

#1072

VOLUNTARY ARBITRATION PROCEEDINGS  
GRIEVANCE NO. 15-03-(950021)-0015-04-01

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:

Sergeant Robert J. Young, Advocate  
Rachel Livengood, Manager, Dispute Resolution Section, OCB  
Lieutenant Barry Donley, Witness  
Karen Neal, Witness  
Tim Brown, Witness

For the Union:

Paul L. Cox, Chief Counsel  
Renee Engelbach, Paralegal  
David K. West, Grievant  
Ed Baker, OLC Staff Representative

MARVIN J. FELDMAN  
Attorney-Arbitrator  
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## 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 Zanesville, Ohio, State Trooper Post, located near Cambridge, Ohio, on July 27, 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 of the instant incident contractual clause 18.08 of the collective bargaining agreement between the parties was in use. That clause revealed the following:

### "18.08 Off-Duty Status

Disciplinary action will not be taken against any employee for acts committed while off duty except for just cause."

Also in use at the time of the instant incident was a performance duty and conduct ethical code for state highway patrol troopers. One such paragraph under that performance code was paragraph (I) which revealed the following:

"(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."

The parties prior to hearing had entered into a stipulated issue and that issue revealed by the parties indicated the following:

"Was the grievant, David K. West, issued a ten day suspension for just cause? If not, what shall the remedy be?"

The grievant had been a state trooper for approximately sixteen years. At the time of the instant incident the grievant had undergone a divorce and then thereafter a bankruptcy. During the course of the grievant's daily life he leased two cellular telephones through a hospital in Zanesville, Ohio. That hospital is also involved in the business of leasing telephones. The grievant failed to make timely payments for the phones or for air time. The grievant further purchased or leased a car but failed to make the required timely payments on the car. As a result of that activity, his employer, the State of Ohio more specifically the State Highway Patrol, felt that the grievant brought discredit upon the State Highway Patrol.

The exact language was a February 3, 1995, communication from the employer which revealed the following:

"As a result of his affiliation with the Ohio Highway Patrol he was permitted to lease 2 cellular telephones through Bethesda Hospital in Zanesville. Trooper West failed to return the

phones upon the request of the hospital. Hospital personnel contacted the Highway Patrol seeking assistance in recovering their property.

Trooper West purchased a car but failed to make required payments. The owner of the vehicle sought assistance through the Highway Patrol to repossess the vehicle when unable to obtain Tpr. West's cooperation."

Certain prehearing disciplinary meetings were conducted concerning the ten day suspension on behalf of that activity and by date of February 3, 1995, the employer found that the grievant was guilty of the violation of the rule and regulation as stated above. Correspondence relevant to that activity under date of February 3, 1995, revealed the following:

"Trooper West had been charged with violation of Section 4501:2-6-02 (I) (1), of the Rules and Regulations of the Ohio State Highway Patrol in that he was charged with bringing discredit to the Highway Patrol. Trooper West was permitted to lease two cellular telephones through Bethesda Hospital in Zanesville. He was charged with failing to return one of the phones upon the request of the hospital. The hospital contacted the Highway Patrol to seek assistance in recovering their property. In addition Trooper West failed to cooperate with authorities attempting to repossess a vehicle he had purchased.

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 Sergeant(sic) S. M. Rance 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."

The grievant filed a timely protest and the statement of the grievance 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."

After the grievance was filed, a step two grievance meeting was had. The officer in charge of that particular meeting in his write-up sustained the employer below, under the following language:

"Management conducted an extensive investigation into all aspects of this case. Of the numerous issues addressed discipline was imposed on just the cellular telephones and the vehicle. Management made it clear that discipline was not being imposed for the grievant filing bankruptcy.

