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VOLUNTARY ARBITRATION PROCEEDINGS
THE TERMINATION OF TROOPER DAVID J. KATAFIAS

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:

Robert J. Young, Advocate
Richard G. Corbin, Advocate
Lou Kitchen, OCB Representative
Melissa Snell, Witness
Judge Richard Branister, Witness
Jerry Kaylor, Witness
Lt. Joe Black, Witness

For the Union:

Paul Cox, Chief Counsel
Ed Baker, Staff Representative
Renee Engelbach, Paralegal
David J. Katafias, Grievant
Mel Walcott, Staff Representative
William A. Simms, Chief Associate
Jim Roberts, Unit #1 Release Person

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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 in Troy, Ohio, on April 18, 1996, 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 the instant incident occurred, there was in use at the facility several contractual clauses which were pertinent to the matter at hand. One of those clauses is paragraph 19.01 which revealed the following:

"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."

Also important to the matter at hand was pertinent language of paragraph 19.05 of the collective bargaining agreement which referred to progressive discipline. That particular language in pertinent part revealed the following:

"19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. Verbal Reprimand (with appropriate notation in employee's file);
2. Written Reprimand;
3. A fine not to exceed two (2) days pay;
4. Suspension;
5. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) 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."

Also forming a predicate for this particular matter was the Code of Professional Responsibility or Ethical Code for State of Ohio troopers. The Code in use at the time of the instant incident and pertinent to the matter at hand, revealed the following:

"(1) 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."

The grievant in this particular matter is an employee with some fifteen years of service whose department record is non-existent. Up until the occurrence in this particular matter, the grievant had absolutely no discipline whatsoever.

The grievant was in a loving relation with a deputy clerk of courts of Vandalia, Ohio, Municipal Court. The relationship lasted probably from September 1994 through the 4th day of December, 1994. The grievant in this particular matter described at hearing that he was in love with that particular individual. The grievant indicated and stated and it was confirmed by the complainant former girl friend that while the complainant was working in the Vandalia Court, the grievant had seen her at work on many occasions during the course of his work in the court and in fact they had dated for several months. As a matter of fact, evidence revealed that the grievant and the complainant had traveled to Las Vegas, Nevada, with the complainant and her family. The romance broke off some time in early December, 1994, and although it was short lived, it was apparently very emotional and deep.

Months after the relationship was over, the grievant wrote a note to the complainant and that note revealed the following:

"THIS SHOULD PISS YOU OFF:

WHAT WOULD YOU DO IF AT THIS VERY MOMENT....I
RAPED YOU"

As a result of that note, several things occurred. Firstly, the Judge at Vandalia Municipal Court called in the commanding officer of the grievant. The commanding officer of the grievant was told by the Judge that the grievant would no longer be allowed upon the premises with his weapon and that if he did come upon the premises without his weapon, he would have to be in the tow of a supervisor. The Judge further stated that he warned the Vandalia Police Department to keep a

look out for the grievant and not to let him upon the court's premises unless the two conditions, i.e., lack of weapon and supervisory control were adhered to. The Judge further stated at hearing that he in no way would allow any employees of the court to be harassed by the grievant.

The second thing that happened was that the commanding officer of the grievant received the following letter from the Human Resource Director of Vandalia. That letter stated as follows:

"Lt. Joe Black
Ohio State Highway Patrol
Post 57
Dayton, Ohio 45414

Dear Lt. Black:

On October 23, 1995 at approximately 2:15 p.m., I was notified by Jerry Kaylor, clerk of courts, that earlier in the day, your trooper, Dave Katafias, directed grossly inappropriate correspondence to Vandalia Municipal Court employee Melissa R. Snell.

This letter is to provide written notice that the City of Vandalia will not tolerate hostile action directed toward its employees and we intend to take every precaution necessary to protect Ms. Snell and other staff members.

We trust you are investigating this matter and have taken the appropriate and necessary action to prevent future conduct of this type by Trooper Katafias.

Please contact me with any questions or concerns.

Regards,

/s/Julie K. Trick
Human Resources Director"

The next thing that happened that there were several articles in the Dayton Daily News revealing activity concerning this particular matter. Those articles appear on the following pages.

Emp #3

25 C TUESDAY, OCTOBER 31, 1993 •

DAYTON DAILY NEWS

Metro

State Highway officer accused of stalking clerk

By Laurie Decker
DAYTON DAILY NEWS

A 15-year veteran of the Ohio Highway Patrol stationed at the Dayton post is under investigation for stalking a deputy clerk in the Vandellia Municipal Court.

