

CONTRACTUAL LABOR ARBITRATION

**IN THE MATTER OF
ARBITRATION BETWEEN:**

**OHIO DEPARTMENT OF
PUBLIC SAFETY,
DIVISION OF THE STATE
HIGHWAY PATROL**

- AND -

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC., UNIT 2**

**DECISION IN
DISCIPLINARY SUSPENSION
ENFORCEMENT AGENT,
STEVEN V. VASSALLO**

CASE NO.: DPS-2017-00440-2

GRIEVANCE: The Grievance protests the imposition of the one-day, unpaid disciplinary suspension for the alleged violation of Safety Work Rule 501.02(A)(4) – “Performance of Duty,” as lacking just cause.

AWARD: The Grievance is sustained in part; and, denied in part.

HEARING: April 24, 2017; Columbus, Ohio

ARBITRATOR: David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Michael D. Wood, Labor Relations Officer 3
Cassandra Brewster, Staff Lieutenant OSHP
Cullen Jackson, Policy Analyst - OCB
Jason Skinner, AAIC
Cynthia Korach, AAIC-Canton

FOR THE UNION

Douglas Behringer, General Counsel
Steve Stocker, Unit 2 Representative
Associate
Renee Engelbach, Paralegal
Steven V. Vassallo, Grievant
Mick Spolarich, Observer

ADMINISTRATION

By email correspondence dated March 23, 2017 from the Ohio Department of Administrative Services, the undersigned was notified of his mutual selection from the Parties' permanent rotating panel, to serve as impartial Arbitrator to hear and decide the Disciplinary Suspension Grievance of Steven V. Vassallo, then in dispute between these Parties. On April 24, 2017, at the Offices of the Fraternal Order of Police, Ohio Labor Council, Inc., an Arbitration Hearing was conducted wherein each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced; and, where, the Grievant appeared and testified in his own behalf. The evidentiary record of this proceeding was subsequently closed on June 16, 2017, upon the Arbitrator's receipt of each Party's Post-Hearing Brief filed in accordance with the arrangements agreed to following the presentation of evidence and subsequently modified per agreement between the Parties. Accordingly, this matter is now ready for final disposition herein.

GRIEVANCE AND QUESTION TO BE RESOLVED

The following electronic Grievance, Grievance number DPS-2017-00440-2, and identified as Joint Exhibit-2, was filed on or about February 2, 2017 and contains the subject matter for disposition herein as follows:

Grievance No.: DPS-2017-00440-2

Grievant Information

Member: Steven Vassallo

Grievant Name: Steven Vassallo

Grievant's Union: Fraternal Order of Police (FOP)

Grievant's Worksite: IUCAN

Grievant Department Description: IU Akron Investigations

Grievant Classification No.: 23511

Grievant's Classification Title: Enforcement Agent

Grievant Bargaining Unit: 2

Statement of Grievance:

The Grievant received a Departmental email along with letterhead attachment showing that DAS (Department of Administrative Services) upheld a decision to issue a (1) DAY WORK SUSPENSION (Without Pay) commencing on February 8, 2017 as a form of punishment to this Grievant.

Resolution Requested:

The Grievant is seeking that all time lost during this (1) Work Day Suspension for the calendar day of February 8, 2017, be returned to the Grievant. The Grievant believes that the Department did not follow FOP Agreement, ARTICLE 19.05 "Progressive Discipline" regarding the severity of the Grievant's role in this investigation. The Grievant believes that the punishment handed down by the Department is severe and unjust. The Grievant wants to be made whole.

Rate of Pay: \$29.89

Potential Liability: \$239.12

The stipulated "Statement of Issue" is framed as follows:

In conformance with Article 20, Section 20.09, Paragraph 8, of the Collective Bargaining Agreement, the Parties submit the following statement of issue for resolution by the Arbitrator:

Was the Grievant disciplined for just cause?

If not, what shall the remedy be?