The grievant leased two cellular phones from Bethesda Hospital in October of 1992. Service was cut off in February of 1994 for failure to pay for monthly service and air time. In March of 1994 the hospital sent the grievant a letter demanding the return of the phones. The hospital made several attempts to have the grievant return the phones without success. Hospital personnel contacted the Zanesville Post Commander, Lt. Donley, in October of 1994 to have him assist in returning the phones. One of the phones was returned in November of 1994. The grievant advised his ex-wife had the other and he would not be able to obtain it. The grievant was the one who leased the phones, therefore he is the one ultimately responsible for the return of them. To this date the grievant still has not returned the phone to Bethesda Hospital.

As to the automobile the grievant entered into a rent to own agreement with the dealer in June of

1994, after he had filed bankruptcy. The grievant failed to make the required payments soon thereafter. The dealer made several attempts to contact the grievant regarding repossessing the vehicle to no avail. The dealer even contacted Lt. Donley to assist in getting the vehicle back.

Clearly the actions of the grievant violated Highway Patrol rules and Regulations. The grievant's behavior brought discredit to himself and the Highway Patrol. Discipline was imposed after an extensive investigation. Management had just cause to impose a ten day suspension. There has been no violation of the labor agreement."

On May 1, 1995, the chief of contract administration of the Ohio Department of Administrative Services denied the grievance under the following language:

"As a result of an administrative investigation you were suspended for violation of the Patrol Rules and Regulations, 'conduct unbecoming an officer', by failing to meet your financial obligations. The first of your obligations were the two Cellular phones which you leased through Bethesda Hospital. These phones were obtained because of your employment with the Ohio Highway Patrol. The second was the repossession of your personal vehicle. In both cases, Lt. Donely, the Zanesville Post Commander had to be contacted. This type of conduct brought discredit to yourself and the Ohio Highway Patrol.

In light of the facts above, this Office does not find any violation of the labor agreement. Your grievance is denied."

Placed into the record of this case by the employer through the commander of the post was a sheet containing a "Sequence of Events" concerning creditor calls made to the post. That sequence of events revealed the following:

"3/07/94

Bethesda Hospital requesting assistance to recover cellular telephone and delinquent payments. Discussed with Trooper West.

10/11/94

Payless Auto Sales and Repair / Requesting assistance to recover lease car and delinquent payments.

10/12/94

Discussed with Tpr. West.

10/14/94

Bethesda Hospital requesting assistance again to recover telephone and payments / Considering criminal charges.

10/17/94

Bethesda Hospital calling again concerning telephone.

Post Commander issued ultimatum to Trooper West concerning Bethesda Hospital.

11/08/94

Trooper West advised he had returned one telephone / Had filed bankruptcy.

11/08/94

Attorney M. Cohen called the Post inquiring about creditor calls."

Sometime in early 1994, exact date unknown, the grievant filed a bankruptcy action under the federal law. He was represented by counsel and signed a fee agreement as early as March 28, 1994, a document that was placed into the record of this case. It might be noted that the activity as to the telephone calls occurred subsequent to the filing of bankruptcy. In other words, there is evidence in the record of this case that Bethesda Hospital and Ameritech, two companies involved in a

phone matter, were listed as creditors in the bankruptcy. The hospital phone calls to the State Highway Patrol were surplusage, unnecessary and if the fact be known were somewhat unusual because when bankruptcies are filed there are the usual restraining orders disallowing any collection of property activity by the creditors listed in that bankruptcy until the court so orders.

It might be noted that the grievant entered into a security agreement with the Payless Auto Company for the purchase of a car in June of 1994, or sometime after the filing of the bankruptcy. It is noted that the grievant made three payments after the purchase of the car and then testified that his lawyer who handled his bankruptcy revealed to him that he should not take any action without a court order in returning any property to any creditor. On that basis the car had to be repossessed on September 30, 1994, according to the records of the auto company. There was no record of any unusual activity when the car was repossessed.

Thus, based upon overdue payments to creditors for the leasing of the telephones (including air time ) and the automobile transaction, the phone calls to the post commander, the employer, saw fit to discipline the grievant for off duty conduct which the employer claimed to be contrary to the code of ethics. Incidentally, the code of ethics at rule IX revealed the following:

"IX

They shall so conduct their private and public life that the public will regard them as examples of stability, fidelity and morality."



