#1891

IN THE MATTER OF ARBITRATION

BETWEEN

THE STATE OF OHIO
THE OHIO DEPARTMENT OF PUBLIC SAFETY
OHIO STATE HIGHWAY PATROL

AND

OHIO STATE TROOPERS ASSOCIATION, INC., UNIT 15

Before: Robert G. Stein
CASE#
15-03-060126-030-07-15

Grievant:
Mary Cosgrove

Advocate for the EMPLOYER:

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INTRODUCTION

This matter came on for hearing before the arbitrator pursuant to the collective bargaining agreement (herein "Agreement") (Joint Exh.1) between The State of Ohio, the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol (herein "Employer" or "OHP") and the Ohio State Troopers Association, Inc., Unit 15 (herein "Union"). That Agreement is effective during the calendar years 2003 through 2006 and includes the conduct that is the subject of this grievance.

Robert G. Stein was mutually selected by the parties to arbitrate this matter as a member of the panel of permanent umpires, pursuant to Article 20, Section 20.08 of that Agreement. A hearing on the matter, which is also identified as case number 15-03-06-126-030-07-15, was held on April 19, May11, and May 12 at the OHP headquarters, located at 3201 North Main Street in Findlay, Ohio. The parties mutually agreed to those hearing dates and location, and they were each provided with a full opportunity to present both oral testimony and documentary evidence supporting their respective positions. The three-day hearing, which was not recorded via a fully written transcript, was subsequently closed upon the parties' submissions of post-hearing briefs. The parties each stipulated to the statement of the issue and the admission of three joint exhibits.

The parties have also both agreed to the arbitration of this matter. No issues of either procedural or jurisdictional arbitrability have been raised, and the matter is now properly before the arbitrator for a determination on the merits.

ISSUE

In conformity with Article 10, Section 20.08 of the Agreement, the parties submitted the following statement of issue for resolution by the arbitrator:

> Was the Grievant, Mary Cosgrove, demoted from her position as an Ohio Highway Patrol sergeant for just cause? If not, what shall the remedy be?

RELEVANT CONTRACT PROVISIONS

Article 19—Disciplinary Procedure
Article 20—Grievance Procedure

BACKGROUND

Mary M. Cosgrove (herein "Cosgrove" or "Grievant") began her career with the OHP in 1984, when she was employed as a cadet dispatcher at the Lima Post. After completing her training at the OHP Academy in 1987, she worked as a trooper at the Piqua Post before being transferred in 1998 to the Lima Post, where she was later promoted to and served with a sergeant ranking until her 2006 involuntary transfer to the West Jefferson and her demotion back to the rank of trooper. It is that

specific demotion and transfer which resulted in the current grievance and is being challenged by the Union and Grievant.

The current grievance had its first objectively identifiable origin with the July 18, 2005 filing of a separate grievance (Management Exh.1) by OHP Dispatcher Julie Clink (herein "Clink"), who worked the 4:00 p.m. to 12:00 p.m. shift under the supervision of Assistant Commander Cosgrove at the Lima Post. Clink's grievance claimed a violation of Article 15.05 of the Agreement, "Unsafe Conditions," based on Cosgrove's purported conduct in "displaying anger and resentment towards personnel at the Lima Post." A four-month administrative investigation was conducted in response to Clink's averment that Cosgrove, Trooper Rustan Schack, and Trooper Bowers had created an unsafe or hostile working environment.