Vandellia police are also investigating whether David Katadas, 41, who allegedly placed a note on the clerk's desk that read "What would you do if at this very moment... I raped you," might have been harassing the

clerk for almost a year.

Police said Katadas also may be charged with harrasing by stalking, one of the new Ohio laws for dealing with someone who exhibits a pattern of stalking behavior. The charge is a misdemeanor of the first degree.

The trooper is also undergoing an internal investigation by the patrol's district headquarters in Piquette.

Katadas' attorney, Stephen King of Troy, declined to comment.

"A total shock" is how Ohio Highway Patrol District Commander Capt. James Walker described his reaction to the allegations. "There is no such behavior in his background as long as he's been a trooper."

Walker said Katadas has been off-duty and on administrative leave since Oct. 23, when police were notified about the note by the clerk.

Vandellia Police Lt. John Sands said the 24-year-old clerk said she found the unsigned note that

same day, written on paper from a co-worker's note pad, on her desk. Sands said the clerk, who had dated Katadas, recognized his handwriting.

Sands said the two dated, but the woman broke off the relationship in November 1994. Since then, Sands said the woman told police Katadas has harassed her at home and at work.

In a police report, the clerk said the trooper has left his Ohio Highway Patrol trading card on her desk; has gotten into her car

when she wasn't in it; and left a Manila envelope containing underwear addressed to her at last year's Christmas party for Vandellia city employees.

The report states the woman and her boyfriend tried to handle the situation themselves by writing to Katadas and threatening to notify the patrol. The report states the harassment ended for a few months and then resumed.

Sands said Katadas was seen in Vandellia court the morning the note was found. The police

report states he had a passing conversation with the clerk, which was overheard by others. The clerk's desk is accessible to police officers and court staff.

The patrol said Katadas was stationed at the Defiance post before coming to the Dayton post.

He was named trooper of the year in Defiance in 1986 and has numerous commendations for aiding citizens and speaking before community groups.

Patrol fires officer charged with stalking clerk

By Laurie Denger

DAYTON DAILY NEWS

Ohio Highway Patrol Trooper David Katafias lost his job Tuesday and later was charged with menacing by stalking.

Katafias was terminated by the patrol Tuesday following a pre-disciplinary hearing.

The trooper also was arraigned in Vandalla Municipal Court and released on his own recognizance. Katafias had been on administrative leave from the patrol since Oct. 23 when clerk

Melissa Snell, 24, of Dayton notified police that Katafias had left a note reading "what would you do if, at this very moment... I raped you" on her desk in the court.

Patrol spokesman Sgt. John Born said Katafias, 41, of Medway is no longer a highway patrol trooper, effective Tuesday. The 16-year patrol veteran faced a hearing officer and other patrol officers during the hearing in Columbus. Born said Katafias can file a grievance if he disagrees with the decision.

His attorney could not be reached following the announcement of his termination.

Katafias pleaded not guilty to the menacing charge in Vandalla Municipal Court. A pre-trial date for the first-degree misdemeanor was set for Nov. 16.

Snell also filed a complaint with Vandalla police in which she said Katafias had harassed her since she told him she no longer wanted to date him. The two dated briefly last year.

But his attorney Stephen King characterized the events as a

"misinterpretation." And he wondered why Snell had not filed a complaint before the note incident if she had been harassed for almost a year.

The police report filed Oct. 23 said Snell and her current boyfriend had tried to handle the situation themselves by sending Katafias a note threatening to go to the patrol. They said the harassment ended for a few months, then started again. Snell filed the complaint, according to police, because she felt the note left on her desk was a threat.

DDN 11-1-95

STATE HIGHWAY PATROL
REPORT OF INVESTIGATION

Post 57 Dayton Case No. _____ Date _____

Field No. _____ Teletype No. _____ Pouch No. _____

SUBJECT Article from Dayton Daily Newspaper

Trooper sentenced

Former Ohio Highway Patrol Trooper David Katafias pleaded guilty to a reduced charge of disorderly conduct in Vandalia Municipal Court on Wednesday, a spokeswoman said. Katafias, who had been with the patrol's Dayton post, was charged in November with menacing by stalking. A municipal court employee complained he had left her a note reading "What would you do if, at this very moment...I raped you?" On Wednesday, Katafias was fined \$250 plus \$119 court costs and given a suspended jail sentence of 30 days. Katafias was also put on probation of up to two years.
— Laurie Denger

Signature *[Signature]* U-18

The next thing that happened in this particular case was that the grievant was charged with menacing by stalking. The matter was cited under the Ohio State Code but the Vandalia Municipal Court allowed a guilty plea to disorderly conduct, a lesser included offense. The grievant was fined \$250.00 with a suspended sentence and the grievant was placed on probation for a period not to exceed two years. Further, the grievant was ordered not to contact the complainant or her family or her friends. Further, the grievant received counselling, pursuant to court order.

