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In the Matter of Arbitration

Between

Fraternal Order of Police-  
Ohio Labor Council

and

The State of Ohio, Ohio State  
Highway Patrol

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Case Number:

15-03-950119-0004-04-01

Before: Harry Graham

Appearances: For Fraternal Order of Police-Ohio Labor Council

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

For Ohio State Highway Patrol

Robert J. Young  
 Ohio State Highway Patrol  
 660 East Main St.  
 Columbus, OH. 43205

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 case 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 Grievant, Gerald Napier, issued a three day suspension for just cause? If not, what shall the remedy be?

Background: Many of the events prompting this controversy are

in dispute between the parties. It is agreed that on September 26, 1994 the Grievant, Gerald Napier, a Highway Patrol Trooper, stopped a motorist, Maggie Marks, for speeding. She was apprehended for doing 75 mph in a 45 mph construction zone. When he gave Ms. Marks the ticket he set a court date for her for October 13, 1994. She was to appear in the Hamilton County Court. Her appearance was mandatory. Due to Ms. Marks speed her fine was computed to be \$129.00. As her violation occurred in a construction zone that fine was to be doubled.

In the evening of October 11, 1994 the Grievant telephoned Ms. Marks. He told her that she did not have to pay a fine nor appear in Court as scheduled. He informed her that an error had been made and dropping of the fine and Court appearance would rectify it. As part of this arrangement Trooper Napier required that Ms. Marks return to him her copy of the ticket. She readily assented to this and offered to mail it to him or drop it off at a police station. This was not satisfactory to him. He desired a meeting with Ms. Marks to personally retrieve the ticket. When this conversation was held Ms. Marks' friend, Melanie Hooks was present and heard Ms. Marks' side of it. Ms. Hooks expressed reservations about this scenario. It seemed improper to her. The next day Ms. Marks telephoned the Hamilton Highway Patrol post to inquire about this procedure. In due course questions

were raised by officials of the Highway Patrol. These led them to impose a three day suspension on the Grievant for inefficiency and untruthfulness. That suspension was protested through the grievance procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Employer: The Employer points out that Ms. Marks and her friend, Ms. Hooks, were unacquainted with the Grievant prior to the events in question. They have no motivation to fabricate a story in order to "get" him. When Ms. Marks was stopped on September 26, 1994 Trooper Napier told her the amount of the fine. She knew from that date that she would have to pay \$129.00 doubled, or \$258.00. Ms. Marks was employed at the time of these events. She scheduled a day off work in order to go to Court as directed by Trooper Napier. It was only after her friend, Ms. Hooks, and co-workers questioned the arrangement offered by Trooper Napier that she became concerned. She concluded his behavior was inappropriate and raised the issue with officials of the Patrol. She acted out of genuine concern, not hostility towards Napier. Her account of events is corroborated by Hooks.

There is in evidence in this proceeding Employer Exhibit 1, a tape recording of a telephone conversation between Marks and Captain Dutton of the Highway Patrol. In that

conversation Marks demonstrates her concern that Napier acted irregularly. It accurately reflects her state of mind at the time of the conversation. Her account of events represents the truth of the matter and should be believed by the Arbitrator the Employer urges.

There is at the Hamilton post a procedure for transferring tickets to the appropriate court. Troopers place them in a basket. They are subsequently taken to the Court. In this situation the Marks ticket was not transmitted to the Hamilton County Court. It disappeared. From time to time tickets are misplaced but they are eventually found. That did not occur in this instance. To the date of the hearing, November 15, 1995, the ticket has not been found. That is due to the fact that it was not properly filed according to the Patrol. Support for this view comes from Shirley Waits, a Dispatcher at Hamilton with 29 years of service. She inquired of Napier about the whereabouts of the ticket and he retrieved it from his own file.

From September 26 to October 11, 1994 the Grievant telephoned Ms. Marks four or five times by his own account. Given the change in the fine and court appearance he should have done more according to the Patrol.