Based on the results of that investigation, a statement of charges (Joint Exh. 3) was issued by the Commander of OHP District One on January 10, 2006, finding that the Grievant "made inappropriate and unprofessional remarks about her Post Commander" and "also failed to properly address inappropriate and unprofessional behavior by her subordinates." A separate letter on the same date to Cosgrove informed her of her intended demotion to trooper status and her transfer to the Wapakoneta Post, based on her violations of OHP Rule 4501:2-6-03(A)(1)—Responsibility of Command and Rule and also Rule 4501:2-6-03(I)(1)—

Conduct Unbecoming an Officer. These sections include the following specific provisions:

> 4501:2-6-03(A)(1) Responsibility of Command
>
> A member who is in command of any post, district, section, unit, detail, or assignment, or part thereof, either on a temporary or permanent basis, shall be held responsible for the efficiency, discipline, performance, and welfare of the persons under his/her command, for facilities assigned under this command, and the effective discharge of the duties and responsibilities of the division within the scope of this command.
>
> 4501:2-6-03(I)(1) Conduct Unbecoming an Officer
>
> A member may be charged with conduct unbecoming an officer in the following situations: (1) For conduct that may bring discredit to the division and/or any of its members of employees . . .

At the January 17, 2006 pre-disciplinary meeting held in response to those alleged violations, the meeting officer determined that there was just cause to impose the demotion and transfer discipline. The Grievant's official disciplinary notice letter of January 18, 2006 advised here that she should report to the District Six Headquarters on January 20, 2006.

Cosgrove filed a grievance dated January 23, 2006 (Joint Exh. 2), asserting that she had been disciplined in the absence of both "just cause" and progressive discipline in violation of Article 20, Sections 19.01 and 19.05 of the Agreement. Because the matter remained unresolved after passing through the preliminary stages of the grievance procedure, the matter was advanced to the arbitration level, as provided in Article 20, Section 20.07, Step 4.

POSITION OF THE UNION

The Union insists that any actually occurring misconduct by the Grievant merited only minor discipline at most, such as a verbal reprimand or counseling from the appropriate human relations or supervisory OHP staff member. The Union contends that "Cosgrove attempted and succeeded to operate the second shift as effectively as it could effectively function in the face of widespread discontent with the command of the Post . . . Sergeant Cosgrove was operating with the severe impediment of having a withdrawn Commander, who relied upon the secret transmissions from Dispatchers to report on the events of the shift and the conduct of the shift personnel, including their shift supervisor." (Union brief p. 5).

The Union specifically argues that the Grievant's demotion and transfer were inappropriately severe discipline in response to the "Responsibility of Command" and "Conduct Unbecoming an Officer" claims made against her, especially in the absence of any prior discipline involving misconduct similar to that having been addressed in the instant situation. The Grievant had incurred two prior suspensions based on (1) a verbal exchange between the Grievant and Sergeant Darren Johnson, determined to merit a five-day suspension with two days held in

abeyance; and (2) a seven-day suspension based on a July 4, 2005 radio conversation between the Grievant and Trooper Brown, during which Brown shared his observations regarding Dispatcher Clink's appearance at a truck stop. Arbitrator E. William Lewis reduced that latter suspension to a written warning in his May 27, 2006 award.

The Union stresses the Grievant's successes and recognition as an exemplary officer, as evidenced by her selection as State Trooper of the Year in 1993. The Union also notes that the hearing testimony of several of the Grievant's subordinate officers demonstrated their respect for Cosgrove, either as a fellow trooper and/or as a supervisor. The testimony of those same officers described "a lack of demonstrated leadership by the Post Commander [Koverman], his undertaking a program of avoidance to any issue related to Dispatcher performance, and his enlisting the Dispatchers to engage in a program of reporting secretly to him what was being said on the [second] shift." (Union brief p.13).

Based on the Union's contention that there is no valid justification for the grievant's demotion and transfer, the Union requests that the Grievant be restored to her rank of sergeant.

POSITION OF THE EMPLOYER

The Employer basically refutes all of the Union's claims and contends that the imposed demotion and transfer discipline was merited because "the Grievant made inappropriate and unprofessional remarks about her Post Commander and failed to address inappropriate and unprofessional behavior by her subordinates." (Employer brief p. 1). The Employer claims that the evidence indicates "the extremely poor working environment at the Lima Patrol Post essentially began in the spring of 2005 after the Grievant made several unfounded allegations against her Post Commander, fellow Assistant Post Commanders, and Dispatchers." (Employer's opening statement). While acknowledging that profanity or "shop talk" occurs in patrol posts "outside of the public eye," the Employer insists "the participation and condonation by a supervisor of the OHP is excusable." (Employer brief p. 2).

