

#1812

In the matter of Arbitration between:

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

**Case # 15-00-040804-0077-04-01
Edward G. Franke, Grievant**

**Ohio State Troopers Association
Union**

In attendance: For the Highway Patrol—Mr. John Allard, OSHP/HRM;
Lt. Charles Linek, OSHP/HRM; Sgt. Greg McCutcheon(witness); Mr.
Andrew Shuman, OCB-2nd Chair; Sgt. Kevin Miller, OSHP/HRM-Advocate

For OSTA---Mr. Bob Cooper, OSTA Staff Representative; Tpr. Edward G.
Franke(witness); Mr. Dennis Gorski, OSTA President; Tpr. Tom
Zook(witness); Ms. Elaine Silveira, OSTA-Advocate

INTRODUCTION:

The matter was heard in Columbus, Ohio at the Office of Collective Bargaining on March 15, 2005 at 12:05pm. All witnesses were sworn. No procedural issues were raised and the parties agree that the issue is arbitrable. There were several exhibits presented: Jt. 1- Unit 1 Collective Bargaining Agreement; Jt. 2- Grievance Trail; Jt. 3-Discipline Package, composed of—Statement of Charges, Pre-discipline Notice, Meeting Officer Reply, Suspension Letter, Department Record, Highway Patrol Rules & Regulations: 4501: 2-6-02 (B)(5) Inefficiency. The Employer introduced the following exhibits: Mgm't. A-Administrative Investigation #20044582; Mgm't. B-OSHP Policy-CUSTODIAL & NON-CUSTODIAL TRANSPORTATION & SECURITY IN PATROL VEHICLES; Mgm't. C-OSHP Roll Call Training Record. The Union submitted the following exhibits: Un. 1-OSHP EVALUATION; Un. 2-AI # 2003-3521, Sgt. Skinner

ISSUE:

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

“Did the Grievant receive a one (1) day suspension for just cause? If not, what shall the remedy be?”

FACTS:

Trooper Edward Franke has been employed by the Highway Patrol since March 9, 2001. The grievant is currently assigned to Post 41 (Stubenville). At the time of the alleged incident Tpr. Franke was also assigned to the Stubenville Post, working the 11p-7a shift.

On May 15, 2004, minutes after midnight, Tpr. Franke stopped a female driver under suspicion of driving while intoxicated. The driver was removed from her vehicle and field tested for sobriety. Trooper Franke found her intoxicated and placed her under arrest for OVI. The shoeless driver was hand cuffed and placed in the right rear passenger seat of the patrol car. The suspect's purse was searched by Tpr. Franke and placed, along with her shoes, in the patrol car's right front passenger seat. While Tpr. Franke was continuing his vehicle search incident to arrest the suspect retrieved her purse. When Tpr. Franke returned to the patrol car the suspect was found with a prescription pill bottle in her mouth. Trooper Franke removed her from the patrol car and attempted to have her “spit-up” the pills, however, without success. Trooper Franke called for the EMT Squad and back up and the suspect was taken to a nearby hospital for treatment.

As a result of this traffic stop an Administrative Investigation was conducted by Sgt. McCutcheon and submitted to Post Commander Evans. On June 4, 2004 Lt. Evans submitted the AI to Captain Minter and Tpr. Franke was notified on July 10 that he would be suspended for one (1) day. Trooper Franke was charged with violating Rules & Regulations of the Ohio State Highway Patrol; specifically Rule 4501: 2-6-02 (B) (5) Inefficiency. To wit: It is charged that on May 15, 2004 you failed to properly secure an OVI suspect during an arrest. A Pre-disciplinary hearing was conducted on July 15, 2004 and cause for discipline was determined by the Hearing Officer. Trooper Franke was issued a letter of one (1) day suspension effective July 29, 2004, by the DPS Director. Trooper Franke filed a grievance on July 29 claiming that the employer violated Article 19.01 (STANDARD) and requested to be made whole.

OPINION:

The incident of record was video taped and mic recorded by Tpr. Franke (Mgm't. A). As viewed on tape this was definitely an intoxicated driver who was not very cooperative. Trooper Franke had some difficulty in hand cuffing her behind her back (Mgm't. A). The suspect was "mouthy" and repeatedly requested her purse (Mgm't. A). After hand cuffing the grievant he placed the suspect in the right rear passenger seat of the patrol car. The car was equipped with a cage, per testimony and evidence. The video next shows Tpr. Franke searching the suspect's purse for nearly one minute. Noise came from the suspect and the Trooper can be seen and heard saying "get back in the vehicle" and Tpr. Franke approaching the right rear of the vehicle. Next, it appears to the arbitrator, That the Trooper's mic picks up the sound of a car door closing. Trooper Franke continues the vehicle search in conjunction with returning to the patrol car a few times. He returns her purse and shoes to the right front passenger seat of the patrol car, according to testimony and the video. The video shows that upon securing the suspect vehicle, Tpr. Franke returns to the patrol car and shouts "no! spit it out" to the suspect. He then takes the suspect to the front of the patrol car while trying to remove something from her mouth. Ultimately, per evidence and testimony, it is determined that the suspect had two prescription drugs in her purse. She retrieved the drugs from the front passenger seat of the patrol car, while being hand cuffed. According to evidence, the drugs were Vicodin and Zanax prescribed for the suspect. The suspect was transported by the Squad to a local hospital, where her stomach was pumped, with no pills being found.

The employer argues that the grievant was inefficient during this traffic stop and arrest. They further argue that Tpr. Franke made errors in judgement and failed to satisfactorily perform his duties in accordance with HP Policy 4501: 2-6-02 PERFORMANCE OF DUTY AND CONDUCT. The suspect was not properly secured in the patrol car, argues management, which resulted in her accessing her purse and attempting to ingest prescription drugs. The grievant's inefficiency, claims management, violated OSHP Policy 203.26(Mgm't. B) by not protecting the arrested person from injury or from being placed in a potentially hazardous position.

The union, on the other hand, argues that the employer did not have just cause for discipline. Trooper Franke did not violate OSHP Policy claims the union. The grievant double hand cuffed the suspect, placed her in the right

rear passenger seat and searched her car and purse for weapons and contraband. Furthermore, per the union, the tape shows Tpr. Franke making frequent trips back to the patrol car during his search, checking on the suspect. The union also argued, through testimony, that Policy does not state that the sliding cage window should be locked. The union, in further support of their position, introduced exhibit 2, which was evidence of another trooper receiving no discipline when his detained DUI suspect exited the patrol car. The DUI suspect (Un. 2) climbed through the protective screen and out the front passenger door.

In the arbitrator's opinion, the grievant was inefficient in handling this traffic stop and arrest. A nearly one minute search of the suspects purse should have exposed the prescription drugs. Even though they were not dangerous taken as prescribed they could be deadly when ingested in large amounts. The cage sliding door should have been latched to prevent the suspect access to the front seat area. In the arbitrator's opinion, the video also reveals the suspect exiting the patrol car, exemplified by the grievant's shout "get back in the car" and the sound of a car door closing. I am not convinced that the child locks were activated, per Policy. Sergeant Skinner (Un. 2) did not have an EMT Squad problem with his detainee and the Sgt. had a spotless Department Record for nearly fourteen and one-half years.

AWARD:

I find that the evidence clear and convincing that the employer complied with the tests for just cause in this case and therefore, did not violate Article 19.01—STANDARD.

The grievance is denied.

This concludes the arbitrator's decision.

Issued this 24th day of March 2005.

A handwritten signature in cursive script, reading "E. William Lewis". The signature is written in dark ink and is positioned above a horizontal dashed line.

E. William Lewis, Arbitrator