

VOLUNTARY ARBITRATION PROCEEDINGS  
THE GRIEVANCE OF TROOPER T.E. GWINN

STATE OF OHIO	:	
HIGHWAY PATROL	:	
	:	
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:

R. Corbin, Staff Lieutenant  
Sergeant W.E. Poffenbaugh, State Highway Patrol  
Lieutenant M.L. Webber, State Highway Patrol  
Deputy P. Mort, Corrections Officer  
Trooper P.H. Beaty  
Amy Beach, Office of Collective Bargaining

For the Union:

Paul L. Cox, Chief Counsel  
Trooper T.E. Gwinn, Grievant  
Ed Baker, Staff Representative  
Beth Klopstein, Paralegal

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 on October 30, 1996, at the Findlay, Ohio, headquarters of the employer 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

The grievant in this particular matter was a four year veteran of the State Highway Patrol. He was employed as a trooper. He did not have any deportment record whatsoever at the time of the instant incident. At the time of the instant incident he was also assigned as a training officer for a state trooper who had just graduated from the State Highway Patrol Police Academy. The trainee accompanied the grievant on much of the grievant's work duties.

On January 6, 1996, the grievant was informed by the Findlay, Ohio, driver's examination station that an individual applied for a commercial driver's license and was in fact not the individual he stated himself to be. The grievant travelled to the site of the examining facility and arrested the individual for giving false information on the commercial driver's license application. The grievant and the trainee then

transported that individual to the local jail. The individual was incarcerated. At the time of that arrest the grievant searched the prisoner and retrieved a wallet from the prisoner. The wallet had many papers in its contents but the grievant merely thumbed through the papers rather than examining each one.

At a later time and within a few hours thereafter the grievant was notified by the sergeant at the sheriff's office at which the prisoner was housed that the individual had upon his person a birth certificate which was found in the wallet that the grievant merely thumbed through. The grievant again reappeared at the jail and booked the prisoner under the proper name and thereafter went back to the station house.

It appeared that the grievant was asked at that time by a superior officer as to whether or not a search of the individual was made to determine his name and the grievant stated that nothing was found but later on the grievant stated that a birth certificate was found. The senior officer through the inquiry of the grievant and the answer by the grievant had the impression that the material was not found in the billfold but rather in the jacket of the suspect. The same story was indicated to the lieutenant in charge of the post by the grievant.

The trainee stated that she heard the grievant state to others that the information was found in the billfold although the grievant indicated to his superiors, by their testimony, that the birth certificate was in fact found in the jacket of the individual and not the billfold. As a result of this information, the grievant was subjected to discipline as indicated in the performance of duty and

conduct code for State Highway Patrol members. Those sections of violation revealed the following:

"(5) Members who fail to perform their duties because of an error in judgment or otherwise fail to satisfactorily perform a duty of which such member is capable, may be charged with inefficiency.

-and-

(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."

Those violations resulted in a suspension of five days. A February 13, 1996, letter concerning the grievant revealed the following:

"Subject: Statement of Charges

Dear Colonel Davies:

It is herewith stated that reasonable and substantial cause exists to establish that Trooper Thomas E. Gwinn, Unit 510, Findlay Patrol Post, District One, 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 (B) (5)  
4501:2-6-02 (E)

It is charged that on January 6, 1996, at approximately 2:00 PM, while in Patrol Uniform, Trooper Gwinn initiated an arrest of a person for providing false information on a driver license application. To wit: subsequent to the arrest action, Trooper Gwinn misrepresented the facts of the case to his Supervisors to conceal an improper search."

A protest was filed under favor of article 19.01 and 19.05 of the

contract of collective bargaining. The statement of grievance reveals the following:

"STATEMENT OF GRIEVANCE (GIVE TIMES, DATES, WHO, WHAT, WHEN, WHERE, WHY, HOW) BE SPECIFIC.

ON 1-14-96 I WAS CONTACTED BY SGT. W.E. POFFENBAUGH STATING AN ADMINISTRATIVE INVESTIGATION WAS BEING CONDUCTED REFERENCE AN INCIDENT OCCURRING ON 1-6-96 AT APPROX. 2:00 P.M. AS A RESULT I WAS CHARGED WITH VIOLATING SECTIONS 4501:2-6-02(B),(9),F. SUBSEQUENTLY I WAS GIVEN 5 WORKING DAYS OFF."

The relief requested revealed the following:

"REMEDY REQUESTED

BE MADE WHOLE REINSTATING THE MONETARY LOSS FROM DAYS OFF."

Placed into the record of this particular matter was a tape of a recorded phone conversation from the sergeant at the jail facility at which the arrested person was jailed. The sergeant revealed to the grievant and it can hardly be mistaken, that the birth certificate of the individual that was arrested was found in the wallet of the individual. The trooper that was being trained by the grievant also revealed in a statement that she heard the grievant state that he knew that such I.D. was found in the billfold. The exact words of the written statement of the trainee revealed the following:

"A. I HEARD THIS FROM TROOPER GWINN. AS I THINK ABOUT IT FURTHER, I REMEMBER I WAS IN THE POST STOCKROOM GETTING SOME NEEDED SUPPLIES FOR THE CASE ON SUNDAY MORNING, JANUARY 7. TROOPER GWINN WAS TALKING TO SEVERAL PERSONS AT THE POST AND I

OVERHEARD HIM SAY SOMETHING ABOUT THE BIRTH CERTIFICATE BEING FOUND IN THE BILLFOLD. I THOUGHT THAT STRANGE BECAUSE I WAS UNDER THE IMPRESSION THE ITEM WAS IN A POCKET. I ASKED HIM ABOUT IT AND HE TOLD ME IT WAS IN THE BILLFOLD. WE WENT TO COURT ON MONDAY JANUARY 8 AND TOOK MR. WARD BEFORE THE JUDGE. BEFORE WE WENT INTO THE COURTROOM, TOM WAS TALKING ABOUT THE CASE TO COURT CLERK KAYLEEN DOTY AND MENTIONED THE FACT THE DOCUMENT WAS FOUND IN THE BILLFOLD. THIS WOULD HAVE BEEN ON MONDAY MORNING."