The Employer specifically denies the contentions of the Grievant and the Union that "the issues with the dispatchers had anything to do with the Grievant's behavior and the imposed discipline. . . As a supervisor that is responsible for her shift, which included the dispatchers, the Grievant was responsible for documenting inefficiencies, yet she failed" to perform her supervisory duty to do so. (Employer brief pp. 9, 10-11). The Employer also specifically describes the Grievant's misconduct as participating in inappropriate and/or profane conversations regarding fellow supervisors, her post commander, and Dispatcher Swisher in the

presence of subordinates. The Employer cites to specific witness testimony, indicating that the Grievant permitted her subordinates (other troopers and also dispatchers) to engage in inappropriate conduct by using profane language.

The Employer insists that this internal insubordination is especially damaging for the OHP, which seeks to maintain its reputation based on high standards of courtesy and professionalism and is especially problematic in a paramilitary organization, such as the OHP, in which respect for rank structure and discipline are fundamental. The Employer insists that the Grievant, while serving as an assistant post commander, should not have discussed her "displeasure" concerning Lieutenant Koverman with her subordinates and that she had attempted, thereby, to undermine his authority. While admitting that the Grievant's past performance indicates that she "made a very fine Trooper, . . .[s]he has demonstrated that she cannot be trusted to fulfill the role of a supervisor without undermining and disrespecting her commanding officer and fellow officers." (Employer brief. p. 17).

Finally, the Employer stresses that the Grievant had been put on notice, both as a result of her three most-recent evaluations and also the prior three-day suspension, of the need for her to be supportive of the management team, to build a team-oriented environment, and to foster cohesive relationships at the Lima Post. (Employer brief p. 18). The

employer contends that, based on the apparently unsuccessful past efforts to assist the Grievant with these behaviors, "she is unfit to serve as a supervisor, and the only acceptable form of discipline was demotion." (Employer brief p. 20). Therefore, the Employer requests that the grievance be denied in its entirety.

DISCUSSION

In an employee discipline matter, an arbitrator must determine whether an employer has proved that a disciplined employee has committed an act warranting the discipline rendered and that the specific penalty imposed was appropriate under the circumstances. *Hy-Vee Food Stores, Inc. and Local 747, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am.*, 102 LA 555 (Berquist 1994).

When a collective bargaining agreement, such as the Agreement to facilitate the cooperative relationship between the Employer and Union in effect in this matter, reserves to management the right to establish reasonable rules and regulations and the right to discipline for "just cause," but fails to define what actually does constitute "just cause," it is proper for an arbitrator to look at the employer's policies, rules, and regulations to determine whether or not the challenged discipline imposed was actually warranted or justified. *E. Assoc. Coal Corp. and*

United Mine Workers of Am., Dist. 17, 139 Lab. Arb. Awards (CCH) P 10,604 (1998). The existence of "just cause" is generally recognized as encompassing two basic elements. First, the Employer bears the burden of proof to show that the Grievant committed an offense or engaged in conduct that warranted some form of disciplinary action. The second prong of "just cause" is to determine whether the severity of the responsive action taken by the Employer was commensurate with the degree of seriousness of the established offense. *City of Oklahoma City, Okla. and Am. Fed'n of State, County, and Mun. Employees, Local 2406,* 02-1 Lab. Arb. Awards (CCH) P 3104 (Eisenmenger 2001). The proof must satisfy the question of both any actual wrongdoing charged against an employee and the appropriateness of the punishment assessed.

