

#1562

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In the Matter of Arbitration

Between

FOP/OLC

and

The State of Ohio, Department  
of Public Safety

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\* Case Number:

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\* 15-00-20010905-0122-05-02-

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APPEARANCES: For FOP/OLC:

Paul Cox  
FOP/OLC  
222 East Town St.  
Columbus, OH. 43215

For Department of Public Safety:

Katharine Stires  
Office of Collective Bargaining  
100 East Broad St., 18th Floor  
Columbus, OH. 43215

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this matter was closed at the conclusion of oral argument in Columbus, OH. on March 20, 2002.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant, Jeffrey Rozier, removed for just cause?  
If not, what shall the remedy be?

**BACKGROUND:** There is some agreement between the parties over the events giving rise to this proceeding. The Grievant, Jeffrey Rozier, was hired into the Department of Public Safety on May 27, 1997. He initially worked out of the Akron, OH. District. In September, 1998 he was transferred to Cleveland, OH. In February, 2001 Mr. Rozier became the Field Training Officer for Sara Valasek. On February 9, 2001 she was directed to pat down Mr. Rozier as part of a training exercise. Mr. Rozier was dissatisfied with the manner in which Ms. Valasek conducted the pat down. In particular, he was concerned with the fact that she did not pat down his genital area. As is set forth further below, the parties dispute what then occurred.

Subsequently, in June, 2001 Mr. Rozier accessed the Law Enforcement Automated Data System (LEADS) to secure information about a citizen, one Amy Newcomb. Ms. Newcomb was not then a suspect in any enforcement action involving the Department of Public Safety.

Based upon these incidents Mr. Rozier was discharged. A grievance protesting that discharge was filed. It was not resolved in the grievance procedure of the parties and they agree it is properly before the Arbitrator for determination on its merits.

**POSITION OF THE EMPLOYER:** According to the State Mr. Rozier's

actions on February 9, 2001 were highly inappropriate. When Ms. Valasek was patting him down she told him how she would deal with the groin area in a real life situation. Further, Ms. Valasek is an experienced officer. Though new to the Department she had served as a police officer in Ellmore, OH. and been through the appropriate police officer training. She knew how to pat down a male suspect. Mr. Rozier had no reason to think otherwise. The State is aware that the Union will point to the alleged existence of a clique or group in the Cleveland office and ascribe responsibility to it for the discharge of Mr. Rozier. That is incorrect according to the Employer. Ms. Valasek was in the office for only one week prior to this incident. She was not a member of a clique. As a new employee, Ms. Valasek jeopardized her standing with her new colleagues by coming forward. Ms. Valasek's account of events is corroborated by Vicky Gilan, another agent in the Cleveland office. She was on the scene when Mr. Rozier thrust Ms. Valasek's hand to his groin. She witnessed the event. Like Ms. Valasek, she took a risk by coming forward. She was sufficiently affronted by Mr. Rozier's action that she did so. Mr. Rozier's actions on February 9, 2001 were sufficiently serious to justify discharge based upon this event alone.

In fact, the event of February 9, 2001 does not stand

alone. On June 21, 2001 Mr. Rozier contacted the Agent-in-Charge of the Cleveland District, William Myers. He told Mr. Myers he was having problems of a personal nature with a woman, one Amy Newcomb. To secure information on Ms. Newcomb he had run an inquiry on the LEADS system. His use of LEADS to research Ms. Newcomb was strictly prohibited. He was using the system for personal reasons, not bona-fide law enforcement activity. Mr. Rozier had been trained on LEADS. He knew he was not to use the system for personal reasons.

Upon learning of Mr. Rozier's improper use of LEADS Mr. Myers told him to contact his local police department. Mr. Rozier did so, informing the Brunswick, OH. Police Department of Ms. Newcomb's activities. Coincident with this, Ms. Newcomb filed a complaint against Mr. Rozier with the Lakewood, OH. Police Department. Her car had been vandalized and she suspected Mr. Rozier was the culprit. That complaint was assigned to Detective Patrick Fiorelli of the Lakewood Police Department. After speaking with Mr. Rozier, Detective Fiorelli informed Mr. Myers that the Grievant had indicated he had permission to access the LEADS system to check on Ms. Newcomb. This was vehemently denied by Mr. Myers. No such permission had been given the Grievant. Based upon his improper activity with Ms. Valasek and his improper use of the LEADS system the Employer urges the grievance be denied

in full.

**POSITION OF THE UNION:** Whatever may have occurred in the pat-down situation involving Ms. Valasek, she was not upset. She made no complaint and repeatedly indicated she was not bothered or offended by Mr. Rozier's actions. It was Ms. Gilan who raised the matter with management. Ms. Gilan's motives are suspect according to the Union. The day following the pat-down incident Ms. Valasek and Ms. Gilan participated in a raid on the Europa Nightclub in Cleveland. They were there to observe events as part of their training. Given the number of miscreants at the Europa Ms. Gilan was asked to pat down a suspect. She did so. In fact, Mr. Rozier complemented her on her efforts. The suspect patted down by Ms. Gilan was later patted down by another officer who found drugs on the suspect. These had been missed by Ms. Gilan. Mr. Rozier subsequently wrote a letter to her file critical of her efforts at the Europa. The Union urges Ms. Gilan's actions be viewed as part of an effort to "get" the grievant.

