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In the Matter of Arbitration Case No. 15-00-061122-0207-05-02

Between

Before: Harry Graham

FOP-OLC

And

The State of Ohio, Department of  
Public Safety

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**APPEARANCES:** For FOP-OLC:

Paul Cox  
Chief Counsel  
FOP-OLC  
222 East Town St.  
Columbus, OH 43215

For Department of Public Safety:

Krista Weida  
Department of Public Safety  
1970 West Broad St.  
Columbus, OH 43223

**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 March 27, 2007.

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

Was the Grievant issued a three (3) day fine for just cause? If not, what shall the remedy be?

**BACKGROUND:** There is no dispute over the event which prompted the Employer to levy a three day fine on the Grievant, Justin Hatten. Mr. Hatten is an Enforcement Agent with the Investigative Unit of the Department of Public Safety. He has four years of service with the State and to this event had no prior discipline.

On September 1, 2006 Mr. Hatten, his Father-in Law, Michael Priday, and his Brother-in-Law, Andrew Priday, attended the Kenton Nationals Coon Dog Trials in Kenton, OH. They arrived at the Trials some time around 6:00 P.M. They had in their possession a twelve-pack of beer which they collectively consumed over the next several hours. At about 10:00 P.M. they were standing at the intersection of two walkways in the vicinity of a lemonade stand. That stand was staffed by three women who assertedly were offended by the Grievant and his family. After some minutes they were asked to move by Sergeant Scott Lantz of the Seneca County Sheriff's Office. They moved a small distance. Sergeant Lantz thought they were not being entirely cooperative with his request and spoke to two other law enforcement personnel, Lieutenant John Allen of the Allen County Sheriff's Office and Deputy Elvis Varian of the Hardin County Sheriff's Office. As they were conversing a fourth person, Thomas Patrick, approached the scene. Mr. Patrick was providing security at the Coon Dog event. Mr. Patrick told the group to move. Michael and Andy Priday did so. The Grievant asked "why?" The exchange between Mr. Patrick and Mr. Hatten continued. In due course it became argumentative. Mr. Hatten repeatedly asked why he should move and Mr. Patrick responded vehemently. He cursed the Grievant. The

various Sheriff's Officers arrived on the scene. The Grievant continued to ask why he was told to move. He was directed to leave the Coon Dog premises by Mr. Patrick. He again asked why. Thereupon Lieutenant Allen took hold of the Grievant to escort him from the premises. Mr. Hatten struggled to free himself. Lieutenant Allen then sprayed the Grievant with chemical mace. He told the Grievant he was under arrest and directed him to place his hands behind his back. He was handcuffed. At that point Mr. Hatten told the officers he was himself a law enforcement officer and that he had a loaded weapon on his person. It was taken from him, In due course he was released from custody and left the site of the Coon Dog trials.

The Employer imposed a three (3) day fine upon the Grievant. That was protested in 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:** The State readily acknowledges that Mr. Hatten did not have a record of prior discipline prior to the incident at the Coon Dog festival. In the ordinary course of events progressive discipline as outlined in Section 19.05 of the Agreement would be followed. This is not an ordinary event. The Agreement contemplates deviation from progressive discipline under certain circumstances. Section 19.05 provides that "more severe discipline may be imposed at any point if the infraction or violation merits the more severe action." This is such an infraction or violation in the opinion of the State.

It needs no belaboring to note that law enforcement officers are held to a high standard of conduct. The Grievant is an officer in the employ of the State.

His conduct must be exemplary. When Mr. Hatten and his in-laws were at the Coon Dog festival they were directed to move. Those who issued that directive were responsible authorities. Mr. Hatten's Father-in-Law and Brother-in-Law complied with the directive. The Grievant did not. There was no reason for him not to do so. Under the circumstances of September 1, 2006 his conduct was certainly unbecoming a police officer.

The Employer is aware that the Union will point a finger of blame and responsibility at Mr. Patrick, a person responsible for security at the Coon Dog festival. The Union will assert the various Sheriff's Deputies involved used excessive force. All of that may be so. That is of no matter in this situation. The Grievant received a directive from properly constituted authority. He could have, and should have, complied with it. The Sheriff's Deputies involved, particularly Lieutenant Allen, felt the Grievant acted improperly. It was only out of professional courtesy that he was permitted to depart the scene on September 1, 2006. As his actions cast the Department of Public Safety into disrepute and were unwarranted in the circumstances of September 1, 2006 the Employer urges that the grievance be denied.

**POSITION OF THE UNION:** The Union points out that Section 19.05 confers discretion upon the Employer to deviate from progressive discipline. When it does so, it must provide justification. Further, Section 18.09 provides that the Employer must have just cause to discipline an employee for off-duty conduct. In this situation, such just cause is lacking in the Union's view. The women who were allegedly offended by the Grievant were not called at arbitration. There is

no basis to believe they made a complaint to anyone.

When Mr. Patrick told the Grievant to move he was confrontational. He was angry. He cursed Mr. Hatten profusely. Further, Mr. Patrick is a civilian. He has no authority to direct people to move. When directed to move by Mr. Patrick the Grievant merely asked "why?" That was not unreasonable under the circumstances. At arbitration Mr. Patrick acknowledged that he did not hear the Grievant make any remarks to the women in the lemonade stand. Under these circumstances his actions were excessive in the Union's view.

The actions of law enforcement personnel were also excessive according to the Union. At no time was the Grievant resisting. He constantly asked why he was being asked to move. He was never given any explanation. Rather, he was maced and manacled. No charges were ever made against the Grievant. No Prosecutor concluded Mr. Hatten's behavior warranted levying of a criminal charge. Under these circumstances the three-day fine imposed upon him cannot stand the Union contends. It urges the grievance be sustained and the Grievant made whole for his losses.

**DISCUSSION:** At arbitration it was asserted by the Employer that the women staffing the lemonade stand at the Coon Dog trials complained about Mr. Hatten. Those women did not testify. It is unknown if those assertions would stand scrutiny.

Mr. Hatten was not acting unreasonably on September 1, 2006. He was asked to move. He inquired "why?" There is nothing on the record to indicate he was ever provided an answer. Neither Mr. Patrick nor the various Sheriff's


Deputies provided a rationale to him as to why he should move. Ordering a citizen, who it is alleged, but unproven, was acting improperly, to move is insufficient. It cannot be concluded that Mr. Hatten's response was unreasonable.

It is the case that the actions of the security officer, Mr. Patrick, contributed to this situation. He was very angry with the Grievant. He cursed Mr. Hatten. He expected prompt and unquestioning obedience to his order. He refused to answer a simple question. He abused his position as a person with responsibility for security at the Coon Dog trials.

That said, Mr. Hatten too could have defused the situation by moving. Mr. Patrick bears some responsibility for the events of September 1, 2006. The Grievant does as well. Situations such as this are often mixed. The contention of the Employer, that the Grievant was the culprit, is not entirely true. Similarly, the assertion of the Union that the fault lies with Mr. Patrick is not completely accurate.

**AWARD:** The grievance is sustained in part and denied in part. The Grievant, Justin Hatten, is to have the three day fine stricken from his record. All straight time pay withheld from him is to be promptly paid. The three day fine is to be converted to a written reprimand dated the date the fine was imposed.

Signed and dated this 13<sup>th</sup> day of April, 2007 at Solon, OH.

  
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Harry Graham  
Arbitrator