

#1315

ARBITRATION AWARD

**OHIO DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF THE STATE HIGHWAY PATROL**

and

**OHIO STATE TROOPERS ASSOCIATION
GRIEVANT: CHARLES D. BISESI**

CASE NUMBER: 15-03-971216-0129-04-01

APPEARANCES: For the Highway Patrol--Robert P. DeSanto, Ashland County Prosecutor, Lt. Robert L. Ferguson, Lt. Sue Rance, and Capt. Richard G. Corbin, Advocate OSHP HRM.

For the union--Tpr. Charles D. Bisesi, Grievant, Bob Stitt, OSTA, and Herschel M. Sigall, OSTA Advocate.

Also present: Beth Lewis, Esq., OCB.

ISSUE: Was the grievant issued a two day suspension for just cause? If not, what shall the remedy be?

FACTS: Grievant, Charles D. Bisesi, was employed as a trooper assigned to the Ashland Post. He was issued a two day suspension based upon his action of writing a letter to the editor of two local newspapers. The Ashland *Times Gazette* published the letter on October 24, 1997. The alleged misconduct involved an unauthorized media release as that term is used in Highway Patrol Admin R. 4501:2-6-02(H)(2). Management claimed grievant sought to use his job title to add greater credibility to his claims, and that his criticism of the Ashland County Prosecutor damaged the working relationship between the Ashland Post and the prosecutor's office.

The facts are not in dispute. Grievant's son was a witness to a fatal traffic accident, in which friends of his in a separate vehicle attempted to pass his vehicle in a no passing zone, and

collided with an oncoming vehicle. The highway patrol investigation and a later inquiry by the Ashland County Prosecutor's office resulted in no charges of any sort being brought against his son. The prosecutor issued a press release which alluded to possible speeding by the two teenager's vehicles, but ruled out any racing or other agreed upon misconduct. Tpr. Bisesi did not agree that there was any credible evidence that his son was speeding, and he was concerned about allegations of a "point system" or other unproved but rumored misconduct damaging his son's reputation.

Grievant admitted he knew his "controlled contempt" for the actions of the prosecutor's office was likely to anger the prosecutor, and that he used his position and title to buttress his own credibility, but he did not think his personal opinion on a closed investigation should be the proper subject for discipline.

There are no procedural issues, and the parties agree this dispute is arbitrable. The suspension was grieved, to no avail, and the matter was presented to me at a hearing in Columbus, Ohio on September 3, 1998, and now comes before me as arbitrator for final resolution.

CONTRACT PROVISIONS

19.01 Disciplinary Procedure-Standard

19.05 Disciplinary Procedure-Progressive Discipline

DECISION: Grievant argues his First Amendment Rights allow him to comment truthfully concerning a matter of public interest, even if he is critical of a public official, and even though he identifies himself as a "State Trooper, Ashland Post".

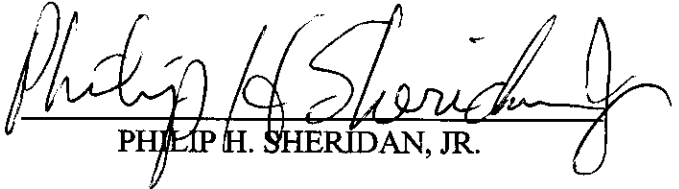
Management argues that grievant's conduct caused needless problems in dealing with the County Prosecutor, and that it is exactly this sort of conduct which is contemplated when the Patrol issues regulations for the dissemination of information by its employees.

My analysis of the case cited, and the regulations and directives presented, lead me to the conclusion that Tpr. Bisesi does not have unlimited First Amendment rights and that management can reasonably regulate statements to the press which have been released by the employee, holding himself out as a trooper in order to give more credibility to his statement. I am not convinced the directives submitted in this case clearly speak to the conduct complained of here, but an inquiry before the fact would have been prudent.

AWARD: The grievant was issued a two day suspension for just cause.

Respectfully submitted,

DATE: September 23, 1998


PHILIP H. SHERIDAN, JR.