Arbitrators do not lightly interfere with management's decisions in discipline matters, but that does not mean to suggest that they will sustain an action found to be unjust or unreasonable under the circumstances.

> The only circumstances under which a penalty imposed by management can be rightfully set aside by an arbitrator are those were discrimination, unfairness, or capricious and arbitrary action are proved—in other words, where there has been an abuse of discretion. The arbitrator should not substitute his own judgment for that of management unless he finds that the penalty is excessive or unreasonable or that management has abused its discretion.

Operating Eng'rs Local Union No. 3 and Grace Pac. Corp., 01-2 Lab. Arb. Awards (CCH) P 3971 (Najita 2001). When a grievance involves a challenge to a managerial decision, the standard of review is whether a

challenged action is arbitrary, capricious, or taken in bad faith. *Kankakee (Ill.) School Dist. No. 111 and Serv. Employees Int'l Union, Local 73*, 117 LA 1209 (2002).

> Arbitrary conduct is not rooted in reason or judgment but is irrational under the circumstances. It is whimsical in character and not governed by any objective rule or standard. An action is described as arbitrary when it is without consideration and in disregard of facts and circumstances of a case and without a rational basis, justification, or excuse. The term "capricious" also defines a course of action that is whimsical, changeable, or inconstant.

City of Solon and Ohio Patrolman's Benevolent Ass'n, 114 LA 2221 (Oberdank 2000).

Clearly, the Grievant exhibited improper conduct by her open criticism of both her supervisor and her subordinates. Serving as a supervisor demands exemplary conduct and an ability to maintain mutual respect between and among other employees at all tiers or levels of the internal hierarchy. Clearly, the unprofessional conduct, described by multiple witnesses at the hearing, was widespread or rampant and appeared to permeate the second-shift working environment. However, to lay total blame for the unsettled work environment upon the action or inaction of the Grievant is unreasonable based upon the totality of the evidence. An obvious cause for employee friction and animosity was the absence of strong leadership and involvement from Lieutenant Koverman (herein "Koverman") in response to the unacceptable behaviors from many individuals being reported to him via the private or secretive e-mail

communication system involving specific Lima Post dispatchers, which Koverman encouraged. This tattletale system does nothing to promote unity, when established either in the family, school, or work environments and ultimately results in a myriad of conflicts and animosities from within the ranks.

I find it troubling that Koverman rather than focusing extensive efforts to address the recurring shift-wide and/or staff-wide problems, chose to surreptitiously build a case against the Grievant individually. The arbitrator finds that Koverman and the OHP were clearly on notice of the performance and conduct problems involving second-shift employees, in general, but chose to discipline only the Grievant. Certainly, the Grievant should be held accountable for her own behavior and be disciplined for her own failure to exhibit appropriate professional conduct, but she clearly cannot be ultimately responsible for all of the misconduct exhibited by her colleagues and subordinates while she served as assistant post commander. It is very troubling for the arbitrator to attempt to empathize with the various hearing witnesses, who testified that the Grievant failed to correct or stop their respective misconduct. (Employer brief pp. 7, 9, 13, 14; Employer's opening statement). Certainly in her role as a first-line supervisor the Grievant has a duty to maintain order. However, employees must also be held accountable for their conduct and are individually responsible for their own behaviors. No one, including

the Grievant, provided those employees with a license to behave offensively and unprofessionally. In the absence of any demonstrated interest or intent by Koverman to support the Grievant in maintaining a cohesive work environment, it is unreasonable to expect the Grievant to singularly "police" the second shift and to suppress the growing aggravation caused by unaddressed conflict between ranks of employees. Based on these circumstances, the arbitrator finds that the Employer had "just cause" to discipline the Grievant for her own misconduct, which included her use of disparaging comments regarding Koverman and her subordinates, and her failure to do more to discourage or curtail remarks by subordinates.