/s/ Michael D. Wood, Ohio State Highway Patrol

CITED PROVISIONS OF THE
COLLECTIVE BARGAINING AGREEMENT

The following provisions of the Parties' Collective Bargaining Agreement, Joint Exhibit-1, were cited and/or are deemed relevant herein as follows:

ARTICLE 6
MANAGEMENT RIGHTS

The Labor Council agrees that all the functions, rights, powers, responsibilities, and authorities of the Employer, in regard to the operations of its work and business and the direction of its work force, which the Employer has not specifically abridged, deleted, granted, or modified by the express and specific written provision of the Agreement are, and shall remain, exclusively those of the Employer.

Additionally, the Employer retains the rights to:

1. Hire and transfer Employees, suspend, discharge and discipline Employees;
2. Determine the number of persons required to be employed or laid off;
3. Determine the qualifications of Employees covered by this Agreement;
4. Determine the starting and quitting time and the number of hours to be worked by its Employees;
5. Make any and all rules and regulations;
6. Determine the work assignments of its Employees;
7. Determine the basis for selection, retention and promotion of Employees to or for positions not within the Bargaining Unit established by this Agreement;
8. Determine the type of equipment used and the sequences of work processes;
9. Determine the making of technological alterations by revising the process or equipment, or both;
10. Determine work standards and the quality and quantity of work to be produced;
11. Select and locate buildings and other facilities;
12. Transfer or subcontract work;

13. Establish, expand, transfer and/or consolidate work processes and facilities;
14. Consolidate, merge, or otherwise transfer any or all of its facilities, property, processes or work with or to any other municipality or entity or effect or change in any respect the legal status, management or responsibility of such property, facilities, processes or work;
15. Eliminate all or any part of its work or facilities.

ARTICLE 19

DISCIPLINARY PROCEDURE

19.01 Standard

No Bargaining Unit Member shall be reduced in pay or position, suspended or removed except for just cause.

19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. At the Employer's discretion, disciplinary action shall include:

1. One or more written reprimand(s);
2. One or more fines in the amount of one (1) to five (5) days' pay for any form of discipline. The first time fine for an Employee shall not exceed three (3) days pay;
3. Suspension;
4. Leave reduction of one or more day(s);
5. Working suspension. If a working suspension is grieved, and the grievance is denied or partially granted by an Arbitrator, and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine. The Employee may choose a reduction in leave, balances in lieu of a fine levied against him/her.
6. Demotion;
7. Termination

However, more severe discipline may be imposed at any point if the infraction or violation merits the more severe action.

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant.

The deduction of fines from Employee's wages shall not require the Employee's authorization for the withholding of fines from the Employee's wages.

ARTICLE 20 GRIEVANCE PROCEDURE

20.09 Arbitration

3. Expenses

A. All other fees and expenses of the Arbitrator will be equally divided between the Parties.

4. Decision of the Arbitrator

The Arbitrator shall render his/her decision as quickly as possible, but in any event, no later than forty-five (45) days after the conclusion of the Hearing, or submission of the closing briefs, unless the Parties agree otherwise. The Arbitrator shall submit an account for the fees and expenses for arbitration. The Arbitrator's decision shall be submitted in writing and shall set forth the findings and conclusions with respect to the issue submitted to Arbitration. The Arbitrator's decision shall be final and binding upon the Employer, the F.O.P. Ohio Labor Council, and the Employee(s) involved, provided such decisions conform with the Law of Ohio and do not exceed the jurisdiction or authority of the Arbitrator as set forth in this Article. The Grievance Procedure shall be the exclusive method for resolving Grievances.

ARTICLE 22 HOURS OF WORK AND OVERTIME

22.12 No Intimidation

No supervisor shall intimidate or unduly influence an Employee to waive his/her rights under this Article.

Additionally, based on the charge levied against the Grievant, Department of Public Safety, Work Rule 501.02(A)(4) - Performance of Duty, indicates as follows:

Employees who fail to perform assigned duties because of an error in judgement, or otherwise fail to perform satisfactorily a duty of which such Employee is capable, may be charged with inefficiency. Unsatisfactory performance may be demonstrated by a lack of job-related knowledge, and unwillingness or inability to perform assigned tasks, failure to take required action, or failure to take appropriate action at any time.

