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In the Matter of Arbitration

Between

Fraternal Order of Police-  
Ohio Labor Council

and

The State of Ohio, Department  
of Public Safety

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Before: Harry Graham

Case Number:

15-00-20051004-0144-05-02

**APPEARANCES:** For FOP-OLC:

Paul Cox, Chief Counsel  
Fraternal Order of Police  
222 East Town St.  
Columbus, OH. 43215

For the State of Ohio:

Matthew Banal, Labor Relations Specialist  
Office of Collective Bargaining  
100 East Broad St., 18th Floor  
Columbus, OH. 43215

**INTRODUCTION:** Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument in Columbus, OH. on June 22, 2006.

**ISSUE:** At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Grievant receive a ten (10) day suspension for just cause? If not, what is the proper remedy?

**BACKGROUND:** The Grievant, Harold Kolsky, is an Enforcement Agent with the Ohio Investigative Unit of the Department of Public Safety. To this incident he had no discipline on his record. In December, 2004 he became involved as an undercover officer in an investigation of the possible sale of illegal drugs in the Columbus, OH. area. He and other agents of the Investigative Unit collaborated with the Columbus Police Department in the investigation.

Among the establishments that came to be investigated was a place known as the Body Shop. In the course of the investigation Mr. Kolsky was satisfied that illegal drugs were being sold at the Body Shop. He identified a person known as Gia as the vendor. Gia came to be identified by what Mr. Kolsky believed was her true name, Tanya Robinson. Mr. Kolsky had heard Ms. Robinson referred to as Gia. He had been told by personnel in the Body Shop that the true identity of Gia was Tanya Robinson.

Agent Kolsky provided the identity of Tanya Robinson to the Columbus Police Department. An arrest warrant was issued and Mr. Robinson was arrested on June 29, 2005. She was incarcerated in the Franklin County Jail. On July 11, 2005 Detective Douglas Eckart of the Columbus Police Department was contacted by Ms. Eckart's attorney. He was told that Tanya Robinson is a nurse and had never been to the Body

Shop. A meeting was held on July 19, 2005 involving Agent Kolsky, Detective Eckart, Ms. Robinson and her attorney. Immediately upon seeing Ms. Robinson Agent Kolsky and Detective Eckart realized she was not the woman who had been identified as Tanya Robinson in the Body Shop. The case against her was dismissed.

An investigation of how a case of mistaken identity had occurred was undertaken. It resulted in charges being filed against Agent Kolsky. He was charged with a violation of Department of Public Safety Work Rule 501.02(A)(4), Performance of Duty. A ten day suspension was imposed for that charge. A grievance protesting that suspension was filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

**POSITION OF THE EMPLOYER:** When Gia was identified as "Tanya Robinson" Agent Kolsky submitted that name to the Law Enforcement Automated Data System (LEADS) maintained by the Ohio State Highway Patrol. One person answering to Tanya Robinson was found. Agent Kolsky then secured the photograph of Tanya Robinson from the Bureau of Motor Vehicles. He confirmed the Tanya Robinson in the picture was the Tanya Robinson at the Body Shop who had sold drugs. That was not the case. The true Tanya Robinson was a nurse. She did not

work at the Body Shop.

Agent Kolsky had been in the Body Shop often. He had become acquainted with Gia, also known to him as Tanya Robinson. He had secured the image of Tanya Robinson from the Bureau of Motor Vehicles. That image is on the record in this proceeding as Employer Exhibit 6. There are several photos of Ms. Robinson in Employer Exhibit 6. They show a light-skin African-American woman. She is listed as being 5'2". Her weight varied over the several photographs on the record from a high of 129 to a low of 98 pounds. She has brown hair and eyes.

Union Exhibit 2 consists of various images of the true Tanya Robinson. She is a white woman. She is 5'11." Her weight has fluctuated from 160 to 120. She has blond hair and blue eyes. Given the discrepancy between the appearance of the real Tanya Robinson and the person identified by Agent Kolsky as Ms. Robinson there should have been no difficulty in making a correct identification according to the State. In fact, Gia was a person named Kimberly Kenyon.

Agent Kolsky's error received wide publicity in the Columbus area. The Columbus Dispatch wrote an article "Agencies red-faced over arrest error." (Er. Ex. 4, no date or page number). Ms. Robinson brought legal action against the Department of Public Safety. It was resolved in May,

2006. The Department agreed to pay Ms. Robinson \$50,000.00 to atone for its error. Agent Kolsky's error subject the Department to adverse publicity. It was costly in monetary terms. Law enforcement agencies cannot make the sort of mistakes made by the Grievant. Under the circumstances of this situation the ten day suspension imposed upon Agent Kolsky was reasonable and should not be disturbed the State contends.