In the often-cited *Liberty Wire* decision (46 LA 359), Arbitrator Daugherty identified seven questions to be addressed in determining the existence of "just cause." The last of those questions is: "Was the degree of discipline administered by the employer reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his service with the employer?" "In disciplinary cases generally, most arbitrators exercise the right to change or modify a penalty if it is found to be improper or too severe under the circumstances of the situation." *Escalade Sports, Inc. and Int'l Union of Elec., Salaried, Mach. and Furniture Workers, AFL-CIO, Local 848*, 01-1 Lab. Arb. Awards (CCH) P 3676 (Allen 2000). The degree of penalty should be in keeping

with the seriousness of the offense and any mitigating circumstances. *Capital Airlines*, 25 LA 13. The concept of "just cause" requires the arbitrator to consider alternative disciplinary options. *Escalade Sports*. Arbitral authority to determine the existence or absence of "just cause" necessarily includes a review of the severity of the penalty. If the penalty is found to be excessive, it may be altered or set aside. *Int'l Union, UAW and Its Local 6000 and the State of Mich.*, 90-2 Lab. Arb. Awards (CCH) P 8419 (Frost 1989).

Both generally and specifically under the provisions of Article 4 the Agreement, management has the obligation, as well as the right, to properly administer the work place and to monitor the on-the-job conduct of all of its employees. This includes the specific right to "[s]uspend, discipline, demote, or discharge for just cause." Because the OHP's outstanding organizational reputation is dependent upon the professional conduct of its individual troopers, who must act reasonably and quickly in response to an unpredictable myriad of events, intense efforts are made to select and train officers, especially those performing at a supervisory level, who are able to function adequately and independently as leaders and mentors, while exercising good judgment and discretion, even in unpleasant and sometimes dangerous situations. Arbitrators have found that law enforcement agencies are paramilitary operations with codes of conduct that are more firm, more focused, and

more disciplined than are the rules and regulations that apply to most other types of employment, because the officers' conduct is constantly being observed and assessed by citizens, as well as other officers and subordinates. *City of Fort Worth, Texas and Combined Law Enforcement Ass'ns of Texas (CLEAT),* 99-2 Lab. Arb. Awards (CCH) P 3191 (Jennings 1999).

As a sergeant serving as an assistant post commander, the Grievant was subject to a higher standard of conduct, because she served as a model or mentor for other troopers and also as a supervisor for other on-site employees, such as dispatchers. Conduct that might be excused in the case of a less-experienced and lower-ranking officer cannot be ignored in the Grievant's case. *City of Thief River Falls, Minn.,* 88-1 Lab. Arb. Awards (CCH) P 8111 (Ver Ploeg 1987). As another arbitrator also noted, professional conduct is demanded of all employees in the law enforcement realm, based on their need to be able to confidently rely on the judgment and behavior of colleagues to assist in a common law enforcement goal.

> There is a great deal of dependence on law enforcement officers to provide protection and safety, especially in these current times. Any conduct that undermines that perception tends to destroy the important sense of confidence the public places in its law enforcement personnel. Further, relationships with fellow employees are also at stake, especially in a **profession where loyalty and respect are needed . . .** (Emphasis added)

City of Cooper City, Fla. and Broward County Police Benevolent Ass'n, 118 LA 842 (Hoffman 2003).

The arbitrator recognizes that the Grievant's conduct was obviously less than optimal, and needed to be corrected However, the operation and moral of any unit must begin with its leader, and the evidence demonstrates that there was a void in leadership at the Lima Post to address problems festering among employee groups. The record indicates that the Grievant currently has had approximately nineteen (19) years of very successful service with the OHP. She was named Trooper of the Year and during her long career has had a limited disciplinary record. The evidence also indicates that she has served as an effective officer and also a capable leader, competently and zealously performing her duties both before and after her promotion to the sergeant's rank. Even though the Grievant erred and participated in unacceptable conduct, deserving of some form of discipline, the arbitrator here finds that the Grievant should not be permanently reduced in rank from sergeant to trooper.