FACTUAL BACKGROUND

The operative facts which gave rise to the filing of this Grievance, challenging the imposition of a one-day suspension effectuated by the Employer are, except where otherwise indicated, essentially undisputed. As the record demonstrates, on or about January 27, 2017, Steven V. Vassallo, hereinafter referred to as the "Grievant", received a Letter of Suspension from the Ohio Department of Public Safety, Division of State Highway Patrol, for his alleged violation of Department Work Rule 501.02(A)(4) - Performance of Duty. The record demonstrates the Grievant has been an Employee of the State of Ohio for approximately 16 years and the record is devoid of any instances prior to this concerning disciplinary action. The Grievant's assignment was as an Enforcement Agent in the Ohio Investigative Unit "OIU" Section at the Canton District Headquarters in North Canton, Ohio. The OIU Section of the Ohio State Highway Patrol is responsible for the enforcement of laws pertaining to liquor, food stamp and tobacco offenses while offering education, guidance and professional assistance to law enforcement agencies and to the public.

On or about October 16, 2015, an investigation was initiated concerning food stamp fraud of the Cineen, Inc., DBA VIP Mini Mart in Medina, Ohio. Such involved the fraudulent use of Supplemental Nutritional Assistance Program otherwise known as "SNAP" benefits. The

Grievant and Enforcement Agent, Jacqueline Largent, were assigned to conduct this investigation. As the investigation ensued, the Grievant made certain ineligible purchases of beer and cigarettes utilizing an Electronic Banking Transaction or "EBT Card" at this location on or about November 12, 2015 with Agent Largent. Following these transactions, both the Grievant and Agent Largent ran license plate numbers of the vehicles in the parking lot of the Mini Mart. They gleaned from the registration information the driver's license photographs to identify the clerks involved in these illegal transactions. As the record demonstrates, one of the clerks was a black female and the other a white female. The record demonstrates the Grievant and Agent Largent identified the white female clerk as Alissa Artino and the black female clerk, as identified by Agent Largent, as Teona Latten.

The record goes on to demonstrate that on January 27, 2016, February 1, 2016 and February 10, 2016, the Grievant and Agent Largent attempted to make additional ineligible purchases, but were denied by the clerks. When this investigation stalled, the Assistant Agent in Charge, "AAIC" Cynthia Korach, contacted the Medina County Drug Task Force to seek assistance in this matter. It was decided that Drug Task Force members would interview both suspects in an attempt to get one of them to "flip" on the owner of the establishment. Each suspect was interviewed by the Task Force in March 2016 and based on these endeavors, Teona Latten, agreed to assist with the investigation. Artino apparently declined at that juncture stating she had never worked at that store, nor had she been to that location in Medina.

Following these endeavors, the Grievant, Agent Largent and AAIC Korach, met with the Medina County Prosecutor, Scott Salisbury on April 12, 2016 to discuss this matter. It was agreed at this meeting to file charges on Artino for Trafficking in Food Stamps. The assertion by Artino denying having ever worked at this VIP Mini Mart was also discussed. On or about April

19, 2016, Agent Largent testified before the Medina County Grand Jury which returned a True Bill indicting Artino for four (4) felony counts of Trafficking in Food Stamps. An arrest warrant was issued and Artino was arrested on the outstanding warrant on Sunday, May 1, 2016, whereupon she was incarcerated overnight and arraigned on Monday, May 2, 2016.

Ms. Artino retained Counsel and a Motion to Dismiss was filed wherein she denied working at the VIP Mini Mart. The record demonstrates Prosecutor Salisbury spoke with Teona Latten whereupon she indicated she had worked with Tracy Ketcherside at the VIP Mini Mart and not Ms. Artino as allegedly identified by the Grievant. AAIC Korach instructed the Grievant and Agent Largent to interview Ms. Ketcherside whereupon she admitted to working at the VIP Mini Mart and to making ineligible sales. The afore-referenced criminal charges against Artino were then dropped.

