

VOLUNTARY ARBITRATION PROCEEDINGS  
CASE NO. 15-03-950504-0041-04-01  
THE GRIEVANCE OF D.K. WEST

THE STATE OF OHIO	:	
	:	
The Employer	:	
	:	
--and--	:	<u>OPINION AND AWARD</u>
	:	
THE FRATERNAL ORDER OF POLICE	:	
OHIO LABOR COUNCIL, INC.	:	
UNIT 1	:	
	:	
The Union	:	

APPEARANCES

For the Employer:

S/Lt. Richard G. Corbin, Advocate  
Donald T. McMillen, Office of Collective Bargaining  
Michael F. Hosler, Witness  
Sgt. Robert J. Young, State Patrol  
Captain William E. Lanning, Witness  
Sgt. John P. Breal, Witness  
Cadet Joshua A. Weaver, Witness  
Dispatcher John (Scott) Stewart, Witness  
Lt. Barry W. Donley, Witness  
Erin Shumate, Witness  
Jennifer Blaney, Witness

For the Union:

Paul Cox, Attorney  
Renee Engelback, Paralegal  
Ed Baker, Staff Representative  
Ron Moenins, Labor Representative  
D.K. West, Grievant

MARVIN J. FELDMAN  
Attorney-Arbitrator  
1104 The Superior Building  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114  
216/781-6100

## I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted at the conference facility of the employer in Columbus, Ohio, on June 22, 1995, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would not be filed. It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

## II. STATEMENT OF FACTS

At the time this matter occurred, the parties were operating under a collective bargaining agreement which at article 19 revealed in pertinent part as follows:

### "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."

Pertinent to the matter at hand were certain documents under which the grievant was expected to conduct himself. One such document was the rules and regulations of the Ohio State Highway Patrol. That document in pertinent part and at section 4501, 2-6-02 and 2-6-05 revealed the following:

"(E) False statement, truthfulness

A member shall not make any false statement, verbal or written, or false claims concerning their conduct or the conduct of others.

(I) Conduct unbecoming an officer

A member may be charged with conduct unbecoming an officer in the following situations:

(1) For conduct that brings discredit to the division and/or any of its members or employees.

(2) For committing any crime, offense or violation of the laws of the United States, the State of Ohio, or any municipality.

(3) For any improper on duty association with any individual for purposes other than those necessary for the performance of official duties.

(1) A member shall not use division equipment except in the performance of official duties."

With those various clauses in mind the grievant on April 21, 1995, received a notice of a twenty day suspension from the Superintendent of the State Highway Patrol and that letter stated in full as follows:

April 21, 1995

Trooper David K. West  
5502 Skyline Drive  
Cambridge, Ohio 43725

Dear Trooper West:

Notice is hereby given that the Director of Public Safety, Charles D. Shipley, intends to suspend you from your employment with the Ohio State Highway Patrol for a period of twenty (20) working days for violation of the Rules and Regulations of the Ohio State Highway Patrol specifically Section 4501: 2-6-02 (E) (I) (1) (3) and 4501: 2-6-05 (B) (1). It is charged that on January 31, 1995, while on duty and in uniform, you accessed Division equipment for personal use, and on

February 10, 1995 you had an improper, on duty association with an individual for purposes other than those necessary for the performance of official duties, which brought discredit to the Division and were untruthful concerning your conduct. To wit; you obtained LEADS information on an individual for non business purposes, later stopped that individual without legal basis to do so, did not report the event as required by procedure and were untruthful to supervisors regarding your contacts with said individual.

This discipline is based on an administrative investigative report by: Sergeant J. P. Brehl.

Captain D. W. Dutton, Meeting Officer, will conduct a pre-disciplinary meeting on the matter on Wednesday, April 26, 1995 at 10:00 AM, in Room 317, at the Ohio State Highway Patrol General Headquarters, 660 East Main Street, Columbus, Ohio.

At this pre-disciplinary meeting, you may substantiate why you believe the proposed discipline is not justified. Should you elect to exercise your right to such a pre-discipline meeting, you may be accompanied by counsel or other representative.

You or your representative and the Employer's representative have the right to cross-examine any witnesses at the meeting or have voluntary witnesses present at the meeting to offer testimony provided, however, the Meeting Officer maintains the right to limit the witnesses' testimony to matters relevant to the proposed suspension or termination and to limit redundant testimony.

