

# 1834

IN THE MATTER OF ARBITRATION  
BETWEEN

STATE OF OHIO – OHIO DEPARTMENT OF TRANSPORTATION

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION  
AFSCME LOCAL 11, AFL-CIO

**Grievant:** Willard Estep

**Case No.** 31-09-011405-01-01-07

**Date of Hearing:** June 20, 2005

**Place of Hearing:** Chillicothe, Ohio

**APPEARANCES:**

**For the Union:**

Advocate: Timothy L. Rippeth  
2<sup>ND</sup> Chair: Charlie Johnson

**Witnesses:**

Willard Estep, Grievant  
James Setty

**For the Employer:**

Advocate: Lou Kitchen  
2<sup>nd</sup> Chair: Ed Flynn

**Witnesses:**

Ken Parks  
Jason E. McLaughlin  
John Shore, Esq.  
Emerson L. Richmond  
Don Buckle  
Ed Flynn  
Lou Kitchen

**ARBITRATOR:** Dwight A. Washington, Esq.

**Date of Award:** July 28, 2005

## **INTRODUCTION**

The matter before the Arbitrator is a grievance pursuant to the Collective Bargaining Agreement ("CBA"), in effect March 1, 2003, through February 28, 2006, between the State of Ohio – Department of Transportation and the Ohio Civil Service Employees Association AFSCME Local 11, AFL-CIO ("Union").

The issue before the Arbitrator is whether just cause exists to support the removal of the Grievant, Willard Estep ("Estep"), for falsifying any official document and dishonesty. The discipline was issued because the Grievant allegedly submitted false documentation about his work history to an outside certification institute, forged an Ohio Department of Transportation ("ODOT") employee's initials on the paperwork, which resulted in the award of certifications by an outside institute to Estep, providing for a promotional opportunity.

The removal of the Grievant occurred on January 10, 2005, and was appealed in accordance with Article 25 of the CBA. This matter was heard on June 20, 2005 and both parties had the opportunity to present evidence through witnesses and exhibits. Post-hearing written closing briefs were presented by both parties, with the record being closed as of June 24, 2005. This matter is properly before the Arbitrator for resolution.

## **BACKGROUND**

Estep was employed as a Project Specialist II ("PS II") for ODOT. Estep had been employed by ODOT for over nineteen (19) years at the time of his removal on January 10, 2005. Estep began his nineteen years of service with ODOT as an Auto Technician and was promoted numerous times. Estep had never faced any disciplinary action until his removal. As a PS II, Estep's duties included inspecting construction projects to ensure contractor compliance with state specifications and plans, verifying

plan quantities and calculations with blueprints, and preparing and maintaining project records and reports.

In May 2004, the Union alleged the Employer violated the CBA when a vacant position was not posted. The Employer took the posture that the Bridge Specialist II ("BS II") position did not have to be posted because no member of the bargaining unit could meet the minimum qualifications for that job. The Union disagreed and submitted a copy of Estep's certification from the National Institute for Certification in Engineering Technologies ("NICET"), indicating that Estep was certified and met the minimum qualifications for the BS II position.

The BS II position allowed an applicant to meet the minimum qualifications either by work experience and/or certification. The Employer had concern regarding the NICET certification because Estep had not performed inspections of existing bridges, and work experience inspecting existing bridges was a requirement. Upon obtainment of the materials submitted by Estep, the Employer concluded that certain documents were falsified, and Estep exaggerated his ODOT work experience.

The Employer considered Estep's conduct comparable to the submission of a phony college degree predicated upon forgery and dishonesty. Estep, as a PS II, held a fiduciary position of trust on behalf of ODOT to insure integrity in dealing with workmanship and contractor's use of materials in the construction of Ohio bridges and roadways.

At the time of his removal, Estep's immediate supervisor was Tony Green ("Green"). As a result of Estep's actions, Gordon Proctor ("Proctor"), Director of Transportation, removed Estep for violating ODOT Directives WR-101-I-18 (falsifying any official document) and WR-101-I-25 (violation of O.R.C. §124.34, Appendix A, Dishonesty). On January 14, 2005, the Union filed a grievance contesting Estep's removal.