On or about September 29, 2016, the Grievant was notified he would be a witness in an administrative investigation concerning Agent Jackie Largent regarding her identification of a suspect in an ongoing covert operation. According to the Grievant, he had never been involved in an Internal Investigation. As such, he requested Union representation be present. Two days thereafter, the Grievant was advised he was no longer being called as a “witness”, but was instead identified as a “subject” of the Internal Investigation. This resulted based on the allegation the Grievant assisted in misidentifying a suspect in this investigation. On or about January 5, 2016, the Grievant was served Notice of his Pre-Disciplinary Hearing and was advised he would be receiving a working “paid suspension”. Allegedly, he was asked to waive his Pre-Disciplinary Hearing whereupon he elected to exercise his right to that Hearing conducted on January 27, 2017 and was served a one-day “unpaid suspension”. The instant

Grievance, alleging such was effectuated without just cause in violation of the Parties' Collective Bargaining Agreement, was thereupon, timely filed.

When the Parties' efforts to resolve this matter through the course of the negotiated Grievance Procedure proved unsuccessful, the one-day disciplinary suspension of Enforcement Agent, Steven V. Vassallo, was appealed to Arbitration hereunder.

CONTENTIONS OF THE PARTIES

EMPLOYER CONTENTIONS

The Employer contends that indeed the Grievant violated the work rule for sworn personnel of the Department of Public Safety concerning the performance of duty and his involvement in the misidentification of a suspect. During the administrative investigation, the Grievant admitted Ms. Artino was identified by the Ohio Law Enforcement Gateway, "OHLEG" that allows Ohio Law Enforcement agencies to share criminal justice data, contained an image of her. He indicated no other methods were used in identifying the suspect. The Grievant admitted running license plate numbers of the cars in the parking lot of the VIP Mini Mart and matched photographs of the registered owners to the clerks making the improper purchases. He admitted to identifying Artino as the clerk during his interview during the Administrative Investigation; however, at the Arbitration Hearing, when he looked at Artino's photograph, he stated "that could be the person." The Employer emphasizes this assertion was never made during the Administrative Investigation.

The Union's reliance on various photographs of various suspects, whose images changed due to drug use, is simply misplaced because they lacked a timeline to reference any changes and/or differences. The images of Artino and Ketcherside are noticeable and distinct; Artino simply did not look anything like Ketcherside. Artino was subsequently charged, arrested and

incarcerated for crimes she did not commit in violation of the Work Rule for which the Grievant was charged. His actions meet all elements of this rule. His inactions undoubtedly resulted in the wrongful arrest of an innocent individual. The Grievant failed to properly identify the vehicle's information gleaned from the license plate he ran from the business; or, he entered the wrong license plate information.

Both he and his Partner failed to properly identify the suspect, which is a blatant mistake. Artino is seven years younger, five inches shorter and 30 pounds lighter than Ketcherside. A comparison of their photographs demonstrates they obviously do not look anything alike. Despite the fact the Grievant testified he only stated "that could be the person" he nonetheless failed to speak up, thus resulting in Artino being charged, arrested, and incarcerated for felonies based on the Grievant's identification. The Grievant made three additional visits to the VIP Mini Mart which suggests if the Grievant really had reservations that Artino was the clerk, he failed to take the time to ensure her identity. He remained silent at key points in the investigation - when Artino was initially identified; when the Grievant returned to the location; when the Grievant learned of her denial of ever working at the VIP Mini Mart; and, finally with the Prosecutor. The Grievant essentially agreed with Agent Largent that they believed the clerk that sold him the improper items at the VIP Mini Mart was indeed that person identified before the Grand Jury. The Arbitration Hearing is the first occasion the Grievant claimed "that could be the person" when he made the identification of the suspect.

