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December 21, 1998

Michael P. Duco  
ODAS Human Resources Division  
Office Of Collective Bargaining  
106 North High Street, 7th Floor  
Columbus, Ohio 43215-1859

*Re: Fide arbitration award and invoice*

Dear Mr. Duco:

Enclosed is a copy of my award and invoice in the Fide arbitration, OCB # 15-00-980417-0056-04-01. Thank you for your consideration.

Very truly yours,



Philip H. Sheridan, Jr.

Enclosures  
PHS/ps  
cc: file

**ARBITRATION AWARD**

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

**and**

**OHIO STATE TROOPERS ASSOCIATION  
GRIEVANT: JEFFREY A. FIDE**

**CASE NUMBER:** 15-00-980417-0056-04-01

**APPEARANCES:** For the Highway Patrol--Lt. Thomas D. Tornabene, and Capt. Richard G. Corbin, Advocate OSHP HRM.

For the union--Tpr. Jeffrey A. Fide, Grievant, Bob Stitt, OSTA, and Herschel M. Sigall, OSTA Advocate.

Also present: Heather Reese, OCB.

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

**FACTS:** Grievant, Jeffrey A. Fide, was employed as a trooper assigned to the Elyria Post. He was issued a one day suspension based upon his action of referring to the Superintendent as an "asshole" in a Post Meeting attended by 20 employees of the Post, including troopers, sergeants, a Lieutenant and some civilian employees.

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 December 15, 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:** The parties do not dispute the facts. Lt. Tornabene called a mandatory Post meeting to discuss several items. The purpose of the meeting was to allow an open forum for discussion of some of the problems at the Post. Lt. Tornabene testified that he allowed adult, mature and polite opinions and disagreements to be voiced, but that grievant's comments were angry and lacking in respect due the commander. He felt any supervisor present would have been offended.

Tr. Fide testified that he had complaints about patrolling I480, and he went to the meeting to state his issues. He understood a mandatory Post meeting to be a meeting where just the employees of the post attended, and what they said stayed within the meeting. He admitted he was upset when the Lieutenant told him they were to patrol I480 because the Colonel said to, he still believes the decision to continue to patrol I480 was a stupid one, and although he might have used different words if he had it to do over, he feels he had the right to express his opinion in this forum even though his way of expressing it might not be appropriate in public. He stressed that he never refused to do the job, and was not disobedient in any way.

Admin R 4501:2-6-03(D)(3) provides: "(D) Military courtesy and respect for rank \*\*\*(3) A member shall not act or speak in an insubordinate manner to any supervisor." Management asserts that grievant's tone of voice and disrespectful comments are "definitive of insubordinate behavior."

The grievant argues that "insubordination" has a very specific meaning, and grievant's conduct does not fit the definition. Absent a rule and notice that his behavior would be met with discipline grievant should not be punished. He believed the mandatory Post meeting was a "bitch" session, and that none of what was said would be taken outside of the meeting. He felt he was being contemptuous of the plan to continue patrolling I480, not the Superintendent.

I believe the conduct complained of was worthy of discipline, and the discipline was appropriate under the circumstances. In private labor arbitration the meaning of "insubordination" is very specific, and requires a clear order, the refusal by the subordinate to perform, and a warning that failure to perform will be met with discipline. However, management's argument concerning the military culture of the patrol, and the concomitant military courtesy requires a broader definition, to include disrespect toward authority. As Lt. Tornabene made clear, it is not the expression of disagreement which is disciplined, but the method--*ad hominem* attack on the Superintendent, which was inappropriate.

**AWARD:** The grievant was issued a one day suspension for just cause. The grievance is denied.

Respectfully submitted,

DATE: December 21, 1998

  
PHILIP M. SHERIDAN, JR.