
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 Number:

25-17-(3-16-93)01-05-02

Before: Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

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

For The State of Ohio:

Greg Rees
Ohio Department of Natural Resources
Fountain Square
Columbus, OH. 43224-1387

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the five day suspension imposed upon Sherrie Hustead for just cause? If not, what shall the remedy be?

Background: There is no dispute concerning the events that prompt this proceeding. The Grievant, Sherrie Hustead, is a

Watercraft Officer Specialist. She has six years of service with the State and to the events under review in this proceeding no prior instances of discipline. Ms. Hustead works in District 7 of Division of Watercraft which is located in Cincinnati, OH. On September 5, 1992 at about 2:30 a.m. the Grievant and a colleague were on routine patrol on the Ohio River. They spotted a vessel operating without navigation lights and stopped it. Upon interviewing the occupants Ms. Hustead noticed that one of them, William Morrissey, had about him an odor of alcohol. She administered the proper tests and determined that he was over the legal blood alcohol limit. She arrested him and issued the proper citation. Mr. Morrissey was to stand trial for operating a vessel while under the influence of alcohol. A pre-trial hearing was scheduled for November 13, 1992. Prior to that date Ms. Hustead was contacted by Ted Froncek of the Hamilton County Prosecutor's Office. At his request a meeting between them was held on November 9, 1992. At that meeting Mr. Froncek informed the Grievant that she had made a good arrest and had a solid case against Mr. Morrissey. In the course of their conversation Mr. Froncek told Ms. Hustead that in spite of the evidence against Mr. Morrissey that consideration was being given to reducing the charges against him. It developed that William Morrissey was the son of a judge. He was then employed as a probation officer and concern was raised by the

prosecutor that conviction for OUI would result in loss of his job. Ms. Hustead had the clear impression that "the fix was in" with respect to this case. She believed that William Morrissey was going to get favorable treatment because his father was a local judge. She was very concerned that this would occur. Not only did she have incontrovertible evidence that on September 5, 1992 he was operating a vessel while intoxicated, he had two prior convictions for driving under the influence and one conviction for reckless operation of a vehicle. Fearing that a person with a well document history of operating a vehicle or vessel while drunk would be let off with a slap on the wrist due to his position she wrote a letter to the presiding judge. That letter was written on November 10, 1992 and called these events to his attention. It expressed her concern that Mr. Morrissey was about to receive favorable treatment from the Prosecutor's Office. In some manner Ms. Hustead's letter to the presiding judge found its way into the print and electronic media of the area. In due course the Department administered a five day suspension. That suspension was protested through the grievance procedure of the parties. No resolution was had and they agree that this dispute is properly before the Arbitrator for resolution on its merits.

Position of the Employer: According to the State the requisite just cause to impose a five day suspension exists

in this situation. No doubt exists but that the Grievant wrote the letter in question. The contents of that letter became public. Consequently, the working relationship between the Department and the local prosecutor's office became and has remained quite strained. The normal course of justice was not followed in this situation. After receipt of Ms. Hustead's letter the presiding judge recused himself. To the date of the arbitration hearing, some ten months after the scheduled preliminary hearing involving William Morrissey his case has not been resolved. There has occurred a massive amount of publicity concerning this matter in the Cincinnati area. The reputation of the Department has been compromised.

In the text of the letter written by Ms. Hustead is found the indication that it was written on behalf of the Watercraft Division of the Department. This is not the case. The Grievant was never authorized by the Department to write to the judge voicing her concerns. By doing so she unleashed a torrent of unfavorable publicity on the Department which has made its routine enforcement tasks more difficult. As that is the case, there existed ample grounds to determine that she was guilty of insubordination, neglect of duty and failure of good behavior. Consequently, the discipline administered to her was appropriate and should not be disturbed by the Arbitrator in the opinion of the Employer.