The record clearly demonstrates the Grievant clearly violated the Work Rule in question concerning his performance of duty as an Enforcement Agent with 16 years of experience; the Grievant clearly had the experience to make a "good" suspect identification. The discipline as imposed is not arbitrary, capricious, or discriminatory and is commensurate with the nature of

the offense committed. An innocent citizen was improperly charged with four (4) felony counts of trafficking in food stamps and incarcerated because the Grievant failed to perform a duty he is certainly capable of performing based on his years of service.

For these reasons, the Employer requests the Grievance be denied.

FOP CONTENTIONS

The FOP contends the Employer's issuance of the single charge against the Grievant in assisting another Agent with wrongfully identifying a subject in an ongoing investigation, was effectuated without just cause and therefore in violation of the Parties' Agreement. In support thereof, the Union emphasizes the Grievant has been employed with the State for 16 years and has a clean Department record. It insists each time the Grievant exercised Union rights, the disciplinary action against him was increased. Initially, he asked for Union representation during an interview and he went from being a witness to an event, to an actual suspect in the investigation. Secondly, when he exercised his right to a Pre-Disciplinary Hearing, the suspension he was advised about went from a paid suspension to an unpaid suspension. As such, the Union contends these violations of Article 22.12 eviscerate any argument from the Employer supporting just cause.

The Grievant was assigned to assist Agent Jackie Largent to make fraudulent purchases of beer and cigarettes using an Electronic Transaction Card, "EBT Card" in order to obtain evidence against the owner of the VIP Mini Mart. This operation included the purchase of beer and cigarettes, collect the license plate information from vehicles observed in the parking lot, and to use OHLEG to identify the suspects by picture and name. Supervisor Skinner indicated there can indeed be personal interaction between the suspects and the Agents wherein interviews may be conducted and generally occur toward the end of the investigation.

In this matter, no interviews were conducted until late into the case and the identifications in this matter were based upon the photos received via OHLEG. Agent Largent identified Ms. Artino as one of the suspects to which the Grievant stated "that could be her." The Union contends that statement by the Grievant does not equate to a 100% accurate identification. Moreover, Supervisor Skinner indicated that upon reviewing the photos of Artino and Ketcherside they simply did not look the same; the hair was different and one wore glasses. The Union notes that women generally change hair color, length and cut, and not everyone wears glasses all the time so the distinctions were not helpful with regard to the identification of the suspects in this matter.

The record demonstrates Skinner was the only supervisor during the onset of the case and then Assistant Agent in Charge Korach, who indicated she had no experience in Food Stamp Fraud, was assigned to the case. After she took over, she learned "buys" were no longer occurring at the Mini Mart and decided to involve the Medina County Drug Task Force to perhaps aid in the investigation. The record fails to indicate drugs were involved in this OIU investigation. The Agent assigned to the case, Agent Jackie Largent, failed to attend the meetings Korach had with the Drug Task Force. She indicated she did not request to attend even though she was the Agent handling the investigation. At some point thereafter, Assistant Agent in Charge Korach decided there was enough information/evidence to take the case to the Medina County Prosecutor. The record demonstrates the Grievant and Agent Largent attended a meeting with AAIC Korach and the Prosecutor wherein Korach presented the facts of the case to the Prosecutor which led to the wrong suspect being charged. The Prosecutor determined Artino was the wrong person in June of 2016 and ultimately dropped the charges against her.

The Union insists the Grievant never arrested anyone in this matter; never testified against anyone in this case; never signed any paperwork for the Prosecutor that lead to an arrest; and, never charged anyone in this case. His only involvement was to make the purchases and indicated, "that could be her" based on the photographs.

The Supervisors involved, Skinner and Korach, had complete access to the ongoing investigation of this matter. They hold weekly meetings to discuss cases with their subordinates and review them to eliminate possible errors. Agent Stocker, who had also been with OIU for a number of years, testified Korach would have access to the case file which contains anything and everything related to the case. If she believed interviews should be taken, she could have instructed Agent Largent to do so. Testimony of record indicates Agent Largent never requested to perform interviews, but at this juncture the case had been given to the Drug Task Force. The contact between the Task Force and the OIU ran through AAIC Korach and Agent Largent was never asked to attend any of the meetings with the Drug Task Force.

