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In the matter of Arbitration between:

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

**Case # 15-00-050606-051-04-01
William R. Bowers, Grievant**

**Ohio State Troopers Association
Union**

In attendance: For the Highway Patrol—S/Lt. John R. Allard, OSHP/HRM; Sgt. D. L. Johnson, Ass't. Post Commander(witness); Mr. John Kinkela, Labor Counsel/OCB; Mr. Ken Koverman, OSHP-Retired; Ms. Jenifer Swisher, Dispatcher(witness); Sgt. Kevin Miller, OSHP/HRM—Advocate

For OSTA---Tpr. William R. Bowers(witness); Mr. Robert Copper, OSTA Staff Rep.; Mr. Dennis M. Gorski, OSTA President; Sgt. Gene C. Jarvi, OSHP-Lima Post(witness); Ms. Elaine Silveira, OSTA Attorney; Mr. Herschel M. Sigall, Chief General Council, OSTA—Advocate

INTRODUCTION:

This matter was held in Columbus, Ohio at the Office of Collective Bargaining on January 9, 2006 at 9:00am. All witnesses were sworn. No procedural issues were raised and the parties agreed 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)(1) Performance of Duty and 4501: 2-6-02(Y)(2) Compliance to Orders. The Employer introduced the following exhibits: ME. 1-AI 2005-5422, Tpr's. Bowers and Schack; ME. 2-OSHP Policy, PROFESIONAL OPERATIONS; ME. 3-OSHP Policy, PATROL CAR/ MOTOR VEHICLE OPERATION BY SWORN OFFICERS; ME. 4-OSHP Policy, AUDIO VIDEO MONITORING; ME. 5-Evaluation-Tpr. Bowers, 11/07/04-11/06/05; The Union submitted the following exhibits: Un. 1-Hand drawn map of Post 2; Un. 2-Evaluations, Tpr. Bowers 2003, 2004, 2005.

ISSUE:

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

Did the Grievant receive a three (3) day suspension for just cause? If not, what shall the remedy be?

FACTS:

Trooper William Bowers has been employed by the Highway Patrol since May 10, 1998. Trooper Bowers at the time of the incident working out of the Lima Post 2 on the 4 to 12p. shift. He is currently working the same shift at the Lima Post.

On January 18, 2005, around 1830 the grievant, Tpr. Bowers, assisted Tpr. Schack on an OVI arrest. The actual stop occurred on the suspect's private property. The suspect (Mr. Andrews) was driving on a restricted use drivers license with OVI plates. Field test were administered by Tpr. Schack and the detainee was transported by Tpr. Schack to the Patrol Post for further tests and examination. Trooper Bowers came on Post and into the BAC room with the suspect and Tpr. Schack.

Subsequent to the release of the suspect to his son, a complaint was phoned in by the suspect's wife around 2130 on the night of the arrest. Mrs. Andrews complained that the grievant made unprofessional remarks in her presence during the arrest, and also to her husband in the Post's BAC room.

As a result of the complaint an Administrative Investigation (AI) was conducted. The investigation concluded that Tpr's. Bowers and Schack had committed chargeable violations. This particular case is confined to the alleged violations of Tpr. Bowers. On April 14, 2005, Tpr. Bowers was notified that he been found in violation of OSHP Rules & Regulations, specifically, Rule 4501: 2-6-02 (B)(1)—Performance of Duty and Rule 4501: 2-6-02 (Y)(2) Compliance to Orders. It was found that on January 18, 2005, you made unprofessional and discourteous comments to a suspect and the suspect's wife during and arrest and failed to conform to orders and directives regarding enforcement techniques. A pre-disciplinary meeting was held on April 29, 2005, and the Meeting Officer

found just cause for discipline. On May 19, 2005, Tpr. Bowers was notified that he would be suspended for three (3) days, effective May 24, 2005.

Trooper Bowers filed a grievance on June 1, 2005, alleging that the Employer violated Article 19, Sections 19.01 Just Cause and 19.05 Progressive Discipline. The requested remedy was to restore the three (3) days, including wages and benefits, expunge the record and make whole. The grievance was denied at Step 2 and on July 6, 2005, and it was ultimately appealed to arbitration on July 21, 2005.

