

In the matter of Arbitration between:

**Ohio State Troopers Association
Union**

and

**Case # 15-03-051116-168-04-01
William R. Bowers, Grievant
Case # 15-03-051127-181-07-15
Mary Cosgrove, Grievant**

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

In attendance: For OSTA—Tpr. William R. Bowers (witness); Tpr. Eric R. Businger (witness); Tpr. Mary Cosgrove (witness); Mr. Dennis M. Gorski, Pres. OSTA; Mr. Dave Riley, Staff Rep. OSTA; Ms. Elaine Silveira, OSTA Attorney—Advocate

For ODPS: Tpr. Robert Gatchel (witness); Mr. Ken Koverman, OSHP Retired (witness); Sgt. K. A. Miller, Mgt. Rep.; Ms. Jennifer Swisher, HPRD (witness); Mr. Matthew Banal, Attorney OCB---Advocate

Introduction:

This matter was heard in Columbus, Ohio at the Ohio State Troopers Association offices on May 18, 2006 at 1:00pm. All witnesses were sworn. No procedural issues were raised and the parties agreed that the issue is arbitrable. There several Exhibits presented: Jt. 1-Collective Bargaining Agreements, Unit 1 and Unit 15; Jt. 2-Grievance Trail # 168; Jt. 3-Grievance Trail # 181; Jt. 4- Bowers 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)(5)—Performance of Duty; Cosgrove Discipline Package, composed of—Statement of Charges, Pre-Discipline Notice, Meeting Officer Reply, Suspension Letter, Discipline Abeyance Agreement, Department Record, Highway Patrol Rules & Regulations 4501:2-6-02(B)(1)(5)—Performance of Duty. The Employer introduced the following Exhibits: ME 1-Recording of Radio Communications; ME 2-Administrative Investigation # 2005-6010. The Union introduced the following Exhibits: Un. 1-Thank you letters from assisted citizens,

regarding Tpr. Bowers; Un 2-Tpr. Bower's Evaluations dated, 9/16/03, 9/9/04, & 9/16/05; Un 3-Sgt. Cosgrove's Promotional Qualification Letters dated, 11/19/01, 11/8/02, 10/28/03, 11/12/04 & demotion letter dated, 1/18/06; Un 4-Sgt. Cosgrove's Performance Reviews for 6/3/02-5/2/03, 6/3/04-6/2/05, & 2005 appeals with responses; Un 5-Sgt. Cosgrove's 1993 Trooper of the Year Portfolio.

FACTS:

Trooper William R. Bowers has been employed by the Ohio State Highway Patrol since May 10, 1998. At the time of the alleged incident Tpr. Bowers was (and is) working the 4p to 12m shift out of Lima Post 2. At the time of the alleged incident Tpr. Cosgrove, then Sergeant, was the 4p to 12m shift supervisor at the Lima Post. Tpr. Cosgrove has been employed by the Ohio State Patrol since September 18, 1987, and she is currently working out of the West Jefferson Post, District 6.

On July 4, 2005 at approximately 7:38p, a radio conversation was conducted between, the then, Sgt. Cosgrove and Tpr. Bowers. The radio conversation was regarding the observation of off duty dispatcher, Julie Clink, by Tpr. Bowers. Ms. Clink was pumping gas at the Flying "J" Truck Stop. Comments were made on this recorded radio transmission by grievants' Cosgrove and Bowers that the Employer alleges were inappropriate. The radio conversation was also heard by three persons at the Lima Post.

An Administrative Investigation (AI) was commenced on July 11, 2005 by Lt. Koverman, Lima Post Commander. Upon his conclusion he submitted his findings to Cpt. R. H. Collins, District Commander. On September 26, 2005, Tpr. Bowers and Sgt. Cosgrove were notified that they were being charged with violating Ohio State Highway Patrol Rules & Regulations 4501: 2-6-02(B)(1)-Performance of Duty, to wit: it is charged that on July 4, 2005, you participated in an inappropriate radio traffic. Pre-disciplinary hearings were conducted October 7, 2005, and the Meeting Officer notified Director Morckel that just cause existed for discipline. Trooper Bowers was notified on October 28, 2005, that he would be suspended for five (5) working days, effective October 30, 2005. Sergeant Cosgrove was notified that she would be suspended for seven (7) working days, effective November 4, 2005.