## ISSUE

Was the Grievant, Willard Estep, disciplined for just cause? If not, what shall the remedy be?

## RELEVANT PROVISION OF THE CBA ODOT WORK RULES ARTICLE 24 – DISCIPLINE

### 24.01 – Standard

*Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(i).*

## ODOT DIRECTIVES

**WR-101-I-18:** Falsifying any document related to employment including electronic documents

### OFFENSE

1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
Suspension/ Removal	Removal		

**WR-101-I-25:** Violation of Section 124.34 (Appendix A) of the Ohio Revised Code, Dishonesty

### APPENDIX A (In part)

The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts of the state, holding a position under this chapter, shall be during good behavior and efficient service. No such officer or employee shall be reduced in pay or position, fined, suspended, or removed, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, **dishonesty**, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. An appointing authority may require an employee who is suspended to report to work to serve the suspension. An employee serving a suspension in this manner shall continue to be compensated at the employee's

regular rate of pay for hours worked. Such disciplinary action shall be recorded in the employee's personnel file in the same manner as other disciplinary actions and has the same effect as a suspension without pay for the purpose of recording disciplinary actions.

## **POSITION OF THE PARTIES**

### **POSITION OF THE EMPLOYER**

ODOT contends that the events that led to Estep's removal began in May 2004.

ODOT points to the grievance filed by Union Chief Steward, Charles Johnson ("Johnson"), as the precipitating event. On May 26, 2004, Johnson filed a grievance claiming that Management violated the CBA when they did not post an open position for filling. This grievance stemmed from the retirement of Gary Gray ("Gray"), a BS II. After Gray retired, ODOT determined that there was no need for two full time BS IIs.

Management also determined that no Bargaining Unit employee possessed the minimum qualifications for the position. Johnson then produced a copy of Estep's certification from NICET, and contended that Estep was certified and met the minimum qualifications for a BS II. At that time, ODOT was aware that work experience regarding inspection of existing bridges was a requirement, and Estep had not performed such duties. ODOT contacted NICET to verify Estep's certification.

As a result of an internal investigation conducted by John Shore ("Shore") of the ODOT General Counsel's Office, ODOT determined the certification Estep obtained through NICET was fraudulently obtained. ODOT maintains that Estep falsified his ODOT experience on NICET documents, misled ODOT employees in order to gain their signatures for his NICET paperwork, and forged one ODOT employee's signature and initials on his NICET paperwork. (Joint Exhibit ("JX") pp. 7, 11, & 13)

First, Estep falsified and exaggerated his ODOT experience on his application for NICET certification for Bridge Safety Inspections. ODOT maintains that Estep exaggerated his claim that as a PS II he frequently worked on a structure with a BS II.

As a PS II, Estep was primarily responsible for new projects and did not inspect existing bridges for structural safety purposes. Specifically, ODOT contends that the amount of time Estep worked with a BS II was maybe 2 to 5 days per year, and that he worked on repairs of existing structures, not inspection. ODOT also maintains that Estep falsified his experience with existing structure safety inspection. The Bridge Specialists, at the time Estep claimed to have done existing structure safety inspections, stated that he did not work with them. Thus, his experience from 1987 through 1991, where he claimed to have worked with an existing structure inspector, was false. Estep also falsified his experience for years when he did not claim to work with Bridge Specialists. By his own admission, Estep only inspected culverts<sup>1</sup>, which were not classed as bridges from 1992 through 2001. At no time can Estep make a legitimate claim to working thirty percent (30%) of his work time inspecting existing bridges. His experience claim of performing safety inspections of existing bridge structures is completely fabricated. Witnesses, Don Buckle ("Buckle") and Emerson Richmond ("Richmond"), both BS IIs with over fifty-six (56) combined years as BS IIs, both testified that they worked with Estep, but he did not perform safety inspections on a full scale. (JX 9) Richmond denied any knowledge of Estep assisting Buckle from 1987 through 1991 in performing bridge safety inspections.