Also as a result of this particular matter, the grievant was terminated from his employment. The subject of the charges indicated as follows by way of letter of October 27, 1995:

"Colonel Warren H. Davies
Superintendent
Ohio State Highway Patrol
660 East Main Street
Columbus, OH 43205

Dear Colonel Davies:

SUBJECT: STATEMENT OF CHARGES

It is herewith stated that reasonable and substantial cause exists to establish that Trooper David J. Katafias, has committed an act or acts in violation of the Rules and Regulations of the Ohio State Highway Patrol, specifically of:

Rule 4501:2-6-02 (I)
(1) Conduct Unbecoming an Officer

It is charged that Trooper David J. Katafias, on October 23, 1995, while on duty, left a threatening, intimidating note on the desk of a Vandalia Municipal Court employee. This action by Trooper Katafias brought discredit to himself and the Highway Patrol.

Respectfully,

/s/Captain J. H. Walker
District Five Commander"

Thereafter and on October 31, 1995, the employer found that there was just cause for discipline. Thereafter, the grievant was removed from his employment by way of letter of October 31, 1995. That letter revealed the following:

"October 31, 1995

Tpr. David J. Katafias
12215 Amydee Lane
Medway, OH 45341

Dear Tpr. Katafias:

Please be advised that for disciplinary reasons, you are being removed from your position as a Highway Patrol Trooper, Department of Public Safety, Division of the State Highway Patrol, effective at the close of business on October 31, 1995.

This removal is the result of your violation of section 4501:2-6-02 (I)(1) of the Rules and Regulations of the Ohio State Highway Patrol. It is charged that on October 23, 1995, while on duty, you left a threatening, intimidating note on the desk of a Vandalia Municipal Court employee. This action brought discredit to yourself and the Highway Patrol.

Very truly yours,

/s/Charles D. Shipley
Director"

Thereafter, the grievant filed a timely protest pursuant to the terms of the collective bargaining agreement and the statement of the grievance revealed the following:

"STATEMENT OF GRIEVANCE (GIVE TIMES, DATES, WHO, WHAT, WHEN, WHERE, WHY, HOW), BE SPECIFIC.
DISCHARGED ON _____ WITHOUT JUST CAUSE
PROGRESSIVE DISCIPLINE WAS NOT USED."

Thereafter, and by way of letter of December 8, 1995, under a step 3 response, the Chief of Contract Administration of the Ohio Department of Administrative Services, Office of Collective Bargaining denied the grievance. That letter of denial revealed the following:

"December 8, 1995

Trooper David J. Katafias
12215 Amy Dee Lane
Medway, Ohio 45341

Subject: FOP, Unit 1 Step 3 Response
Grievance No. 15-03-951030-0101-04-01
Ohio Department of Public Safety/
State Highway Patrol

Dear Trooper Katafias:

This Office has reviewed your grievance alleging a violation of Article 19, Sections .01 and .05 of the Unit 1 Agreement. You grieve that your employment with the Patrol was terminated without just cause for allegedly violating OHP Rules and Regulations 4501:02-6-02(I)(1) - Conduct Unbecoming an Officer. It was alleged that you placed a sexually harassing note on the desk of a municipal court employee.

After reviewing your grievance, this Office has determined that management acted within the guidelines of Article 19 in terminating your employment for the violation(s) referenced above. The discipline imposed was commensurate with the offense and did not constitute a violation of the Agreement. Therefore, this grievance is denied.

Sincerely,

/s/Robert E. Thorton,
Chief of Contract Administration"

The employer in this particular matter indicated and stated that the offense of the grievant was rather serious; that the victim complainant was rather deeply and permanently affected; that the grievant's conduct did not comport with the Code of Ethics for the State Highway personnel and that although progressive discipline is the rule under the contract, where the activity is so severe, progressive discipline may not be followed.

The union on the other hand indicated and stated that the activity of the grievant was nothing more than a spat between two lovers; that the grievant admitted his remorse for such writing as was indicated in this particular matter and that the grievant pleaded guilty to disorderly conduct which was accepted by the authorities, a rather minor charge, all of which should lead the employer as well as the arbitrator to treat it with the same attitude. It was upon the facts indicated herein as well as the argument of the parties that this matter rose to arbitration for Opinion and Award.

