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VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration

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Between

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EXPEDITED

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DECISION AND AWARD

OHIO STATE TROOPERS

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ASSOCIATION, INC.

*

Anna DuVal Smith, Arbitrator

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Case No. 15-03-970310-0032-07-15

and

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William J. O'Rourke, Grievant

OHIO STATE HIGHWAY PATROL

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Suspension

Hearing

Date of Hearing: May 28, 1998

Place of Hearing: Columbus,

Ohio

Advocate for the Ohio State Troopers Association: Herschel Sigall, Esq.

Advocate for the Ohio Highway Patrol: Lt. Robert J. Young

Issue

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

Decision and Award

There is no question in my mind that the Grievant purposefully placed his vehicle in the path of the motorcycle and applied his brakes. There is also no question that he knew the rider was without goggles or helmet and that he did not yet know the rider's record beyond what he observed with his own eyes in the preceding minutes. Clearly the Grievant was outside the Policy 200.06-01 guidelines for roadblocks of motorcycles which state that "no type of roadblock should be considered unless the violator is wanted for or chargeable with a life-threatening felony," caution that moving roadblocks are "extremely dangerous," that "the

violator is very unpredictable and many times will choose any avenue of escape or ram the patrol car,” and indicate that moving roadblocks usually involve two patrol cars which are “gradually slowed to a stop.” Moreover, the Grievant is a supervisor with many years of service and had frequent roll-call training on the use of force and on pursuits. The only question is whether the Grievant’s actions forced the cyclist to crash or merely forced him to make a decision. That is, did the cyclist have a reasonable opportunity to avoid colliding with the cruiser, or was this option removed by the Grievant? The State imposed the suspension believing the Grievant not only forced the cyclist to crash, but did so on purpose. If the State is correct, I would agree the suspension is warranted. However, I do not find the evidence as persuasive as the State does. The distance and perspective of the witness from the restaurant, the lack of testimony from the other observer, the diagram of the accident site and the estimated speed of the vehicles, and the Grievant’s own story all leave the question open in my mind as to whether the Grievant left enough distance for the 40 mph motorcycle to stop or turn right instead of colliding with the cruiser. It thus seems to me as equally likely that the proximate cause of the crash was the cyclist’s decision and futile attempt to escape by turning left to go around the cruiser as it was the Grievant’s decision to use force to stop the cycle. A doubt of this magnitude must be resolved in favor of the Grievant. However, the Grievant is not completely blameless for the course of events, for he acted outside of guidelines which were well known to him and, in my opinion, without sufficient justification under these circumstances. I therefore find that while the State lacked just cause to suspend the Grievant, good and sufficient reason exists for a written reprimand. The one-day suspension will be expunged from the Grievant’s record and be replaced with a written reprimand. The Grievant will receive one day lost wages and benefits and made whole.