Trooper Bowers filed a grievance on November 12, 2005 & Sgt. Cosgrove filed a grievance on November 21, 2005. They claimed that the Employer violated ARTICLE 19 DISCIPLINARY PROCEDURE, Sections 19.01 Standard, and 19.05 Progressive Discipline. Both the Sgt. and Tpr. Requested the removal of their suspensions and to be made whole. A Step 2 grievance response of denial was made to both grievances on December 7, 2005. The grievances were ultimately appealed to arbitration on or about January 19, 2006.

DISCUSSION AND OPINION

Evidence and testimony confirms that on July 4, 2005 at approximately 7:38pm, that there was radio traffic on the MARCS TAC channel between Tpr. Bowers and Sgt. Cosgrove. Trooper Bowers initiates the conversation by stating "old Jules is at the Flying J getting gas", followed by Sgt. Cosgrove's response of "oh yea, sure she's not up there working", and the conversation is concluded by Tpr. Bowers stating "she looks like she could have been". Not only was this traffic recorded, but it was overheard by the Post dispatcher and an off-duty Trooper and his wife. Testimony and evidence showed that the subject of the conversation was off-duty dispatcher, Ms. Julie Clink. A complaint was filed by Ms. Clink on July 5, 2005, claiming that a hostile work environment existed for her, based on the two Officers comments, according to the AI.

PERFORMANCE OF DUTY AND CONDUCT, Rule 4501:2-6-02(B)(1) reads as follows: "A member shall carry out all duties completely and without delay, evasion or neglect. A member shall perform his/her duties in a professional, courteous manner." Were the recorded and testified to comments in violation of this rule?

The Highway Patrol claims in their opening statement that these comments constituted, in the law enforcement community, an implication that the off-duty dispatcher (Clink) was working at the truck stop as a prostitute. They further argue that the grievants were unprofessional and inappropriate, by talking about their co-worker.

The Union and grievants do not deny that the radio traffic occurred. However, they argue, in their opening statement that the Employer is interpreting perception, and not fact. The statements, argues the Union,

were made innocently and there was no reference to prostitution. Dispatcher Clink did work other jobs and prostitution was never implied, nor was there malice of intent in the statements, argues the Union. Is the Union trying to weasel out of a clear attempt to disparage the reputation of a co-worker?

In reviewing the recording, the conversation lasted less than thirty seconds and the comments between the two communicators were direct and straightforward. There was no laughter or snickering detected, as one Management witness claimed. Although truck stops may have a reputation for prostitution activity, the term or synonyms were not part of the recorded evidence. There were obviously interpretations made as to the intent of the grievants' words, however, no evidence was produced to validate the purpose of malice on the grievants' part. According to testimony, this Post has had some turmoil regarding relationships, which in the arbitrator's opinion, has exacerbated this miniscule conversation into a severe disciplinary situation.

The conversation could have bordered on unprofessional conduct as argued by Management, and could be unnecessary radio traffic, as admitted to by the grievants. However, in the arbitrator's opinion, there was no clear and convincing evidence that the grievants were trying to disparage Ms. Clink, since there was a lack of direct reference to prostitution and the brevity of the radio traffic. Furthermore, in the arbitrator's opinion, the less than thirty seconds of radio chatter does not rise to the imposed level of discipline, and is too severe, even considering the grievants Department Records¹. Although the discipline was progressive, it is not commensurate with the offense, as required by Section 19.05.

AWARD:

Trooper Bowers's discipline is to be reduced to a written warning, and he is to be made whole for the five (5) days lost wages and benefits.

Trooper Cosgrove's discipline is to be reduced to a written warning, and she is to be made whole for the seven (7) days in lost wages and benefits. However, the Abeyance Agreement is to be reinstated, if it has not expired.

¹ Elkouri & Elkouri, 6th Ed. Pg. 913

This concludes the arbitration decision.

Respectfully submitted this 27th day of May 2006.

A handwritten signature in cursive script, appearing to read "E. William Lewis".

E. William Lewis
Arbitrator