

#155-9

**In the matter of Arbitration between**

**Ohio State Troopers Association,  
Union**

**And**

**Case no. 15-00-20011116-148-04-01  
Brody K. Sheppard, Grievant**

**State of Ohio, Department of Public Safety,  
Employer**

**In Attendance:** For the Highway Patrol—Sgt. Charles J. Linek, Mr. Pat  
Mogan-OCB, Lt. Reggie Lumkins, Advocate OSP-MRM

For OSTA—Tpr. Brody K. Sheppard-Grievant, Mr. Robert K. Stitt-  
OSTA President, Ms. Elaine Silviera-OSTA Ass't. General Council, Mr.  
Wane McGlone-OSTA Staff Rep., Mr. Herschel M. Sigall-OSTA General  
Council, Advocate

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**Arbitrator's Decision and Award**

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**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-STATEMENT OF ISSUE; Jt. 2-pack-

et of of documents composed of-Grievance Trail, Discipline Package, Two Administrative Investigations, Discipline Abeyance Agreement; Jt 3-collective bargaining agreement- Unit 1. Two additional exhibits were introduced by the employer and admitted during the hearing.

## **ISSUE:**

The issue was stipulated as follows:

Was there just cause for discipline and did the rule violation constitute a triggering event for the previous discipline abeyance agreement? If not, what shall the remedy be?

## **FACTS:**

Grievant, Brody K. Sheppard, has been employed by the Ohio State Highway Patrol since April 2, 1999. Since graduation from the Academy he has been assigned to the Marietta Post. On August 10, 2001 Trooper Sheppard conducted a traffic stop on a motorist, who, later that day, complained to the Marietta Post regarding the traffic stop. An Administrative Investigation was subsequently conducted and the employer issued Trooper Sheppard a four day suspension, which included a one day suspension from an Abeyance Agreement signed by Trooper Sheppard on October 25, 2000.

The employer charged the Trooper with violating the Rules & Regulations of the Ohio State Highway Patrol, specifically-Rule 4501:2-6-02(Y)(2) Compliance to Orders. To wit: conducting an improper search(during a traffic stop on August 10, 2001). The suspension was grieved by Trooper Sheppard, stating that the employer violated contract provisions: 19.01-**Disciplinary Procedures-Standard** and 19.05-**Disciplinary Procedure-Progressive Discipline**.

## **OPINION:**

Testimony and evidence showed that on August 10, 2001 the grievant was nearing his home, in an off duty status, on a rural two lane road driving his patrol car when he observed an oncoming pick-up truck moving at a high rate of speed. The grievant turned on the flashing lights and clocked the vehicle at 72 mph. on his radar. The grievant further testified that while the vehicle was still oncoming, he observed the driver reach down to his right, probably under his bench seat. The grievant motioned to the driver to pull over, which he did, and the trooper made a u-turn in behind the pick-up. Trooper Sheppard further testified that because of the

suspicious driver movement, he was concerned that the driver was getting or hiding something-maybe a weapon, etc.. When the grievant arrived at the driver's side of the pick-up, license, registration and insurance were requested along with requesting the driver to exit the truck. Upon exiting the truck, the grievant testified that, he observed the driver; a young male, was dressed in tight jeans, tucked in T-shirt and work boots. The driver was asked to step to the rear of the truck and the grievant searched under and around the bench seat, finding nothing. He testified that he and the driver entered the patrol car and a citation was issued.

After the complaint was filed an Administrative Investigation was conducted interviewing the complainant and the grievant, and including a record review. The Synopsis(Jt.2) showed that the AI resulted in three allegations; (1)-improper search(chargeable) (2)-Trooper attitude(non-chargeable) (3)-incorrect information on the HP-7 citation(chargeable). After the AI and the pre-disciplinary hearing, the charge was made against the grievant of "conducting an improper search". A significant amount of time and testimony centered around the lack of camera use and whether or not it was on or broken. It is unlikely, in the arbitrator's opinion, that a camera would have caught the suspicious movement. Although the employer brought out that there were a number of procedural errors committed by the trooper, the arbitrator must confine the decision to the specific charge.

According to management (Jt. 2), in order to conduct a protective search, a trooper must have reasonable, articulable suspicion; and, in their opinion, the grievant did not. The union argues that the oncoming driver's movements (reaching down) generated in the grievant's mind reasonable suspicion.

Base on the evidence and testimony brought forward, I find that Trooper Sheppard had reasonable suspicion to conduct the search, for his own safety. Based on his observations of the driver at the scene, a more thorough search may have been unnecessary.

**AWARD:**

The grievance is sustained. This does not negate the previous status of the Abeyance Agreement.

Issued this 4<sup>th</sup> day of April, 2002.

APR 15 2002  
E. William Lewis  
E. William Lewis, Arbitrator