Second, Estep misled co-workers who assisted him by not disclosing the NICET regulations that guided the certification process. As an example, if Estep shared the NICET regulations with Jason Eric McLaughlin ("McLaughlin"), Technical Engineer 2 at ODOT, he would have discovered that the certification Estep sought was not designed for technicians with experience in new bridge construction inspection, but rather for technicians with experience in existing bridge inspection. McLaughlin testified that he would not have acted as a verifier if Estep had shared this fact. ODOT contends that Estep concealed NICET Information from McLaughlin because if McLaughlin had read

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<sup>1</sup> A sewer or drain crossing under a road or embankment. *The American Heritage Dictionary of the English Language*, 4<sup>th</sup> Ed., 2000.

the first paragraph, he would have known that the program was not designed for technicians engaged in the inspection of new bridge construction. (JX 8) McLaughlin testified at the hearing that if Estep had shown him the NICET regulations he would not have been a verifier. Even if McLaughlin had personally initialed every element to which his initials are attached, without the NICET Program Detail Manual (JX 7) a verifier could not know what he was verifying. Another example is that Estep concealed from Daniel Beasley ("Beasley"), Technical Engineer 4 at ODOT, his "Character Reference," that he sought Certification as a Bridge Safety Inspector of existing structures. Had Beasley known this was the certification Estep sought, he would never have vouched for him because Beasley knew he was not qualified.

Third, ODOT contends that Estep forged the initials of McLaughlin, his verifier, on more than one of his NICET applications, and forged McLaughlin's signature on at least one of his applications. Moreover, Estep inappropriately signed as his own verifier, attesting to his own knowledge of subjects required for certification. (JX 7, p. 11) Estep did not show the NICET Certification Rules and Regulations to McLaughlin.

ODOT also asserts Estep's discipline has been consistent with employees who falsified documents relating to their employment or documents arising out of their work for ODOT. Management supports this claim by providing evidence of twenty-six (26) cases where employees have either resigned or been terminated because of dishonesty, theft, or falsification of several different kinds of ODOT official documents. (Management Exhibit ("MX") 1)

The Employer refutes the Union's contention that ODOT does not discipline employees uniformly. The Union presented evidence of an ODOT violation in an attempt to support their contention that ODOT does not uniformly discipline employees for dishonesty, theft, or falsification. This evidence showed that in 1999, Green, Estep's supervisor, was suspended for failure of good behavior. (Union Exhibit ("UX") 2) Giving

rise to Green's suspension was that Green authorized the use of left over concrete from an ODOT construction project at his personal residence. (UX 2) However, in Green's case, Green did not receive an immense personal benefit and the concrete was to be disposed of regardless of his actions. Also, Green decreased the travel time necessary to dispose of the concrete, as his residence was closer to the ODOT site than the concrete disposal site.

Unlike Green's situation, Estep would have greatly benefited from his dishonesty. The submission of Estep's NICET Certification, whether directly or through his Union, was an attempt to use a falsified and forged document to gain a position for which he otherwise would not have the qualifications.

In addition, ODOT reasons that Estep's actions impact ODOT because the requirement of NICET certification is an employment path in the Classification Specifications of the Department of Administrative Services and ODOT. Estep knew there were two pathways to meet the minimum qualifications for a BS II; experience and certification. He chose the only pathway he could possibly attain: certification. Not so innocently, Estep asked Buckle about the Bridge Safety Inspection position; Buckle responded that Estep needed five (5) years experience, and he should follow the NICET manual. (JX 9) ODOT maintains Estep's submission of falsified documents to NICET of his work experience convinced NICET to grant him twenty-four (24) months of experience credit, and ultimately certification. The submission of forged documents to verify his knowledge of a multitude of different subjects also assisted in his effort. Estep knew he could never meet the minimum qualifications for the position of BS II based on his lack of actual work experience at the time he submitted the forms in 2002 and 2003. Frightening, Estep's goal of meeting minimum qualifications would have been accomplished if Management had not questioned his experience to NICET.



ODOT stated that had Estep obtained a BS II position based upon the forged documents, the consequences could have been catastrophic. Management compares Estep's fraudulent actions to the submission of a phony college degree upon which an employer relies. Estep's attempt to acquire certification by forgery, falsification, and exaggeration is dishonest, and results in a breach of the position of trust he held with ODOT. ODOT contends that as a PS II, Estep held a fiduciary position; he was the eyes and ears of Ohio Taxpayers. Estep was responsible for ensuring that contractors used specified materials and that the construction of Ohio's roadways and bridges met workmanship standards. To allow bridge safety inspections to be done by an employee who is not experienced or trained would be the height of irresponsibility by ODOT, and a violation of state and federal law. The amount of potential liability that ODOT and the State of Ohio would assume by allowing Estep to certify safety of bridges with forged credentials would be unthinkable.