If you elect to present witnesses testimony other than in writing, you must furnish the name and address of each witness you intend to call, and a brief synopsis of their testimony to the Meeting Officer at least 72 hours in advance of the meeting. The Ohio State Highway Patrol reserves the right to submit evidence in support of the proposed discipline which you may cross-examine or otherwise rebut.

Those presenting evidence on behalf of the Ohio State Highway Patrol will be Sergeant J. P. Brehl.

Following the pre-discipline meeting, the Meeting Officer will consider all evidence and testimony.

He will then submit a written recommendation to the Director within five days. You shall be provided with a copy of the Meeting Officer's recommendation.

This letter will be the only formal notice of the pre-discipline meeting. Any change of the pre-discipline meeting date shall only be made by the Meeting Officer.

You have the right to waive your pre-discipline meeting and accept the Director's decision. If you elect to waive the pre-discipline meeting, sign the original copy of this notice and forward to the Meeting Officer within 72 hours. Your signature must be witnessed by another person, who must also sign this form.

/s/Colonel Warren H. Davies  
Superintendent."

As a result of that discipline of a twenty day suspension, a pre-disciplinary meeting was held and on April 27, 1995, and the meeting officer rendered the following notice to the director of public safety:

"April 27, 1995

Director Charles D. Shipley  
Department of Public Safety  
240 Parsons Avenue  
Columbus, OH 43266-0563

Dear Director Shipley:

On Wednesday, April 26, 1995, I conducted a pre-disciplinary meeting for Trooper David K. West, at the Highway Patrol General Headquarters in Columbus, Ohio

Trooper West had been charged with violation of Section 4501:2-6-02 (E) (I) (1) and (3), and 4501:2-6-05 (B) (1), of the Rules and Regulations of the Ohio State Highway Patrol. Trooper West was charged with using Division equipment for personal use, and having an improper, on-duty association with an individual for purposes other than those necessary for performance of official duties. Trooper West was also charged with being

untruthful to supervisors during the investigation.

Trooper West was present at the meeting and did not give testimony on his own behalf. He was represented by Mr. Ed Baker of the FOP/OLC, Inc.

Captain M. R. Everhart served as the Divisional Representative and Lieutenant B. W. Donley and Lieutenant R. A. Newbanks presented investigative facts.

After listening to the evidence, reviewing the provided documentation, and considering information brought out during the questioning, I find just cause exists for discipline.

Respectfully,

/s/Captain D. W. Dutton  
Meeting Officer"

Thereafter and within the time limits a protest was filed and that protest on its face revealed the following:

"I was suspended without just cause, and progressive discipline was not followed."

The remedy requested revealed the following:

"That I be made whole, and this punishment be eradicated from my record."

The step 2 meeting was had and on May 22, 1995, the answer was filed by the employer after that step 2 meeting and it revealed the following:

"A Step 2 grievance meeting was held on Friday, May 19, 1995, via telephone conference call. The

parties agreed the meeting officer would issue an answer without further discussion of the issue.

Grievance: 15-03-950504-0041-04-01

Grievant: Trooper David K. West

Administrative investigation #95-0188

Meeting Officer: Staff Lt. R. G. Corbin

Issue: Did the employer have just cause to suspend the grievant for twenty days?

Investigative facts as taken from the administrative investigation:

A private citizen, Erin Illane Shumate of Norwich, Ohio, complained that grievant stopped the vehicle she was operating without probable cause. In addition, she charged that grievant told her he had gotten her phone number by using a computer at work.

The employer conducted an investigation of the complaint and determined the allegations were founded. Grievant did stop Ms. Shumate without probable cause during the early morning hours of February 10, 1995. Grievant did not call in the stop as required by Highway Patrol policy and gave no legal reason for having stopped her. It was also determined that grievant used the Law Enforcement Automated Data System to obtain personal information about Ms. Shumate on January 31, 1995. Grievant denied the allegations. The employer is of the opinion that his denial is a blatant falsification aimed at covering up his wrongdoing.

#### UNION CONTENTION

The union contends the imposition of a 20 day suspension was excessive and did not follow the principles of progressive discipline. Grievant argues the proof is insufficient to establish just cause. The union asks that the grievant be made whole and his department record be expunged.