The Union points to Management Exhibit 1 at page 17, which suggests the identity of Ms. Artino existed as early as April 2016 and the Task force had in fact discovered this mistake when it interviewed Ms. Artino. AAIC Korach could have discovered had she followed up with the Task Force; however, there is no evidence she did. At this juncture, Korach and the Prosecutor determined charges against Artino should be pursued. The Grievant testified that based on his lack of a definitive identification, had he been the Case Agent in charge of this case, he would have conducted interviews. The Grievant was not in charge of the case and not the one who prepared the reports. The Union insists he was merely assisting Agent Largent and he did not turn the case over to the Drug Task Force. The sole charge against the Grievant involves the misidentification of the suspect that Supervisor Skinner indicated the Grievant's statement "that

could be her" was not an identification by law enforcement standards. Based thereon, the Union contends the Employer simply has no case against the Grievant.

With respect to the Employer's reliance upon the "Disciplinary Grid" to punish the Grievant, even under the grid, the Union contends it has never agreed to and it is not contained in the Agreement, nonetheless the discipline imposed is too severe. The Parties' Agreement provides for Progressive Discipline and a finding of just cause for the issuance of disciplinary action. The first step in the Progressive Discipline scheme under Article 19 is one or more written reprimands. In this matter, there is no reason to subject this Employee with 16 years of service and a clean Department record, to more severe discipline for believing it was possible the person in a photograph "might" be a suspect in question. The Union insists the fault in this matter lies with the Supervisor and the County Prosecutor who elected to pursue these charges, not the Agents assigned to this case.

For these reasons, the Union requests the Grievance be sustained and the Grievant be made whole.

DISCUSSION AND FINDINGS

The disposition of this matter hinges upon the determination of whether the Employer has established just cause to effectuate the one-day, unpaid suspension of the Grievant, Steven V. Vassallo, for what the Employer alleges is the violation of Department of Public Safety Work Rule 501.02(A)(4) – "Performance of Duty", arising from an October 2015 investigation concerning the fraudulent use of Supplemental Nutritional Assistance Program, otherwise known as "SNAP" benefits.

The Employer insists that indeed just cause was established since the Grievant assisted in identifying the wrong individual as a suspect in an ongoing investigation. That person was

charged, arrested, and incarcerated for crimes she did not commit. The Grievant either did not properly identify the vehicle information based on the license plate he ran under OHLEG, or he entered the wrong license plate information he obtained. Nonetheless, he improperly identified the suspect who is seven (7) years younger, five (5) inches shorter, and thirty (30) pounds lighter than the actual suspect who committed these crimes. The photographs of each person of interest are obvious; they do not in any way look alike. The Employer insists the Grievant remained silent at critical points in the investigation when he could have voiced his concerns or reservations about the identity of the suspect. The Employer insists the Grievant's assertion that he indicated "that could be the person" was first uttered by him at the Arbitration Hearing. Clearly, the Grievant violated the afore-referenced work rule concerning his performance of duty and as an Enforcement Agent with 16 years of experience, he knew or should have known what steps were necessary to make "good" suspect identification.

The Union insists that when the Grievant exercised his contractual rights to seek Union representation during an interview, he went from being a witness to a suspect in this matter. Additionally, when he requested a Pre-Disciplinary Hearing, the suspension he was facing went from a paid suspension to an unpaid suspension. It insists the Grievant was assigned to assist Agent Jackie Largent to make fraudulent purchases of beer and cigarettes using an Electronic Banking Transaction Card, or an EBT Card. Once this case was assigned to AAIC Korach, she learned that "buys" were no longer occurring at the VIP Mini Mart and decided to call the Medina County Drug Task Force to aid in this investigation. Neither the Grievant nor Agent Largent attended the meetings Korach had with the Task Force and Largent indicated she was not asked to attend. The FOP contends the Grievant never arrested anyone in this matter, he never testified against anyone in this matter, he never signed any paperwork for the Prosecutor

that might lead to an arrest in this matter, and he never charged anyone. His only involvement was to make the purchases and to say, "that could be her" based on the photographs that were obtained. All contact with the Drug Task Force ran through AAIC Korach and there is no evidence the Grievant was ever required to appear or take part in these matters. He was not in charge of this case, he was not the Case Agent and he did not prepare the Reports. His involvement herein was to merely assist Agent Largent.

