said that on June 7, 1992, he was living with his wife and they had talked and his wife whacked him and told him to jump down the stairs. He said he went and got his pistol and was asked whether he thought of suicide and he said no.

Reinking said that his wife then called 911 and he had an unloaded pistol and he reloaded and gave her the pistol and she ran outside and he followed her and as he reached for the pistol that she had, it went off. Reinking said that he then took the pistol and unloaded it.

Reinking said he then went upstairs in the apartment, threw an object against the wall and waited for the police to come.

The second incident, said Reinking, occurred on June 16, 1992 because his wife, Heidi, was sleeping with another person

and he said he would leave but he was going to take his vehicle - a Firebird. That annoyed Heidi, said Reinking, because she wanted the car. He said that his wife smacked him two or three times and he threw her on the ground. Reinking said he put a coil wire on the Firebird and she then called 911.

Reinking said that he then drove north on Route 23 at high speed. Since that date, Reinking said nothing has occurred.

Reinking said he met with Dr. Ashbrook on June 7th and again on June 15th. He was asked what led to his problems and he said he knew his wife Heidi from high school when he was 18 and she was just 15. He went on to say that his mother died when he was 18 and then he went into the army and his first son had Downes syndrome.

Reinking said he was military police officer in the U.S. Army. He also testified his former wife, Heidi, had problems with her parents because Heidi's father had affairs with women.

Reinking said that he and his former wife, Heidi, had another child who was normal.

Reinking said that he is seeing Ashbrook continually and he went on to say that eventually he was divorced on June 26, 1992 and his former wife moved to Pompano Beach in Florida. He said he thought he was supposed to have liberal visitation rights with his children and he hopes to see them.

Reinking said he feels 100% better now and there is a great weight off his back.

Reinking testified that he always wanted to be a State Trooper and he feels he is okay and that his wife was the root of all of his problems.

The Union cross examined Lt. Megison who acknowledged that he thought Reinking's wife was the cause of his problems.

2. ARGUMENT

The Union asserts that publicity in this case is not important and the TV issue which we observed is not the basis to find against Dean Reinking. Moreover, the Union does not fault the Employer for being lenient towards Reinking's problems. The Employer, notes the Union, tried to counsel Dean Reinking but once it did that, then it tried to build a case against Reinking. In short, the Union argues that Management is trying to do it both ways.

Dean Reinking, asserts the Union, acknowledges that he did wrong and he has taken responsibility for fleeing a number of situations. However, the Union argues that Reinking did not try to make things bad; rather, while quite young, he had a first love affair, married, and he and his wife had continual problems. The Union simply states that what makes sense is to give Reinking another chance and it cites Dr. Litvak's twelve page statement (see Joint Exhibit #4). The Union notes that Dr. Litvak said that Reinking's behavior is not unusual in the sense that he did not behave in other situations as he did with his wife. Thus, Litvak argues that Reinking's behavior with suspects and other citizens were appropriate as opposed to his behavior

with his wife. Apparently Litvak concluded that the trooper had a normal emotional adjustment and his real problems emanated from the marriage rather than life in general. Litvak asserted that Reinking had a temporary mental disorder and that is not surprising for a person who otherwise had no appreciable mental disorders. Thus, he concluded there was no basis to consider Reinking as having a anti-social personality or being psychotic, although it is reasonable to conclude that Trooper Reinking's aberrant behavior is related to his intense marital discord.

The Union goes on to say that Reinking's wife is now in Florida and therefore, he is able to work again. The Union also cites Union Exhibits #1 and #2 from Richard Ashbrook who stated that Reinking's mental status was not remarkable and essentially Ashbrook said that his behavior really is not unusual and the results of tests were within normal limits. Union Exhibit #2 from Mr. Ashbrook, notes the Union, also points out that after various testing, Ashbrook said that Reinking does not present any danger to himself or others and he could return to duty.

The Union argues that now, as a consequence of the problems being cleared up, Reinking is on the straight and narrow path and he has recovered. It cites Management Exhibits D-3, A-1, A-3, and B-1. The Union notes that Reinking's wife was a manic depressive and she also tried suicide. Thus, the marriage caused all of the problems and the Union argues that Reinking's wife, Heidi, was the root of the problems.

In short, Reinking deserves another chance with his life together and therefore, he should be put back to work.

V. DISCUSSION AND AWARD

The question is clear and concise; namely, should Dean Reinking be put back to work as a State Highway Patrol Trooper? Reinking had been in the State Highway Patrol for about two and one-half years when he was terminated on June 17, 1992.

Both Lt. Megison and Grievant Reinking agreed that there had been serious marital problems between Reinking and his former wife, Heidi. In addition, it is fair to say that Reinking's problems occurred even before he became a trooper; that is, he once moved into an army barracks while in the service because of problems between himself and his wife.

The evidence indicates that Reinking and his wife were continually involved in domestic disputes. Moreover, Reinking apparently threatened suicide in December 1991 and while he claimed he really had no such intent, on cross he evaded the question of suicide.

Thus what occurred on a regular basis was a very poor relationship between himself and his wife and as a consequence, he became irrational at times. Although Dr. Litvak claimed such behavior focused only on Reinking's real problem with his wife and that in other regular situations, he was normal, that assessment is not overly persuasive. It is possible that Reinking might have responded in other critical situations in the same way he dealt with his wife.

In any event, what is obvious is that Reinking's aberrant behavior increased until the point at which he drove 100 miles an


hour and then returned to the Communications Center and he was described as "distraught, intoxicated, and paranoid". Reinking's irrational behavior, even if only exhibited when reacting to his wife, is potentially dangerous to others and has a harmful effect on the Highway Patrol.

The Union claims that since Reinking's divorce and his ex-wife's move to Florida, Reinking's problem has ended and he is now a capable employee. Reinking may have adjusted; he may be, as the Union argues, on the straight and narrow path. However, all of the evidence indicates that Reinking was unable to control his relationship with his former wife and it is not persuasive to argue that all of his problems were his former wife's fault. That claim is simply not persuasive.

The Ohio Highway Patrol argues that given Reinking's "problem", it is unrealistic to reinstate him as a State Highway Patrol officer. The problems which a State Highway Patrol officer deals with are difficult, argues Management, and Reinking, a man who had a relatively serious behavioral problem, should not be put back to work.

Based on the testimony and evidence, the conclusion is clear: There was just cause for the Highway Patrol to terminate Reinking and there is no persuasive reason nor proper basis to consider reinstatement.

The grievance must be denied.


John E. Drotning
Arbitrator

October 14, 1992