**POSITION OF THE UNION:** The Union points to the charge against Agent Kolsky. It relates to his "Performance of Duty and Conduct." The Grievant was charged with violating section A 4 which provides:

Employees who fail to perform assigned duties because of an error of judgement or otherwise fail to perform satisfactorily a duty of which such employee is capable may be charged with inefficiency.

Section A 4 cannot apply to Agent Kolsky according to the Union. There was no error of judgement. The Grievant was sent to the Body Shop. There he met Gia. She subsequently identified herself to him as Tanya Robinson. Two other people in the bar also identified Gia as Tanya Robinson. Other Enforcement Agents checked the license plates of vehicles in the parking lot of the Body Shop. A car licensed to Tanya Robinson was found. Mr. Kolsky had every reason to believe Gia was Tanya Robinson. When, upon meeting the arrested person, the real Tanya Robinson, he recognized his mistake

immediately. He did not attempt to cover it up. He immediately and forthrightly indicated that the arrestee was not the person he knew to be Tanya Robinson.

In fact, when employees of the Body Shop were presented photographs of the real Tanya Robinson one person said she was the person who was the Tanya Robinson of the Body Shop, a.k.a. Gia. This was obviously a mistake made by a co-worker of Gia, Ms. Kenyon. If a co-worker could make such an error, so too could Mr. Kolsky in the view of the Union.

In this situation the Grievant erred. His error is entirely explicable when consideration is given to the fact that Gia identified herself to him as Tanya Robinson, notwithstanding the fact that she was really Kimberly Kenyon. Ms. Kenyon's co-workers identified her to Agent Kolsky as Tanya Robinson as well. Mr. Kolsky had every reason to believe the woman he believed to have sold drugs in the Body Shop was Tanya Robinson. As that is the case the Union contends the grievance must be sustained and the ten day suspension stricken from Mr. Kolsky's record.

**DISCUSSION:** What was the Grievant to do? Operating as an undercover agent he went to the Body Shop. A person known to him as Gia came to identify herself as Tanya Robinson. That identification was confirmed by other employees of the Body Shop. Mr. Kolsky had every reason to believe the person he

knew as Gia was Tanya Robinson. That belief was reinforced by the fact that Agent Kolsky's colleagues had identified a car licensed to Tanya Robinson in the parking lot of the Body Shop. The weight of information available to the Grievant prompted a reasonable belief that the person he knew as Gia was indeed Tanya Robinson.

The photographs of the real Tanya Robinson and Gia, Kimberly Kenyon, show obvious differences as set out above. The most casual observer would not be prompted to believe Tanya Robinson and Kimberly Kenyon were one and the same person. A person identifying Robinson as Kenyon or vice-versa would be in error. In fact, one of Ms. Kenyon's co-workers saw the photographs of Ms. Robinson and identified her as Gia of the Body Shop. Incomprehensible as that is, it remains the fact on the record. Even one of Ms. Kenyon's colleagues who worked with her on a regular basis identified her as Tanya Robinson. With all this as his basis for decisionmaking why should Agent Kolsky have concluded otherwise? He had a woman who claimed to be Tanya Robinson. Her co-workers at the Body Shop knew Gia to be Tanya Robinson. For whatever reason a car registered to the real Tanya Robinson was found in the parking lot of the Body Shop. Mr. Kolsky's conclusion that Gia who had sold him drugs was Tanya Robinson was certainly reasonable based upon the information in his possession. He

had no reason to believe that Gia was anyone other than Tanya Robinson.

Upon seeing the arrestee, the real Tanya Robinson, Mr. Kolsky immediately recognized she was not the Gia of the Body Shop. He acknowledged his mistake. Charges against her were dismissed. He acted properly once discovering Tanya Robinson was not Gia. Under the circumstances of this situation the grievance must be sustained.

**AWARD:** The grievance is sustained. The Grievant, Harold Kolsky, is to have the ten (10) day suspension administered to him rescinded. All straight time pay lost is to be reimbursed to him. All record of this incident is to be removed from the personnel record of the Grievant.

Signed and dated this 10<sup>th</sup> day of July, 2006 at Solon, OH.

Harry Graham  
Harry Graham  
Arbitrator