III. OPINION AND DISCUSSION

There is no doubt that there existed between the grievant and the complainant a loving relationship that was described by the grievant as intimate for a period of at least a month or six weeks. That was buttressed by the fact that the parents of the complainant had even invited the grievant to vacation with them and the complainant in Las Vegas, presumably during this period of time. The grievant testified that he, on occasion, left the complainant flowers and notes and doughnuts at her work place and that he dated her by taking her to putt-

putt and bowling and other events. The testimony from both of the individuals (grievant and complainant alike) at hearing, revealed that this was a highly emotional activity that the parties participated in.

The grievant on or about the 23rd of October, 1995, while on duty, at the Vandalia Court House left a note on the desk of the complainant. That note in clear and unambiguous language stated "what would you do if at this very moment I raped you". The complainant became so upset, she stated that she looked for her employer who was not present (clerk of courts) and that she thereafter and immediately went to the presiding judge who thereafter and immediately had a conversation with the grievant's employer. Because of the judges' immediate and hostile activity directed to the grievant, the commanding officer of the grievant responded immediately and the grievant was placed on administrative leave the next day. The activity indicated in the statement of facts hereinabove revealed all that transpired. That included newspaper articles, charges in the court house and termination activity on the part of the State of Ohio. The complainant testified at hearing that she was a changed person as a result of all of this and that she was fearful and that she had not traveled alone since this activity occurred.

All in all, if the evidence is examined in light of our present society, and in light of the loving relationship and highly charged relationship between the parties, the activity of the grievant takes on a different light. This was not a case of sexual harassment. The grievant described his activity as a joke and in his mind, could have

been. The complainant described this activity as cruel and abusive and harassing and criminal in nature. The courts finally accepted a plea of disorderly conduct, which is a very minimal charge in our judicial system. The overemotional description by the complainant does not comport with the judicial findings in this particular matter.

The employer testified that if the grievant had to appear in the court house at Vandalia with a supervisor and without his sidearm, then in that event, the work activity of the grievant would be seriously hampered. The employer further testified that the grievant was acting grossly violative of the code of ethics.

The grievant in this particular case was a fifteen year employee who had an exemplary record without one bit of discipline during that period of time. This conduct was described as a "surprise" to the commanding officer of the grievant. There is no doubt in my mind that the loving relationship between the grievant and the complainant was rather serious. At the time the note was written, the complainant did not believe that there in fact was a loving relationship. Whatever the case be, I think that there was an overemphasis in this particular matter and that it was blown completely out of proportion given the circumstances in the relationship between the parties. The employer described this as a situation in which there was so grossly a substandard activity on the part of the grievant that progressive discipline should not be followed. I must take issue with the employer on that particular count.

There was no physical harm in this case. The court system allowed a plea of a minimal charge of disorderly conduct and the criminal system refused to indict. It is my belief that the activity of the employer under the terms of the contract does not merit more consideration than the city court adopted.

In this particular case, the parties stipulated an issue. That statement of issue revealed the following:

"STATEMENT OF ISSUE

In conformance with Article 20, Section 20.08 (8) of the Collective Bargaining Agreement between the parties, the Employer submits the following statement of issue for the resolution by the arbitrator:

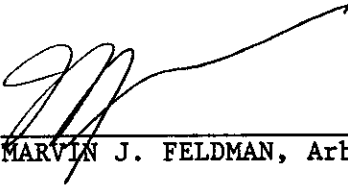
Was the grievant terminated for just cause? If not, what shall the remedy be?"

There is insufficient just cause in this case for all the reasons indicated to terminate the individual. His record, his seniority, his loving relationship with the complainant and his professional conduct for fifteen years make it impossible to terminate this individual on the facts revealed in this particular case. As a result, the grievant should receive some discipline but not that which was meted out in this matter. It might also be noted that the grievant should be transferred from his present duty station to a duty station distant from Vandalia so that he not have contact with the court system in Vandalia and would be foreclosed from contacting the complainant or her family or her friends because the distance would be too great. The grievant should be transferred forthwith and returned to duty with back pay beginning from

the 61st day after termination was indicated.

IV. AWARD

The grievant shall be returned to duty forthwith and transferred forthwith to a needful duty station distant from Vandalia, Ohio. The grievant shall altogether lose sixty days of wage but there shall be no loss of seniority or benefit.



MARVIN J. FELDMAN, Arbitrator

Made and entered
this 30th day of
April, 1996.