#### MANAGEMENT CONTENTION and FINDING

Management contends that just cause for discipline was established and no violation of the agreement occurred. The level of discipline was determined appropriate by the Director of Public Safety. It is the position of the employer that the grievant's behavior constitutes a serious violation of Division work rules regarding the

improper use of the Law Enforcement Data System. In addition, grievant's denial of improper use constitutes falsification during an official investigation.

Grievant's self-serving explanation of how he obtained the personal information about Ms. Shumate is neither believable on its face or consistent with the evidence. There is no doubt the evidence establishes that grievant used his LEAD's authorization improperly and that he provided false information during the administrative investigation.

The evidence establishes that grievant made an illegal traffic stop of Ms. Shumate's vehicle on February 10, 1995. It is also clear that he stopped her for personal reasons and failed to radio in the stop as required. Once again grievant denies the allegations, said denial constitutes falsification during an official investigation.

The level of discipline was not unreasonable, arbitrary or capricious. The Director of Public Safety, in full agreement with the senior staff of the Highway Patrol determined the grievant used LEAD's for non-criminal justice purposes, made a traffic stop without probable cause and exacerbated the situation by not being honest during the investigation. The imposition of a 20 day suspension was not unreasonable, arbitrary, capricious or discriminatory given the grievant's very poor deportment history. The grievance is denied.

Staff Lt. Richard G. Corbin  
May 22, 1995"

The chief of contract administration, State of Ohio, reviewed the grievance of the grievant and on June 19, 1995, this matter was denied by the following correspondence:

"June 19, 1995

Trooper David K. West  
5502 Skyline Drive  
Cambridge, Ohio 43725



Subject: FOP, Unit 1 Step 3 Response  
Grievance No. 15-03-(950504)-0041-04-01  
Ohio Department of Public Safety/  
State Highway Patrol

Dear Toooper West:

This Office has reviewed your grievance alleging a violation of Article 19 of the Unit 1 Agreement and Sections 4501-2-6-02(E)(1)(1)(3) and 4501:2-6-05(B)(1). You grieve that on(sic) you were improperly issued a twenty-day suspension without just cause. In addition, you allege that Management failed to follow the principle of progressive discipline. As a remedy, you request to be made whole and to have your deportment record expunged.

Management proved that you did, in fact, stop the motor vehicle of a private citizen without probable cause on February 10, 1995, and you failed to radio in the stop pursuant to Highway Patrol policy. Further, Management has deduced that on January 31, 1995, you accessed the Law Enforcement Automated Data System (LEADS) to gain personal information about this same citizen.

This Office has determined that management acted within guidelines of Article 19 in imposing a suspension upon you for the above-mentioned offenses. The suspension was commensurate with the offense and did not constitute a violation of the Agreement. Therefore, this grievance is denied.

Sincerely,

Robert E. Thornton,  
Chief of Contract Administration"

The State of Ohio has as a means of obtaining immediate criminal data by an operation known as the Law Enforcement Automated Data System. The grievant is a qualified user of that equipment. The grievant was so certified on March 21, 1994 and as of June 21, 1995, the grievant was still so certified. The record also revealed that the grievant was a sixteen year employee of the State Highway Patrol Unit 1. The record

also revealed that the grievant had a series of personnel disciplinary actions. His department record revealed that the grievant had seven verbal reprimands and five written reprimands. His record also revealed that he had a one day suspension. One of those reprimands was a womanizing incident when he gave his name and phone number to a female while on duty and not for the purpose of police work activity.

On February 10, at approximately 2:30 a.m. in the morning a citizen of Norwich, Ohio, left work, made a bank deposit from her job and proceeded to her home. On Interstate 70 she alleged that she was stopped by the grievant in this case who was on duty as a highway patrolman in the sector in which the grievant was driving. The citizen made a complaint and gave a statement in that regard. The pertinent part of her statement dated February 10, 1995, stated as follows:

"Friday, Feb. 10th, around 2:15 am I was walking out of the theater, with my friend Jennifer Beaney. I noticed a police car sitting at 5-B's. I told Jenn that I hoped it was a Zanesville police car. I wasn't - it was a state patrol car. The car slowly approached toward us. We thought that it was going to come down to us. Instead, it did a 'U' turn and headed toward Rt. 40.\* As the car drove towards us, I thought that it resembled the appearance of DK.\* The car then turned left onto Rt 40. I was concerned that I was DK. About five minutes later, I left to follow Jennifer to the bank. As I turned out onto Rt. 40, I noticed two Sheriff's car's sitting and talking to each other. As a way to keep myself from being pulled over, I went 5 mph under the speed limit. As I approached 'Sunrise Do it Center' I saw the patrol car sitting there. It was located under a light. As I went by, my car could be well distinguished. The patrol car did another 'U' turn, and started to follow me. I slowly approached Adamsville, turned on, and headed toward Norwich. The car also followed. At this time I started to worry. Between Adamsville

& Airport was pulled over. The lights were flashing. As the patrolman approached my vehicle he asked for my license. He said he had me 70 mph, but I tried to stay at 60 mph. I asked 'what did I do, I wasn't speeding.' He, DK, stated nothing Erin, I didn't know it was you. DK also said he just wanted to be friends. He also stated that now he also lost a partner. DK asked if I was scared. He said Ryan told him that I was scared of him. He ended with bye. I turned onto the interstate, and he sped by me, turned around in the authorized areas, and headed towards Zanesville." (sic)

The complainant, at hearing, testified to substantially the same activity as she wrote about on February 10th. A portion of her statement can be buttressed by a co-worker who left the place of work with the grievant. The co-worker also gave a statement as Ms. Shumate did and both of them, i.e., the co-worker and Ms. Shumate said they saw the State Highway Patrol car across the street from the job that the grievant held. The co-worker's statement in pertinent part revealed the following:

"When we opened the doors and were walking to our cars we both saw a police car sitting with its lights on in the 5B's parking lot. It slowly began to move toward the other part of the parking lot where our cars were. The car got about halfway across our parking lot then turned around and went back up toward 5B's. Then the police car exited the parking lot and turned left; headed toward East Pike area. Erin and I left and took our deposit to the First National Bank."

Thus the incident began with a police vehicle out in front of the grievant's employment at 2:45 or 2:30 in the morning as testified to by both the complainant and her co-worker. The complainant then testified that she was stopped in the duty area of the grievant in this particular

case. The radio time record of the grievant revealed that the grievant was available during that period from 0156 to 0236, the very period during which the grievant complained of being stopped. The grievant denied making such stop but it is noted that there was no definitive action for a period of 40 minutes on the grievant's radio log. It might be noted that the grievant further testified that he was in the area that the grievant worked on the way to meal time at the hospital, the place that he usually ate his meal during the course of his shift.

It might be further noted that the complainant testified that when she asked the grievant during the police stop on Interstate 70 how he had obtained her license plate etc. he said he had obtained her license plate and phone number by computer. As a result of that the State Highway Patrol made a check of the system upon which the grievant was trained and certified. As a result of that check it was found that on January 31, 1995, indeed a request had been made to the criminal computer system known as LEADS and there was a response by that system concerning the very person that the grievant allegedly stopped on Interstate 70, an act which the grievant denied but the one the complainant reported almost immediately after it occurred. The State Highway Patrol conducted an investigation and there was not one person on the entire force who admitted making that request of the computer. Further, the grievant was reported to have been at the station at the time the request was made and answered.

Based upon the grievant's inquiry, the information which resulted from the investigation of the patrol, based upon the complaint of

Shumate, based upon the prior discipline record of the grievant, based upon the fact that one of those disciplines was a womanizing experience, and based upon the fact that the grievant had no time indicated on his radio record for the period indicated and his admission of his being in the area of the grievant's employment at the time of the incident all lead the employer to believe that in fact the grievant had violated the practices and procedures which governed the grievant's activity and which was indicated and stated by his employer at hearing and prior.

The grievant denied all of this alleged substandard conduct. It was as a result of all of these indications, statements, averments and denials that this matter rose to arbitration for opinion and award.