> Excessive punishment has long been a concern in arbitration. Once the misconduct has been proved, the penalty imposed must be fairly warranted and reasonably calculated to eliminate the offensive conduct. The punishment should also be based upon the employee's actual actions and not the possible consequences of those actions.

Lewis County, Wash. and Teamsters, Local 252, 03-2 Lab. Arb. Awards (CCH) P 3491 (Ables 2003). Although the Grievant was deserving of

discipline for her "conduct unbecoming an officer," the appropriate penalty should be one less severe than her actual demotion. Just as management has the recognized right to promote deserving employees, subject to contractual guidelines, it also has a reciprocal right to demote when employees are incapable of performing the duties of their job, either because of a lack of efficiency, incompetency, deteriorated physical condition, or because the employee has demonstrated a trait or incurred a condition, which renders him or her unable to perform the specifically assigned job without potential further damage, problems, or injury to himself, other co-workers, or the employer's property. *Allegheny Ludlum Ind., Inc., Brackenridge, Pa. Works and United Steelworkers of Am., Local Union No. 1196, AFL-CIO*, 86-1 Lab. Arb. Awards (CCH) P 8160 (McDermott 1985). The arbitrator finds that none of those limitations are present to limit the Grievant's future work performance.

Article 19, Section 19.05 of the Agreement, entitled "Progressive Discipline," includes the following language:

> The Employer will follow the principles of progressive discipline. **Disciplinary action shall be commensurate with the offense.** Disciplinary action shall include:
>
> 1. One or more Verbal Reprimand (with appropriate notation in employee's file);
> 2. One or more Written Reprimand;
> 3. One or more day(s) Suspension(s) or a fine not to exceed five (5) days pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.
> 4. Demotion of Removal (Emphasis added)

The arbitrator here agrees with Arbitrator Platt in his analysis of the devastating and long-term nature of demotion discipline.

> Arbitrators generally support the principle that permanent demotion is an improper form of discipline. Basically, the reason supporting that principle is that the use of a permanent demotion is an indeterminate sentence, which has no terminal point, and it may go far beyond the extent of the penalty actually warranted by the infraction committed. Furthermore, the use of a permanent demotion, if for disciplinary reasons, violates the employee's seniority rights to future promotions, and it may also adversely affect pension or other individual benefits guaranteed by the labor agreement. Other arbitrators have pointed out that the use of a permanent demotion, as a form of discipline, is contrary to the purpose of industrial discipline. That purpose is to use the disciplinary process to correct the faults and behavior of workers, by instituting penalties in progressively harsher degrees, with discharge as the ultimate penalty after all efforts at correction have proven unsuccessful.

Republic Steel Co., 25 LA 733 (Platt).

Another arbitrator found that demotion is typically an appropriate remedy only if an employee is not capable of successfully performing the work assigned. *GAF Broad. Co., Inc., WNCN and Am. Fed'n of Television and Radio Artists, AFL-CIO,* 8602 Lab. Arb. Awards (CCH) P 8377 (Light 1986). In a separate arbitration matter involving a police captain's demotion to patrolman "because of his improper comments" after his sixteen (16) years of service to a city's police department, an arbitrator found that a suspension, followed by his reinstatement, constituted the appropriate remedy.

> Measures which bear a reasonable relationship to the gravity of the said offense(s) should be utilized . . . [The Grievant's misconduct] did not show that he lacked the ability to perform the

> work of a police captain on a continuing basis in a competent, qualified manner. . . For demotion to be a proper penalty, it must be related to the disciplined employee's ability to perform on a continuing basis in terms of his competence and qualifications, with discipline, which is properly related to the infractions and rules of conduct.

The City of Key West, Fla., 96-2 Lab. Arb. Awards (CCH) P 6304 (Wolfson 1995).