DISCUSSION AND OPINION:

There was much testimony regarding why the grievant (Tpr. Bowers) was in the area the first place. The area of the arrest was not in the grievant's line assignment, but in Tpr. Schack's assignment area. Trooper Bowers testified that he was in the arrest area following up on a previous day's (1/17/05) crash and flee search. As a result of his follow up, per Tpr. Bowers, he drove by the residence of a previously arrested and convicted OVI driver, and noticed the OVI driver's vehicle gone. Knowing of the driving restrictions on the resident Tpr. Bowers testified that he called Tpr. Schack and informed him of the OVI driver's absence. Trooper Schack set up a stationary patrol near the residence of the restricted driver's residence (ME-1). Trooper Schack stopped the restricted driver near his residence and within seconds Tpr. Bowers was on the scene. Timeliness of the occurrences might suggest that one or both of the Troopers were out to get the arrestee, but only opinion evidence was brought forward.

However, during the arrest and booking of the restricted driver on 1/18/05, certain improprieties were committed by the grievant, alleges the Employer. The first alleged violation, according to the Employer, occurred prior to the stop of the suspect. The Employer claims that Tpr. Bowers violated the OSHP Motor Vehicle Operation Policy H. 2.—Deceptive Enforcement Techniques. The Policy states: "When parked or stopped at night, the officer should have the headlights on, if possible; otherwise, the parking lights shall be lit. A parked, occupied patrol car should be well lighted to make it as conspicuous as possible." It was claimed, through evidence and testimony, that the grievant was in stationary patrol with his lights off immediately preceding the stopping

of the suspect (Andrews), by Tpr. Schack. The grievant admits, through evidence and testimony, that he was very near the suspect's residence. However, he had his lights on. Employer evidence refutes the grievant's claim (ME-1). AI interviews of the arrestee's daughter and Allen County Deputy Sheriff Litsey, reports them having seen Tpr. Bowers patrol car parked nearby, with the lights out. The arbitrator could easily discount the daughter as having a vested interest, however, there would be no apparent reason for the Deputy to be untruthful. Furthermore, the two unrelated witnesses identified the grievant's patrol car, condition (lights out), and location, similarly, on the map.

The tape submitted as part of ME-1, in the arbitrator's opinion, does not, with one exception, record the audio with sufficient clarity to identify any unprofessional comments by Tpr. Bowers, at the scene of Andrew's arrest. Unfortunately, the only on scene audio recording was on Tpr. Schack's mic, who was the arresting officer.

The complainant's, Mr. And Mrs. Andrews, claim that unprofessional comments were made to them by Tpr. Bowers at the arrest scene and in the Post's BAC room. Mrs. Andrews claims that the grievant made comments at the scene (ME-1): (1)-that he (Andrews) had been drinking, (2)-he is not allowed alcohol, (3)-wasn't his level (alcohol) about double the last time, and (4)-Tpr. Bowers shined his light on the DUI plates identifying them as the reason for the stop. Mr. Andrews claims (ME-1) that Tpr. Bowers, while in the BAC room said (1) "your not going to take the test, and (2) we had so many charges on you (last time), I don't know how you got out of them, thought they would make an example out of you".

Trooper Bowers testified that he did say, at the scene, that "he (Andrews) was drinking", but denies saying "tested double the last time and shining his light on the DUI plates". The alleged comment at the scene of "not allowed alcohol", if made, certainly could not be construed as being unprofessional, in the arbitrator's opinion. The alleged comments made at the BAC room, by the grievant, were denied, except for saying "bet you don't take the test again".

The scene comments are, he said she said, except that a comment by Tpr. Bowers of "he got lucky the last time", was detected by the arbitrator, on the tape. Trooper Schack was occupied with the detainee, and unfortunately, had the only mic activated. Trooper Schack, during the AI interview, stated that he remembered the grievant making two statements; (1) "he's been drinking" and (2) "we had so many charges on you, I don't know how you got out of them, I

thought they would have made an example out of you". These recollections of Tpr. Schack do not corroborate the grievant's testimony.

The creditable evidence regarding the unprofessional comments supports the allegation that the grievant made certain comments on the evening of January 18, 2005. These comments, if not unprofessional, were certainly discourteous in nature, in the arbitrator's opinion.

In the arbitrator's opinion, the Employer has met the tests for just cause, and considering the number of sustained charges, the employees Department Record, I find the discipline imposed to be progressive.

AWARD:

The grievance is denied.

This concludes the arbitration decision.

Respectfully submitted on this 23rd day of January 2006.

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis, Arbitrator