It is interesting to note that this record also contained an event of an incident involving the complainant's former boy friend. The grievant was or perhaps still is a friend of the Shumate's ex-boy friend. The complainant had discussed the bad relationship with the grievant and as a matter of fact had spent a six hour period with the grievant one evening driving round trip from Cambridge to Canton discussing the relationship of the complainant to her boy friend. This occurred prior in time to the incident at hand. The grievant offered some explanation as to the boy friend's acts. The complainant testified that there was a moment or so during that six hour meeting that caused the complainant to believe that the grievant in this case was attempting to obtain an intimate relationship with the complainant. The complainant testified that she stopped any advances. The complainant did say that she on prior occasion heard from the grievant by phone. However, the

incident of February 10th apparently brought a halt to any activity between the complainant and the grievant.

The union sought to defend this matter not only upon the denials of the grievant but also upon the fact that a love triangle caused the problem and that this was really a personal involvement rather than any dereliction of duty or misuse of police time and equipment or act contrary to policy and procedure.

Such being the case this arbitrator considered all of those activities and the facts and allegations and denials of the parties.

### III. OPINION AND DISCUSSION

The grievant was involved in this particular case because the grievant, according to a complaint from a citizen, allegedly stopped that citizen in the night season without probable cause and the roof lights flashing. The complainant testified that this placed her in fear because she was not speeding or doing anything violative of the law to cause this highway stop. For whatever reason, the grievant admitted to her that he knew her plate number and phone number and had received computer information concerning her.

Acting upon that after investigating the immediate complaint of Shumate, the Highway Patrol checked the computer and found that in fact the information was true. If the statement had never been stated to the complainant by the grievant and if the statement had not been investigated, there would be little belief by buttressing evidence that

the complainant was telling the truth about the stop on Interstate 70. In this particular case it is apparent from the evidence that in fact the complainant had received information from the grievant himself that he was assisted in his phone numbers and car identification and plate numbers through the use of the computer and that information in fact was true because the complainant's statement was buttressed by the fact that a LEADS inquiry concerning information about the complainant was in fact found to be the case.

The grievant denied the stop on Interstate 70 and denied the use of the computer. For a moment let us investigate the stop. The stop is verified by the information obtained concerning the computer that the complainant received from the investigating officer at the time of the incident. It is noted that the grievant's statement was taken by the highway patrol on February 10, 1995. This is not apparently a made up statement but one taken at 1150 hours on the date of the incident. It is apparent that the grievant went home, slept as best she could, reported the incident and appeared at the patrol station within the next eight or ten hours. The information that was revealed to her as she stated was buttressed by the finding of the LEADS inquiry.

Furthermore, a state highway patrol car was seen in the vicinity of the complainant's work place at the time the complainant left her employment. That was buttressed by a co-worker. Thus, both aspects of the information revealed by the complainant are apparently true. There was a car across from the work as the complainant left her job and the car was identified as an Ohio patrol car. There was a stop by the

grievant and that was buttressed by the information that the grievant gave her, i.e., computerized information inquiries.

The denial of the grievant in both aspects seems to have been defeated by the information that is not only stated by the complainant but buttressed by her co-worker and the computer system. Further, there was sufficient time for the grievant to have acted at the time complained of as indicated by his radio record. Further, no one at the station house at the time the computer inquiry was made admitted to making any computer inquiry concerning Shumate. Everyone there would have no reason to make those computer inquiries of the complainant other than the grievant himself. He was the only person who knew the complainant.

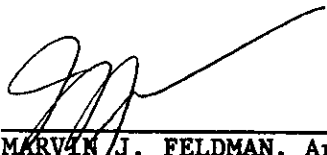
From all of this it is apparent that the grievant is guilty of the acts as complained of by the employer and violative of the policies and regulations under which the grievant worked. The grievant committed serious violations. Misuse of criminal investigative apparatus for personal use and stopping a citizen without probable cause in the night season with flashing lights is rather serious activity. Those two serious acts coupled with the prior discipline is sufficient to trigger the twenty day suspension. In other words, from all of this suffice it to say that there is good and sufficient evidence in the file to prove from the entire record that the grievant is guilty of the acts and those acts are simply enough to trigger the discipline that the grievant received. The grievant is not entitled to any modification of his discipline. He was disciplined for good cause pursuant to the terms of



the contract and the policy and procedures.

IV. AWARD

Grievance denied.

  
\_\_\_\_\_  
MARVIN J. FELDMAN, Arbitrator

Made and entered  
this 6th day  
of July, 1995.