The Grievant has prior discipline on his record. At the time of the three day suspension he had a live written reprimand and a one day suspension. Under the circumstances,

the three day suspension at issue in this case is justified according to the Employer. It urges the Grievance be denied. Position of the Union: According to the Union there occurred in this situation an unfortunate confluence of events. The ticket given to Ms. Marks was lost. That happens from time to time as was acknowledged by the post commander. The ticket shown by Trooper Napier to Disptacher Waits was the copy retained in the Trooper's own file, not that sent to the Court. Similarly, from time to time erroneous information is provided to motorists when they are stopped for violations. Troopers then contact motorists to make corrections. In this case that is what Napier tried to do. He should not be penalized for his efforts.

The Union places particular emphasis upon Employer Exhibit 1, the tape recording of the conversation between Ms. Marks and Captain Dutton. In particular, as the Union urges it be interpreted, it was only when Ms. Marks realized that she was liable for a \$129.00 fine that she became agitated. To that point, she had not raised any problem with the behavior of Trooper Napier. Ms. Marks is a student, working to support herself during her studies. A \$129.00 fine is a large amount for her. Under these circumstances she was seeking to escape it. Hence, her account of events should be discounted according to the Union. It urges the grievance be sustained and the three day suspension removed from Trooper

Napier's record and lost pay restored to him.

Discussion: There is no reason to believe that Ms. Marks and Ms. Hooks fabricated their story in order to avoid a court appearance and payment of a fine. At the time of this incident they were unacquainted with the Grievant. They have maintained their story consistently for more than a year. The Union did not show hostility between them and the Grievant. The motive ascribed to them by the Union, desire to avoid the expensive consequences of speeding, is plausible. That they acted as they did to discredit, in essence to frame the Grievant, is implausible. As is the case with any tribunal attempting to discern fact from fiction, there occurs in the arbitration forum a weighing of the probabilities. It appears to this Arbitrator that Ms. Marks and Hooks were truthful in their testimony.

This view is bolstered by the mishaps that occurred in this situation. It is true as the Union notes that tickets get lost. They are normally found. After more than a year the relevant copy of the ticket at issue in this case has not surfaced. Related to this is the testimony of Shirley Waits, a veteran of 29 years of service with the Patrol. Ms. Waits can be expected to be familiar with the multiple colors involved with the traffic ticket. In this situation, her testimony is credited by the Arbitrator.

Reasonable people can quibble about whether or not

Trooper Napier made sufficient efforts to contact Ms. Marks prior to October 11, 1994. When he did so, by the account of Ms. Marks and Hooks his conversation was sufficient to excite suspicion. Not only were they concerned after initially being elated, Ms. Marks co-workers were concerned as well. They were sufficiently concerned that one of them made a phone call on her behalf to inquire if Trooper Napier's actions represented the policy of the Patrol. In essence, the Union asks the Arbitrator to believe that there was a widespread conspiracy to get Ms. Marks out of paying the fine and appearing in Court while at the same time discrediting Trooper Napier. This is not believed.

Similarly, the significance attached to Employer Exhibit 1, the taped conversation between Captain Dutton and Ms. Marks, by the Union is misplaced. This Arbitrator cannot hear in the conversation the sudden realization by Ms. Marks of the magnitude of her fine asserted to exist by the Union. To the contrary, she was aware from the date of the incident that she faced a substantial fine. The Union would have the Arbitrator believe that the conversation between Dutton and Marks was an act by Marks. This is rejected.


That this or any other arbitrator might have made a decision different from that made by the Patrol in this incident is irrelevant. If the determination of discipline by an Employer is within the bounds of reasonableness it should

not be disturbed. It is when an arbitrator determines that discipline is excessive and disproportionate to the offense that discipline is modified. In this situation it is believed that events transpired as testified by Ms. Marks and Ms. Hooks and Dispatcher Waits. As that is the case, discipline is justified.

The Employer pointed out that the Grievant had prior instances of live discipline on his record when the three day suspension at issue in this proceeding was levied. As that is the case and as the accounts of the various Employer witnesses are credited by the Arbitrator, no reason exists to disturb the three day suspension at issue in this proceeding.

Award: The grievance is denied.

Signed and dated this 28<sup>th</sup> day of Nov, 1995  
Solon, OH.

  
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Harry Graham  
Arbitrator