Position of the Union: The Union takes the position that the

discipline at issue in this dispute is unwarranted. In this situation the State's action is tainted by the circumstances that provoked it according to the Union. William Morrissey had been arrested for operating a vessel while intoxicated. It was a good arrest. No doubt exists but that he was under the influence of alcohol according to the breathalyzer test. He was not close to be sober. Because of his position in society, the accident that he is the son of a judge in Hamilton County, a deal was in the works to reduce the charges against him. As a conscientious officer, Ms. Hustead was concerned. In her view had the same events transpired with an ordinary citizen, one lacking Mr. Morrissey's connections, no doubt exists concerning the outcome of these events: a conviction for operating under the influence would have ensued. In this case, a senior official in the Prosecutor's Office asked to meet with the Grievant. This had never, ever, happened before. It was obvious to Ms. Hustead that a deal was in the works. It was under these circumstances that Ms. Hustead wrote to the judge. That the letter was released to the public was not of her doing. Her attorney had provided it to MADD and in some fashion it was provided to the media.

In fact, it is the policy of the Department not to plea bargain good cases. This is clearly shown by Union Exhibit 3 in this proceeding. That Exhibit is a memo from Ms. Hustead's

supervisor to the head of Watercraft. In that memo he strongly stated the policy that the Department does not plea bargain unless there is a defect in the case. None existed in this situation. When that memo was written Ms. Hustead's supervisor knew that the prosecutor might enter into a plea bargain. The memo reflects the view that "The assistant prosecutor has already told Sherrie (Hustead) that they may have to plea bargain it." (Emphasis in original). When Ms. Hustead wrote the judge she was reiterating department policy against plea bargaining.

Subsequent to these events, in June, 1993, Watercraft District 7 issued policies concerning written correspondence and media relations. (Union Exhibits 5 and 4). Those policies were not in existence prior to these events. They cannot have been violated since they were not in effect. Hence, there cannot have occurred insubordination nor failure of good behavior. To the contrary, what occurred in this situation was exemplary behavior by a law enforcement officer who saw her good efforts being compromised for improper reasons. As that is the case, the Union insists that the Employer lacked the requisite just cause to impose the discipline at issue in this proceeding. It urges the grievance be sustained and that Ms. Hustead receive the appropriate back pay and deletions to her personnel record.

Discussion: The concept of insubordination involves

disobedience to an order or directive. No policy prohibiting Ms. Hustead's actions in this situation existed at the time they occurred. It was only many months later that the Department issued policies specifically concerned with correspondence and media relations. There can be no violation of a nonexistent policy. Hence, there was no insubordination involved in Ms. Hustead's behavior.

In this situation the grievant had made a good arrest. No question existed but that Mr. Morrissey was intoxicated. In the ordinary course of events the normal charge would have been lodged against him and the appropriate penalty levied. In this situation the actions of the arresting officer, Ms. Hustead, were being compromised. She was aware of that fact. So too was her supervisor and the Chief of Watercraft. A reduced charge was being contemplated by the Prosecutor's Office for what appeared to the Watercraft officials involved, Ms. Hustead and her supervisor, to be improper reasons. The evidence made at the arbitration hearing indicates as much to the arbitrator. Rather than exhibiting a failure of good behavior, Ms. Hustead's actions in this case are representative of those of a conscientious law enforcement officer witnessing the compromise of her good case for improper reasons.

When Ms. Hustead indicated to the presiding judge that she was objecting to the reduced charges being contemplated

for Mr. Morrissey "in (sic) behalf of the Watercraft Division" she was reiterating what she knew to be the policy of the Division. The Division does not plea bargain good cases. Her supervisor had indicated that to her. He had also reiterated it to the Chief of the Division before the Grievant wrote to the judge. As the arresting officer Ms. Hustead was indicating to the judge that the justice system was facing the potential for subversion in this situation. Such activity does not constitute neglect of duty or failure of good behavior. The opposite is true. Under the circumstances of this case the Department lacked the requisite just cause to sustain any discipline against the Grievant.

Award: The grievance is sustained. The five day suspension imposed upon the grievant is to be expunged from her personnel record. All pay that would have been made to her but for this action is to be made.

Signed and dated this 1st day of October, 1993 at South Russell, OH.



Harry Graham
Arbitrator