In sum and substance the investigative report of the State Highway Patrol concerning this matter revealed the following:

"Investigative facts:

The grievant became the focus of an administrative investigation for his actions while on duty January 6, 1996. Tpr. Gwinn was advised of a suspected stand-in applicant at the Findlay Driver Exam Station. An investigation concluded the grievant was not who he said he was. The suspect was arrested for giving false information on a CDL application. He was transported to the local jail and incarcerated under the name Melvin L. Lothery.

Later when the grievant was at the patrol post he received a call from the Sheriffs Department. Sergeant Golden advised the grievant they had found a birth certificate and pay stubs. The grievant asked where the birth certificate was found. Sgt. Golden advised it was found in his billfold. The grievant told his supervisors, Lieutenant Webber and Sergeant Poffenbaugh, the birth certificate was found in the jacket of the suspect. He also told the trooper he was training, Trooper Beaty, the birth certificate was found in the jacket.

As a result of the administrative investigation the grievant was charged with violating highway patrol rules and regulations. Specifically sections 4501:2-6-02 (B) (5): Inefficiency and section 4501:2-6-02 (E) False Statements. He was given a five day suspension.

A grievance was filed alleging violation of the labor agreement."

The cited paragraphs of the grievance were revealed to be paragraphs 19.01 and 19.05. 19.01, in full, stated the following:

"19.01 Standard

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause."

Pertinent portion of 19.05 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."

The grievant testified at hearing. He testified that he really didn't understand from the sergeant at the jail house that the birth certificate of the prisoner was found in the billfold. The grievant further stated that he did not know until sometime late Monday or January 8, that such was the case. The grievant therefore offered the explanation of allegedly telling untruths in that he did not know at the

time of the statement what he said was untrue. The grievant said that when he talked to his immediate sergeant and later to the lieutenant, the post commander, that he believed his answer was correct in that he did not find out about the truth until after he spoke to these two officers.

It was upon those facts that this matter rose to arbitration for opinion and award.

### III. OPINION AND DISCUSSION

The facts in this case are rather straight forward. An incident occurred wherein a stand-in appeared for a commercial driver's license. The stand-in was arrested and his billfold was retrieved by the grievant upon the arrest. The grievant created a shoddy investigation in that he admitted he merely thumbed through the papers rather than taking them out and reading them. If he had read them he would have known who the arrested person was, rather than booking that person under a name that the grievant knew to be improper.

That factual analysis was buttressed by the sergeant at the jailing facility who did in fact read all of the papers in the billfold and within a short period of time he found out who the arrested person actually was. The grievant could have accomplished that and did not. That appeared to be an inefficiency on the part of the grievant and certainly falls within the purview of one of the cited regulations under which the grievant was charged.

The second event of telling untruths to superior officers is



buttressed by the facts in the record. The grievant was told by the sergeant at the jailing facility that the incarcerated person was identified by papers in that person's billfold. The fact that the grievant knew that they were found in the billfold was also buttressed by the testimony of the newly graduated state trooper who was being trained by the grievant. She made a statement for the record in an investigation that she heard the grievant state both on Sunday and on Monday that the grievant knew the I.D. of the arrested person was found by a birth certificate in the billfold. The fact of the matter is that those facts support the allegation that the grievant was not candid with either his sergeant or the post commander.

The grievant therefore is found guilty of both the substandard activities that he was charged with. The evidence is unequivocal in that regard and any thought to the contrary must be held for naught.

The union has argued in this particular matter that the employer is committed, by contract, to progressive discipline. I agree. Paragraph 19.05 of the contract makes that commitment. The paragraph also revealed that in certain situations the discipline would be less or more depending upon the indication of the record as to the activity involved. In this particular case the shoddy investigation is exactly that. It was shoddy, inexplainable and not subject to an excuse. It was purely poor professional conduct.

Covering up by lying and telling untruths to superior officers compounded the activity of a shoddy investigation. What is more important is that the grievant at hearing stated under oath that he did

not remember many of the material facts. That too is an activity that should not be indulged in by those who take an oath to tell the truth, the whole truth and nothing but the truth concerning the matter at hand. As a result of all of this therefore it is apparent that the grievant should receive discipline. The question is how much. Because of the grievant's conduct under two violations indicated and because of the grievant's activity to fail to realize his promise to tell the truth, the whole truth and nothing but the truth I think and believe that the grievant is entitled to be disciplined in the amount of time as set by the employer. I am not willing to set the discipline for any lesser days.

He will have to rehabilitate his conduct with his superiors as he continues his duties at this employment but that is up to him. For all of these reasons the grievant is not entitled to relief but must realize that that is only because that not only was the grievant involved in inappropriate conduct, he also must tell the truth, the whole truth at arbitration hearings. I believe the grievant was not candid. There is no new evidence in the record to lessen the discipline. Arbitrators do not brandish their own industrial justice. There must be good reason in the record to change the result. The record was the same at hearing as it was at the time the grievant was disciplined.

IV. AWARD

Grievance denied.

Made and entered  
this 4th day  
of November, 1996.

96 NOV 9 P2:43  
OFFICE OF  
COLLECTIVE  
BARGAINING  
  
MARVIN J. FELDMAN, Arbitrator

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