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In the matter of Arbitration between

Ohio State Troopers Association
Union

And

Case no. 15-00-20010329-0042-04-01
June A. Clark, Grievant

State of Ohio, Department of Public Safety,
Employer

In Attendance: For the Highway Patrol—Lt. Reggie Lumkins, Mr. Pat Mogan-OCB, Sgt. Brian T. Holt(witness), Sgt. Heide A. Marshall(witness), Sgt. Charles J. Linek, Advocate

For OSTA---Mr. Robert K. Stitt-President OSTA, Trp. June Clark-(Grievant), Ms. Elaine Sliviera-OSTA Ass't. General Council, Mr. Robert Cooper-Associate Advocate, Mr. Wayne McClone-OSTA staff Rep., Mr. Herschel M. Sigall-OSTA General Council, Advocate

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Arbitrator's Decision and Award

INTRODUCTION:

This matter was heard in Columbus, Ohio at the Office of Collective Bargaining on March 28, 2002. All witnesses were sworn. No procedural matters were raised and the parties agree that the issue is arbitrable. There were several exhibits presented: Jt. 1-Collective Bargaining Agreement, Unit 1; Jt. 2-Grievance Trail; Jt. 3-Discipline Package, composed of-Statement of Charges, Pre-disciplinary notice, Meeting Officer Reply, Suspension Letter, Deportment Record, Highway Patrol rules & Regulations

4501: 2-6-02 (B)(1)(5); Jt. 4-Grievance Settlement Agreement. One additional management exhibit (M-1) was submitted, composed of- The Administrative Investigation & Synopsis Report. The video tape of the traffic stop on October 8, 2000 was also introduced as part of exhibit: M-1.

ISSUE:

A jointly signed issue statement was submitted and stipulated to as follows:

Did the Grievant receive a five (5) day suspension for just cause? If not, what shall the remedy be?

FACTS:

Grievant, June A. Clark has been employed by the Ohio State Highway Patrol since November 12, 1993. On the date of the incident, October 8, 2000, Trooper Clark was assigned to Post 67, Ravenna. On 10/8/00 Trooper Clark conducted a traffic stop on a motorist (Mr. Shipley). On December 31, 2000 the motorist filed a complaint at the Ravenna Post against Trooper Clark. The complaint alleged that Trooper Clark on October 8, 2000, at the traffic stop, was unprofessional in her conduct, and he did not agree with the traffic violation citation. An Administrative Investigation was subsequently conducted and the employer issued Trooper Clark a suspension of five days, effective April 1, 2001.

The employer charged the grievant with violating the Rules & Regulations of the Ohio State Highway Patrol, specifically- Rule 4501: 2-6-02 (B) (1)(5)-Performance of Duty, to wit: on October 8, 2000 you were discourteous and unprofessional during contact with a motorist. The entire traffic stop was recorded on tape. The suspension was grieved by Trooper Clark on March 24, 2001. The union charged the employer with violating Article 19.01 & 19.05 (Disciplinary Procedure) of the Collective Bargaining Agreement.

OPINION:

The traffic stop occurred shortly after midnight. The entire incident was recorded visually by the vehicle's camera, and by audio, on the Trooper's mic. The motorist was on a somewhat rural, two lane highway driving a pick-up with a bed camper. Trooper Clark determined that the motorist was

impeding traffic by driving at a slow rate of speed (37mph) in a 55 zone. After following the vehicle a few miles Trooper Clark turned on the flashing lights and pulled the motorist over. Trooper Clark approached the driver's side of the camper-pick-up. An intensive communication ensued between the driver and the officer. The incident resulted in the driver being issued a citation for impeding traffic.

The union contends that the complainant was very uncooperative and it required the grievant to be assertive to get control of the situation. On the other hand, management, through their witnesses' testimony, characterized the actions of the officer as being unprofessional and discourteous.

In viewing and reviewing the video tape (Mgm't ex. 1) I find the incident to be disconcerting. The driver was defensive and not forthcoming with identification but, in my opinion, not threatening to the officer. Within one minute of the beginning of the conversation, I observed the grievant yelling, or at least, using a highly raised voice at the motorist. Within two minutes of the encounter the grievant was threatening to haul the driver to the sheriff's department. In my opinion, the term encounter best describes the initial contact between the officer and motorist. The stop ended much calmer when Trooper Clark delivered the citation.

In reviewing the testimony and the exhibits (including the tape), I do not find that the employer violated the contract. I find just cause for the discipline.

AWARD:

The Grievance is denied.

Issued this 5th day of April, 2002.

E. William Lewis

E. William Lewis, Arbitrator