Finally, ODOT trusted Estep - trusted him to oversee millions of taxpayer dollars for projects he was responsible for inspecting. Knowing now that Estep falsified, forged, and submitted phony documentation to a certifying body, upon which ODOT and the State of Ohio rely, Management cannot trust Estep.

For all of the above reasons, ODOT requests the grievance be denied and the removal be upheld.

### **POSITION OF THE UNION**

The Grievant, an honest, dedicated employee for over nineteen (19) years, was removed without just cause.

Estep worked very hard to obtain NICET certifications. The certifications were not required for his job with ODOT. He did not use the certifications for personal gain nor did he submit his certifications to ODOT regarding an open position. Although Estep

made a few mistakes on his NICET application for certification, which he fully admits, the result he should not be termination from his job.

The Union contends that the mistakes Estep made on his NICET certification documents have no connection with his position at ODOT. NICET is not connected to the State of Ohio or ODOT, and as such, mistakes made on documents outside of his employment with ODOT should have no bearing on his ODOT employment.

In addition, Estep contends that management at ODOT knew he was obtaining NICET certification, and they encouraged him to do so. Estep claims that while Management refutes this claim of knowledge, their position is suspect, as they did not interview Estep's immediate supervisor in order to learn his knowledge on the subject.

The Union alleges that Estep's removal was an inappropriate discipline for document falsification. Ed Flynn ("Flynn"), Assistant Administrator of Labor Relations, testified regarding the application of ODOT's policy concerning employees who had been disciplined for falsification. The Union discredits Flynn's testimony because it claims the reports he submitted were incomplete, and the reports did not include all employees who were charged with falsification. Further, the testimony of Ken Parks ("Parks"), District Nine Business and Human Resources Administrator, directly contradicted Flynn's report. Parks stated that a manager had been removed due to falsification, yet Flynn's report included only employees covered by the CBA. Parks also stated that not all employees charged with falsification in District 9 have been terminated. The Union relies on Flynn's statement that Management reviewed each falsification violation on a case-by-case basis, rather than strictly adhering to the ODOT directives governing progressive discipline.

Estep is an honest man who made unintentional mistakes on the NICET documents, unlike the other employees who were removed for intentional dishonesty. (MX 1) Ironically, the list was not all-inclusive, because Estep's supervisor, Green, was

caught accepting free items from a contractor yet he received only a one (1) day suspension. Estep can be trusted, unlike his supervisor, who should have been removed.

The Union maintains that ODOT does not have the authority to direct NICET as to what type of experience qualifies as relevant work experience to satisfy NICET certification requirements. Michael Clark ("Clark"), General Manager of NICET, granted Estep credit for his relevant work experience which allowed Estep to gain his Level III certification. (JX 6) ODOT was unsure (confused) of the amount of experience Estep should be credited for his past experience on conducting bridge safety inspections. John Shore ("Shore"), ODOT investigator, stated that NICET was also unclear as to the amount of credit given to Estep. (JX 6) The first credit awarded to Estep was twenty-four (24) months; then, NICET increased the credit awarded, based upon Estep's work experience, to 5 years. Unfortunately, the Union was unable to clarify NICET's apparent inconsistencies regarding credit given to Estep.

The Union contends that if Shore had a question about the type of work Estep was doing on a given day, he could have reviewed his time sheets to ascertain with certainty what work Estep was performing. Had Shore made a thorough investigation, he would have found that Estep's time sheets reflected work associated with bridge safety inspections.

The Union refutes Management's accusation that Estep's certification paperwork involving verifier McLaughlin was fraudulent. ODOT management admitted that McLaughlin, while not Estep's supervisor, was more than qualified to serve as Estep's verifier. McLaughlin could not recall whether or not Estep called to ask if he [Estep] could sign McLaughlin's name and initial some NICET paperwork that was needed by a deadline. Jim Setty ("Setty"), District Construction Engineer, testified that McLaughlin was working on a project in 2002-2003 with major responsibilities. The Union opined

that McLaughlin could not recall every conversation with Estep because of the challenges associated with the project.