In the instant matter, the Employer has not demonstrated that the Grievant is unqualified or unable to successfully perform as a sergeant and in a leadership capacity. The Grievant indeed may need some additional requirements in order to become a more well rounded leader. However, the record demonstrates the Grievant is an employee who exercises enthusiasm for law enforcement work and who demonstrates care and concern for troopers she supervises. In another decision involving a police officer with a prior exemplary record, the arbitrator ruled that oral counseling was appropriate for the "model officer" who had exercised "bad judgment" in obtaining a copy of a child support record involving a fellow police officer because law enforcement officers "should at all times conduct themselves in a manner which does not bring discredit to themselves, the police department, or the city they represent." *The City of North Port, Fla. and Southwest Fla. Police Benevolent Ass'n, Inc.*, 93-1 Lab. Arb. Awards (CCH) P 3110 (Hoffman 1992).

The arbitrator here is certainly not intending to convey a message that the Grievant's conduct in making disparaging and profane comments was acceptable or that the Grievant and her work colleagues have a kind of license to pursue similarly offensive, inappropriate, and unprofessional conduct. Law enforcement personnel generally have a duty to avoid even the appearance of impropriety. *City of Grand Rapids*, 95 LA 1119 (Cohen 1990). However, the type of offense committed by the Grievant in the instant matter is not demonstrative of an inability to continue to perform successfully as a sergeant in a different location. Although the Grievant is certainly deserving of some punishment or discipline, the arbitrator finds that discipline less severe than a permanent demotion is reasonable under the circumstances because the Grievant's permanent demotion would, in fact, constitute an abuse of discretion by the Employer. Measures which bear a reasonable relationship to the gravity of the Grievant's offense or misconduct should be utilized to carry out the intended purpose of progressive discipline, which is to correct the Grievant's behavior and to provide her with an opportunity to effect positive change. The penalty imposed should be tailored so that its "sting" is limited to the specific misconduct at hand. *Int'l Union, UAW and Its Local 6000 and the State of Mich.*, 90-2 Lab. Arb. Awards (CCH) P 8419 (Frost 1989). The arbitrator believes that demotion is discipline, which is too severe under the circumstances established in this matter. It is a

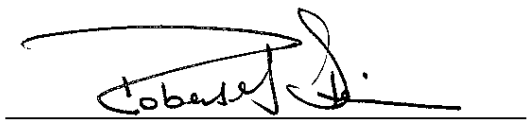
fundamental precept of the concept of progressive discipline that a person generally be given an opportunity to correct behavior before being subjected to discipline for conduct demonstrating errors in judgment and insensitivity, but not so egregious as to merit a permanent demotion.

In addition to the specific discipline, detailed *infra*, the arbitrator recommends the Grievant's participation in an OHP-sponsored leadership training class or workshop or a class of a similar nature sponsored by some other conveniently located local organization or institution. Having a "refresher" experience regarding leadership duties and responsibilities will hopefully provide the Grievant with renewed insight about the dynamics of her own conduct as affecting organizational effectiveness. The Employer acknowledges that the Grievant does have the appropriate administrative skills to successfully perform as a supervisor or even a post commander. (Employer brief p. 17). Her ability to succeed is evidenced by a variety of comments from different OHP leaders, individually recognizing her "pride, dedication, and professionalism," "excellent interpersonal communication skills and her aggressive attitude," and her "integrity, fairness, tact, and loyalty" to the OHP. (Union Exh. 10).

AWARD

The grievance is sustained in part. Cosgrove's demotion will be vacated and due to her prior disciplinary record shall be converted into a ten working day suspension without pay. All back pay and or benefits that were denied the Grievant as a result of her demotion and which exceeded what would have normally been deducted during a ten working day suspension shall be restored. Cosgrove shall be reinstated to her former rank of sergeant within two (2) pay periods from the date of this Award, and her seniority in that position shall be bridged.

Respectfully submitted to the parties on this 8th day of August 2006



Robert G. Stein, Arbitrator