The Parties' Collective Bargaining Agreement at Article 19 titled, "Disciplinary Procedure", at 19.01 titled, "Standard", recognizes the Employer's contractually right to effectuate disciplinary action for "just cause". Under the Just Cause analysis, the Employer is required to establish the Grievant is guilty of the wrong doing, which served as the basis for the imposition of the disciplinary action at issue; and, if in fact that threshold consideration has been sufficiently established, then whether the discipline imposed is commensurate with the nature of the infraction committed while considering both aggravating and/or mitigating factors.

The Grievant, a 16-year Employee, was assigned to this investigation that began in October 2015 concerning food stamps fraud and the use of the Supplemental Nutritional Assistant Program or SNAP benefits, to purchase beer and alcohol, which is prohibited with utilization of such benefit cards. The record demonstrates the Grievant, among other Agents, did indeed purchase ineligible beer and cigarettes using the Electronic Banking Transaction (EBT Card) at the suspected location on various occasions. Once, the Agents did in fact make the ineligible purchases, they would run the license plates of the vehicles in the parking lot in an attempt to obtain the identity of the clerks with whom they dealt. At some point in time, after additional attempts to make ineligible purchases were denied, the investigation stalled and the Medina County Drug Task Force was called upon, by AAIC Korach, for assistance to interview

what were believed to be the suspects to see if they would "flip" on the owner of the VIP Mini Mart.

As set forth in the Administrative Investigation Report, Management Exhibit 1, the Grievant indicated he worked with Largent to identify Artino by running license plates in the parking lot of the VIP Mini Mart. Based on that gleaned from this Report, the Grievant's involvement seemed secondary to that of Agent Largent. Except for the April 12, 2016 meeting with Medina County Prosecutor, the Grievant did not testify before the Medina County Grand Jury or perform any other matters relative to this investigation. Based on the documentary evidence of record, particularly that of Sargent William R. Bancroft of the Administrative Investigation Unit concerning this matter (*See*, Management Exhibit 1) the Grievant's involvement therein is seemingly secondary to that of Agent Largent who did indeed testify before the Grand Jury, that determined to issue a "True Bill" to effectuate the arrest of the suspect; albeit the wrong suspect. Following the May 1 arrest of Artino, Largent was shown photographs of Ketcherside, who Latten indicated was the "white female suspect" who worked with her at the VIP Mini Mart. The record does not indicate the Grievant was involved in these post-arrest matters. He did not participate in the interviews.

Of particular importance herein is the fact that once the case "stalled" as characterized, it was referred to the Medina County Drug Task Force that performed interviews of the suspects. It was reported by that Task Force that Artino denied ever working for the VIP Mini Mart. It is unclear whether or not the Grievant was in the chain of communication concerning that revealed by the Drug Task Force. Nonetheless, discussions ensued with the County Prosecutor and charges were brought.

If indeed despite the Grievant's denial of any involvement in the interviews conducted by the Task Force or the arrest of Artino, and that his involvement herein is merely supportive in nature, the Grievant indeed was assigned to this matter based on the "OASIS" program - Ohio Agent Secure Information System - the database for Agent case tracking, indicating the Grievant was assigned, like the others noted therein, to this investigation. Such was corroborated by AIC Jason Skinner, who indicated the Grievant and Largent both shared an equal part in this investigation. Both Skinner and Korach testified these duties were shared and divided as each saw fit; however, the Union contends that since Agent Largent entered the Reports into the system, the Grievant was not responsible for the misidentification of Artino.