Setty's testimony also supports the Union's position that Estep's representations on the NICET forms were not misleading. Setty testified that a PS II often inspects bridge rehabilitation projects to ensure that the bridge will be safe to repair. In the case of a bridge rehabilitation project, Setty testified that the PS II's duties would include sounding concrete and examining current steel and barriers, which are bridge safety functions. Estep would also inspect culverts during the winter months.

Estep testified that he inspected bridges and culverts and that his experience qualifies him for NICET certification as a Bridge Specialist. Estep also testified to other NICET certifications he possessed in bridge safety inspections and highway construction. Estep admitted that he made mistakes on his NICET paperwork, yet he gave clear explanations as to why these errors occurred. The Union believes that ODOT's decision not to cross-examine Estep is proof enough that ODOT could not discredit his testimony. The Union believes that ODOT was aware that there was no reason for the disciplinary action against him, and that by questioning Estep ODOT would further damage their position. Estep was a very dedicated, long term employee who should not have been terminated.

The Union requests that Estep be restored to his position as a PS II with appropriate back pay, benefits, and seniority.

### **BURDEN OF PROOF**

It is well accepted in discharge and discipline related grievances, the employer bears the evidentiary burden of proof. See, Elkouri & Elkouri – "How Arbitration Works" (6<sup>th</sup> Ed., 2003). The Arbitrator's task is to weigh the evidence and not be restricted by evidentiary labels (i.e. beyond reasonable doubt, preponderance of evidence, clear and

convincing, etc.) commonly used in non-arbitrable proceedings. See, Elwell- Parker Electric Co., 82 LA 331, 332 (Dworkin, 1984).

The evidence in this matter will be weighed and analyzed in light of the ODOT's burden to prove that the Grievant was guilty of wrongdoing. Due to the seriousness of the matter and the Article 24 requirement of "just cause", the evidence must be sufficient to convince this Arbitrator of (the Grievant's) guilt. See, J.R. Simple Co. and Teamsters, Local 670, 130 LA 865 (Tilbury, 1984).

### **DISCUSSION AND CONCLUSIONS**

After careful consideration of the evidence in this matter, I find that the grievance is denied. My reasons are as follows:

The process Estep pursued to obtain bridge safety inspection certification is at the heart of this dispute. NICET is recognized nationally as an organization that provides certification programs designed by industry experts in the engineering technology field. ODOT and other employers utilize NICET certifications as measurements for the qualifications of an employee. ODOT, as an example, accepts NICET certification as the minimum qualification for certain job classifications. NICET's certification process required Estep to provide a detailed description of job tasks and responsibilities for each position held. Examinations of Estep's job knowledge consisted of grouping job tasks into modules called work elements. NICET allows applicants to select the work elements applicable to the certification sought. Another component of the process requires a supervisor to verify the work experience<sup>2</sup> of the applicant and provide a character reference.

Estep was certified by NICET at Level III, in Transportation Engineering Technology Bridge Safety Inspection. A Level III bridge inspection certification would

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<sup>2</sup> Verification by McLaughlin consisted of initialing a work element that Estep had repeatedly and competently performed in McLaughlin's presence. (JX 8)

allow Estep to meet the ODOT minimum qualifications for a BS II, and under the Federal Highway Administration for an inspection team leader. ODOT obtained Estep's NICET certificate from the Union when a contractual issue arose over whether ODOT had to post a permanent position to fill a BS II slot, or whether the use of intermittent help by retired BS IIs was appropriate. During the processing of the grievance, Johnson presented Estep's certificate as a bargaining unit member who was qualified to fill the position of a BS II. ODOT was aware of Estep's experience as an inspector in the construction of bridges, but was unaware that Estep had experience in bridge safety inspection. To verify Estep's Level III certification by NICET, Parks on June 2, 2004 wrote Clark and stated in part "...none of the positions he [Estep] has held while in our employment permitted or required Mr. Estep to perform bridge safety inspections. Mr. Estep has considerable experience with us in the area of bridge construction, but no experience that we are aware of in bridge safety inspection." (JX 5) Parks also indicated to Clark that he was aware that McLaughlin, who was not a supervisor, had verified Estep's experience and Beasley supplied a character reference for Estep. ODOT made a request to NICET to obtain the documentation supplied by Estep regarding his Level III certification in Bridge Safety Inspection.