There were in the Cleveland office several agents who constituted a clique or group. Mr. Rozier was not part of the group. In fact, he and various members of the group had manifested hostility towards each other. The allegations against him involving the pat-down by Ms. Valasek are evidence of the hostility of the group towards Mr.

Rozier in the opinion of the Union.

Mr. Rozier had known Ms. Newcomb several years prior to this incident. When she moved out of the Cleveland area they had lost touch. Upon her return to Cleveland she contacted him. She wanted to have sex with him, an offer he declined. She continued to bother him and he informed her that if her attentions did not cease, he would contact the County Prosecutor. In fact, he did bring Ms. Newcomb's attentions to the Brunswick, OH. police department. By coincidence, Mr. Rozier was at the Lakewood Police Department on State business when he learned Detective Fiorelli wished to speak with him. He immediately went to Detective Fiorelli's office and discussed the situation with him. The Union acknowledges that Mr. Rozier acted improperly by using LEADS to check-out Ms. Newcomb. That is mitigated by the fact that he never hid his actions from his superior, Mr. Myers. Nor did he conceal it from Detective Fiorelli. Taken together, the incidents involving Ms. Valasek and Ms. Newcomb do not give rise to dischargeable offenses. For that reason the Union urges Mr. Rozier be restored to employment.

DISCUSSION: Ms. Valasek was interviewed in connection with the pat-down incident. Her interview was transcribed and is on the record in this dispute. (Er. Ex. 5A, pp. 82-94). During the interview Ms. Valasek indicated she was not

offended by Mr. Rozier's actions. She said "I would'nt have agreed with it if he would have continued to tell me I had to do it 3 or 4 times over and that one incident I don't think I was I guess offended by it or felt that it was sexual harassment or nothing like that." (Er. Ex. 5A, p. 84). Later, she was asked directly if she was offended by Mr. Rozier and she said "No...." (Er. Ex. 5A, pp.85, 86). She considered his actions part of her training. (p. 85). She never considered his action sexual in nature. (p. 85). She also indicated she was not going to make a complaint about Mr. Rozier's actions. (p. 89). She continued to stress that she did not feel Mr. Rozier's actions constituted sexual harassment. (p.90). Ms. Valasek did not file a complaint about his activity during the pat-down incident. It is accepted by the Arbitrator that the incident between Mr. Rozier and Ms. Valasek occurred as claimed by the State. What is unclear is whether or not his activities constituted sexual harassment. Certainly the ostensible harassee did not regard Mr. Rozier's activities as improper. Nor has the State shown that Mr. Rozier's pat-down training technique was improper or prohibited by any work rule. The State cannot discipline him for this incident. If it wants to impose discipline on employees for similar incidents in the future there must be clearly enunciated guidelines on the manner in which training for pat-downs is

to be conducted and whether or not female agents are permitted to touch male agents in the groin area and vice-versa.

More serious is Mr. Rozier's entry to the LEADS system for personal purposes. Such activity is improper. Citizens must be confident that their personal histories are not open to scrutiny for the personal objectives of law enforcement personnel. By entering the LEADS system for personal purposes Mr. Rozier has opened himself to serious discipline.

There exists a discrepancy in the testimony concerning whether or not Mr. Rozier was given permission to access LEADS for personal purposes. He indicates such permission was granted. Detective Fiorelli's testimony on this point agrees with Mr. Rozier. He understood from Mr. Rozier that permission had been granted by Mr. Myers, the Agent-in-Charge of the Cleveland District, to access LEADS for personal business. When he relayed Mr. Rozier's assertion to Mr. Myers it was unequivocally denied. Mr. Myers indicated to Detective Fiorelli clearly and forthrightly that he had not given the Grievant permission to enter the LEADS system for personal reasons. His actions support his testimony. He indicated that as a result of entering LEADS for personal business Mr. Rozier would have to file an Unusual Incident Report. Mr. Myers would have to file a report on the incident as well.



The testimony and actions of Mr. Myers are consistent with the fact that no permission was given the Grievant to use LEADS for personal business. It is accepted that Mr. Rozier did not have permission to access LEADS. The policy on such access, (Er.Ex. 4A, p.5) clearly and unambiguously prohibits accessing LEADS for personal purposes. Mr. Rozier knew, or should have known, that accessing LEADS to check on Ms. Newcomb was prohibited. Thus, there are two offenses in connection with Mr. Rozier's check on Ms. Newcomb on the LEADS system. One is the improper entry to the system for personal purposes. The other is failing to be truthful about accessing the system. Were it the case that the sole offense committed by Mr. Rozier was improper access to the system serious discipline, short of discharge, would be justified. Mr. Rozier's improper entry into LEADS does not stand alone. He indicated he had permission to do so when it is accepted by the Arbitrator based upon the testimony of Messrs. Fiorelli and Myers that was not the case. Taken together the two offenses provide the Employer with the requisite just cause to discharge the Grievant.

**AWARD:** The grievance is denied.

Signed and dated this 15<sup>th</sup> day of April, 2002 in Cuyahoga County, OH.

Harry Graham  
Harry Graham  
Arbitrator

APR 15 2002