Management indicated and stated that the activity of the grievant was unacceptable. The language of the opening statement of the employer in that regard revealed the following:

"The fact the Highway Patrol holds its employees to a high standard of both on and off duty conduct is accepted by the courts, supported by the public and recognized in past arbitrations. It will become clear the actions of the grievant brought discredit to the Highway Patrol and violated the Rules and Regulations of the Highway Patrol."

The union on the other hand indicated and stated that off duty conduct of a state trooper is punishable only for just cause. The activity of the trooper in this matter, indicated the union, was not embarrassing to the employer, did not receive any notoriety, was not unusual for the citizenry at large and that the financial stress of a divorce and prior suspension of the trooper made it impossible for the trooper to fill all of his financial obligations. Thus, the union argued that the activity of the grievant was not an event that should become the subject of discipline. It was upon those averments, statements, denials and allegations that this matter rose to arbitration for opinion and award.

### III. OPINION AND DISCUSSION

The activity involved in this particular matter all transpired as a result of a certain sequence of events which were indicated hereinabove. To restate those telephone events were as follows:

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Bethesda Hospital requesting assistance to recover

cellular telephone and delinquent payments.  
Discussed with Trooper West.

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None of those events were on duty events. The activity that triggered the phone calls were clearly off duty events. They involved the lease of two cellular phones from Bethesda Hospital and the lease or purchase of an automobile from Pay Less Auto Service. That had nothing to do with the grievants duties and any discipline that the employer sought to invoke in any event in this matter must be clearly based upon off duty status discipline. It is interesting to note that in the background of the grievant, the grievant had been through a divorce

situation and the financial ramifications of a divorce are clearly known. It is further interesting to note that the grievant had been through a suspension of his employment and that suspension also triggered a financial difficulty for the grievant. As a result of all of these activities, i.e., his divorce, his suspension and many of the bills that he had to pay, the grievant suffered serious financial difficulties and was unable to meet some of his financial obligations. As a result, the grievant found himself in financial difficulty---all of which triggered creditors to call the employer. It might be noted that one of the creditors who is listed on the bankruptcy and should have looked to the bankruptcy court for orders regarding the disbursement of property rather than to the person who had the equipment. Why the hospital bothered the employer is an activity that is commonplace yet antiproduktive to obtaining the property. The phone call should have been made to the bankruptcy court or the trustee and bankruptcy and not to the employer.

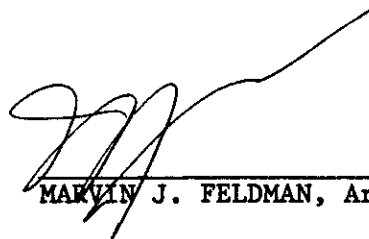
The situation with the automobile revealed that the purchase of the automobile was made after the bankruptcy. The grievant made three payments and the car approximately ninety days later was repossessed. The repossession was without incident and again an anxious creditor called the post commander. None of these events were advertised in the newspaper or known to the public generally and the State Highway Patrol was not embarrassed in any manner or respect. The grievant participated in a bankruptcy court action to which he was entitled as a citizen of the United States. His activity was not criminal in nature. The grievant gave up the telephones as he should have and the automobile as he should have. The episode was over rather quickly and was within a

period of months and in no way should have triggered any discipline whatsoever.

The activity of the employer in this case was based upon some alleged substandard conduct for off duty patrolmen. Quite frankly, the action of the employer was not warranted under the activity involved. While this arbitrator is not condoning financial problems for the members of the State Highway Patrol the fact is that there must be a realization that every private activity of the troopers are not subject to discipline unless there is an embarrassment to the employer or the act is criminal or involves civil disobedience. Simply put, the activity of the grievant in this matter does not meet any of those guidelines and for those reasons the grievance must be granted.

IV. AWARD

The grievance is granted and the grievant shall be paid any lost wage.

  
MARVIN J. FELDMAN, Arbitrator

Made and entered  
this 16th day  
of August, 1995.