Clark, in October 2004, provided to ODOT copies of all documentation submitted by Estep. (JX 7) Estep submitted documentation which included the following: McLaughlin, as verifier, was listed as Estep's supervisor (JX 7, p.18); Estep worked under an existing BS II from 1987 through 1991, where he spent at least thirty percent (30%) of the time performing bridge safety inspections (JX 7, pp. 19-20); McLaughlin's initialed work elements on forms dated June 7, 2002 (JX 7, p. 7), December 6, 2002 (JX 7, p. 11), and March 7, 2003 (JX 7, p.13); and, an 'Activity List' that included bridge safety inspections as thirty percent (30%) of his work from 1992 through 2001 (JX 7, pp. 19-20).

Upon review of Estep's submittals, ODOT conducted an investigation which included obtaining written statements from McLaughlin, Buckle, Gray, Richmond, Beasley, and Estep. ODOT also obtained NICET's Rules and Regulations for Certification for Bridge Safety Inspection. (JX 8) On November 30, 2004, ODOT concluded that Estep submitted false information; forged an employee's initials on NICET documents; and Estep fraudulently obtained certification as a Bridge Safety Inspector. (JX 6)

#### Work History

Estep submitted five (5) applications to NICET for testing, with the verification forms attached. Estep submitted an 'Activity List' which contained the percentage of time he worked on various jobs between 1985 and 2003. (JX 7) Estep claimed that he worked with Buckle from 1987-1991 on bridge inspections approximately 30% of the time. (JX 7) From 1992-2001, Estep indicated on the 'Activity List' that he spent 30% of his time doing culvert markings/bridge safety inspections. Buckle and Richmond, former Bridge Specialists at ODOT, both testified that Estep did not perform any inspection duties between 1987-1991. Buckle, who was employed as a BS II from 1970 until 1997, indicated that Estep might have been with him maybe two (2) to four (4) days a year if he had to look at a particular problem on a bridge. (JX 9) Estep offered no evidence to rebut Buckle's or Richmond's testimony. Buckle's testimony was credible, and no reason was proffered for Buckle to be less than candid.

From 1992 through 2001 Estep's 'Activity List' indicates that the 30% of work doing existing bridge inspections consisted of doing culvert inspections. Estep testified that during the winter months he performed maintenance work and some culvert inspections that were not classified as bridges. However, Estep added that he inspected culverts that went under the highway as well. However, Estep offered no evidence to allow an inference to find that inspection of culverts are similar to bridge inspections.

Therefore, the claim that thirty percent (30%) of Estep's work consisted of culvert inspections is not supported by any evidence submitted to NICET, other than Estep's own representations.

Problematic to Estep's 30% work experience claims is direct evidence provided by Buckle and Richmond that contradicts Estep's position. Also, Estep did not offer any reports or activity logs that could support his culvert experience. The significance of Estep's desire to convince NICET of his 30% work experience is that a Level III certificate requires five (5) years of experience relevant to bridge safety inspection. NICET ultimately determined that Estep's experience, as contained in the documentation, satisfied the five (5) years experience criteria for Level III. Estep, during the investigatory interview on November 3, 2004, retracted that he worked 30% of the time with Buckle, and from 1992 to 2001 the 30% experience represents his perception of work performed during the year. (JX 15, pp. 17-20)

The evidence indicates that Estep did not perform 30% bridge safety inspections in any year from 1985 to 2001 as contained on the 'Activity List' submitted to NICET. However, NICET, unknowing of this false information, awarded Estep credit for this non-existent experience. Estep's conduct supports a finding that he knowingly submitted false information to NICET to obtain experience he otherwise did not possess.