Despite the fact, he did not enter these Reports into the OASIS System, such does not absolve him from his responsibility to ensure a proper identification of a suspect; especially an Employee with 16 years' service. Moreover, if he had *any* doubts or reservations about Artino's involvement, based on his statement, "that could be the person", allegedly made for the first time at the Arbitration Hearing as asserted by the Employer, he could have expressed such to the Prosecutor during the April 12 meeting. Apparently, he did not. The Investigative Report simply does not contain any such acknowledgement and what is viewed as a very critical piece of evidence. In fact, as gleaned from "Attachment T" in Management Exhibit 1, he admitted, he "...worked with Agent Largent in identifying Artino...". His "assistance" to Largent, presumably the "Primary Investigator", nonetheless resulted in the misidentification and subsequent arrest of the wrong suspect. Such simply cannot be ignored.

With respect to the Union's assertions the Grievant was in some way intimidated and certain aspects of this matter were heightened based on his request for Union representation, the record simply does not support a finding that a violation of Section 22.12 occurred. It is clear his

status was changed to a “subject” of an investigation after the Office of Personnel and Professional Standards became aware of his assignment/involvement in this matter. The record clearly indicates the Grievant assisted in identifying the wrong individual in this ongoing investigation concerning food stamp fraud. That person was subsequently, charged, arrested and incarcerated for crimes she did not commit. The Grievant's assistance in this matter that led to the misidentification of a suspect, which taken in totality, compels the conclusion that indeed the Grievant, while he might not have been the “lead” or “Primary” Agent, he was nonetheless “assigned” to, and assisted with, this investigation that led to the wrong suspect being charged and arrested.

The evidence of record demonstrates that despite the Grievant's assertions he was not “directly” involved with the misidentification of the suspect and his assertion, "that could be the person", seemingly was never made prior to the Arbitration Hearing. While I recognize he may not have been the direct contact in this matter, he was in fact assigned to this investigation. His “secondary role” simply does not absolve him of his responsibilities to perform as a 16-year Enforcement Agent to make “good” suspect identifications. In this regard, it is indeed found that the Grievant, based on the totality of the evidence presented, was in violation of DPS 501.02(A)(4) titled, “Performance of Duty”. Any doubts or reservations he may have harbored about Artino as a suspect, could have been acknowledged at the April 12 meeting with the Prosecutor. They were not.

With respect to the level of the discipline imposed, the Union contends the “Disciplinary Grid” is not part of the Collective Bargaining Agreement. Indeed, it is not. Its inclusion therein simply does not preclude the Employer from establishing reasonable work rules and regulations; Article 6 titled, “Management Rights”, number 5, explicitly sets forth that authority to “make

any and all rules and regulations”. The problematic aspect herein is the range of disciplinary action for violation of this particular work rule. It ranges from a written reprimand to various levels of suspensions – up to 5-days.

What this record is also devoid of is any disciplinary action in the Grievant's personnel file. That serves as a compelling mitigating factor warranting the tempering of the disciplinary action imposed. While it is found the Grievant indeed seemingly violated this work rule and did not express and/or acknowledge any uncertainty/reservations with respect to the suspect, he failed to bring his uncertainty/reservations to the forefront suggesting that perhaps there were not any. The Grievant, as a 16-year Employee with an unblemished personnel record, is entitled certain consideration based on this encounter with the violation of this work rule. The imposition of this disciplinary suspension, even only one-day, is severe in light of both the Grid “level” for a first offense, while also acknowledging progressive discipline as recognized in Article 19, Section 19.05, and more importantly, the Grievant's overall unblemished work history and personnel record. Based thereon, the appropriate “message” to be sent can be satisfied with a written warning.

Accordingly, the disciplinary suspension shall be reduced to a written reprimand and his personnel record shall reflect this modification of the discipline imposed. The Grievant shall be made whole for the monetary loss associated therewith.

AWARD

The Grievance is sustained in part; and, denied in part.

David W. Stanton

David W. Stanton, Esq.
NAA Arbitrator

July 29, 2017
Cincinnati, Ohio