#### Paperwork – Forged

Estep admitted during the investigatory interview that McLaughlin did not initial the work elements on at least three (3) verifier forms. (JX 15, pp. 10, 12-13, 15) McLaughlin, at the hearing, testified that the initials on the June 7, 2002, December 6, 2002, and the March 2, 2003 submissions were not in his handwriting. Estep stated that McLaughlin gave him permission to sign his name and/or initials to the forms in question. Contrary to Estep's recollection, McLaughlin did not recall giving Estep permission to sign his name or initials to any NICET document.



McLaughlin also testified that the signature, as verifier, on the March 2, 2003 application was not his signature. In other words, none of the work elements were verified as to this submission. Estep indicated that some of his forms were stolen between February 26, 2002 and June 7, 2002, and since McLaughlin had previously verified the work elements, he obtained McLaughlin's permission to sign his initials. What's the rationale for signing McLaughlin's initials on the December 6, 2002 and the March 2, 2003 applications? Estep submitted three (3) of the five (5) applications to NICET that contained initials and/or the signature of McLaughlin that were forged. No evidence was offered to explain this egregious conduct. The stolen document defense was not believable, and even if true, would not provide justification to sign the applications knowing verification did not occur. It must be noted that Estep had been previously certified through the NICET process in other areas, so his past experience clearly gave him knowledge of the proper procedures to follow.

#### Dishonesty

It is undisputed that Estep obtained the Level III certificate from NICET to become eligible for a promotion. The BS II position was sought by Estep, and he discussed with Gray, Buckle, and Richmond the steps necessary to become a BS II.

Through NICET, Estep pursued the pathway to a BS II position. Estep solicited McLaughlin and Beasley to provide supplemental data as part of the application process. However, neither McLaughlin nor Beasley were provided official information about NICET concerning the specific certification being sought by Estep. The Employer contends that if McLaughlin or Beasley was aware that Estep was seeking a certificate as a Bridge Inspector their help would have been non-existent. Accordingly, the point is well taken, that Estep was less than candid with co-workers who sought to assist in his certification efforts.

The height of Estep's dishonesty was NICET's acceptance of all of the documentation he submitted. The Union argues that Estep did not present his certification to ODOT for any posting, and that consequently there is no foul. The Union, without complicity, presented Estep's NICET certificate to ODOT as an employee who met minimum qualifications for an unposted BS II position. Assuming the position was posted and Estep was appointed based upon the state of the facts in the record, if some safety event occurred regarding bridge inspections on Estep's watch, I do not believe the Union or ODOT would take consolation in the outcome. Simply, until Estep was challenged by ODOT, he was poised to migrate to responsibilities of grave significance to the citizens of Ohio – of which he was not qualified.

Estep occupied a fiduciary position as a PS II, and his conduct from February 2002 through March 2003 demonstrates dishonesty and a manipulative approach for personal gain that warrants removal.

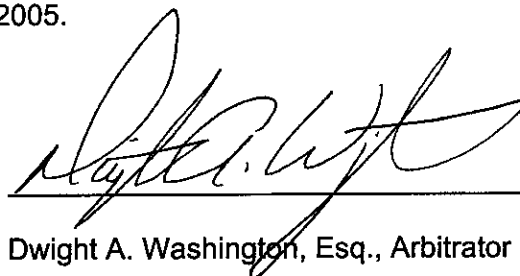
A review of Estep's length of service was given consideration for mitigation purposes. However, based upon the seriousness of the conduct Estep engaged in, he diminished his previous favorable work record. Moreover, as a long term employee, Estep was aware that his position required the exercise of trust and confidence. As a PS II, Estep was responsible for hundreds of thousands of dollars of project related expenditures associated with his job. Troublesome to this Arbitrator is Estep's non-acceptance of his actions that led to his removal. The record is replete with a series of events that were not minor, and extend over a considerable period of time. These actions served to eliminate length of service as a mitigating factor.

The other contentions of the Union, singularly or combined, do not indicate that ODOT acted arbitrarily or unreasonably. I find that the discipline meets the just cause standard, and the removal shall stand.

## **AWARD**

The grievance is denied.

Respectfully submitted this 28<sup>th</sup> day of July 2005.

A handwritten signature in black ink, appearing to read "Dwight A. Washington", is written over a horizontal line. The signature is stylized with large, flowing loops.

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Dwight A. Washington, Esq., Arbitrator