
In the Matter of Arbitration

Between

Case No. 15-03-20080910-0125-07-15

Ohio State Troopers Association

and

Before: Harry Graham

The State of Ohio

APPEARANCES: For Ohio State Troopers Association:

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For The State of Ohio:

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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. Post-hearing briefs were filed by both parties. They were exchanged by the Arbitrator and the record was closed.

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

Did the Department of Public Safety remove the Grievant for just cause? If

not, what shall the remedy be?

BACKGROUND: There is some agreement over the events prompting this proceeding. On a regular basis officers of the Ohio Highway Patrol are required to be tested and recertified on the Blood Alcohol measuring device. This recertification is performed by an Inspector from the Ohio Department of Health. Part of the testing process involves the taking of a written multiple choice exam.

On April 4, 2008 the normal recertification was performed at the Canton, OH. post of the Highway Patrol. It developed that a number of those taking the examination were found to have cheated. Among those accused was the Grievant, Sergeant William Bower, a veteran of eighteen years of service with the Highway Patrol.

It developed that a Trooper at the Canton post, Anthony Maroon, had in his possession a study guide and answer sheet to the exam. He had made reduced-size copies. He had distributed the material to some of those taking the test. According to him, among those receiving the material was the Grievant, Sergeant Bower.

The State conducted an extraordinarily thorough investigation of this incident. The Grievant, Trooper Maroon, and others were discharged. A grievance was filed on behalf of Sergeant Bower. 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: As is to be expected the Employer has an extensive set of work rules. Among them is rule 4501:2-6-03(A)(1) dealing with

the "Responsibility of Command." Rule 4501:2-6-02(B)(6) is concerned with "Performance of Duty." The Employer contends both were violated in this instance. The rule dealing with responsibility of command provides that an employee who is in command of a post or any part of a post is to be responsible for the "efficiency, discipline, performance and welfare of the persons under his/her command...and the effective discharge of the duties and responsibilities of the division within the scope of his command. The rule concerning performance of duty indicates that a person "who at any time becomes aware of another employee's impending or actual violations of the rules and regulations, the directives of the Superintendent, or violations of any criminal or civil statutes, shall take immediate action to prevent such violations and then report the violations to a supervisor as soon as possible."

As a Sergeant the Grievant had a heightened responsibility to supervise people at the Canton post. As the Employer sees it, he did not meet that responsibility. It was the case that the Grievant and Trooper Maroon discussed the copied exam as far back as 2007. That discussion was not reported by Sergeant Bower. Further, according to Trooper Maroon, he was twice contacted by the Grievant in the week prior to the 2008 exam. Sergeant Bower allegedly requested a copy of the answer sheet. In fact, on April 4, 2008 Trooper Maroon entered Sergeant Bower's office at about 8:30 a.m. and gave him the answer sheet. Sergeant Bower acknowledges he saw the answer sheet and that he did not come forward. In fact, the Grievant was late for the test by about 10 minutes. He was informed of that by Staff Lieutenant Smith. He passed

Lieutenant Smith on his way to the test room and made no mention of the answer sheet. His failure to act violates the rule dealing with performance of duty.

As a Sergeant the Grievant has great responsibility. He failed to exercise it properly. The fact is that Sergeant Bower knew of the existence of the cheat sheet and did not report it. He was responsible for doing so. That he did not has put DUI convictions at risk. Further, as shown by copious exhibits at the hearing, e.g. Er. Ex. 1, the reputation of the Highway Patrol has been seriously affected by this situation. It has been damaged in the eyes of the public.

It is the case that two other sergeants were in the test room when cheating on the exam occurred. They were not fired. Rather, they were demoted and transferred. Their situations are different from that of Sergeant Bower. He knew about the cheating before they did. They received the cheat sheet later than Sergeant Bower. Further, the State asserts the Grievant asked for a copy of the cheat sheet. He was an active participant in the cheating on the exam. As a sergeant his failure to report it should prompt his discharge the State asserts.

It is the case that the Inspector from the Department of Health, Craig Yanni, did not properly supervise the exam on April 4, 2008. That is irrelevant in the opinion of the Employer. Sergeant Bower knew what was occurring. He did not report it. He participated in the cheating. Thus, his discharge should stand the Employer contends.

POSITION OF THE UNION: According to the Union the Employer has not proved its case against Sergeant Bower. On April 4, 2008 Trooper Maroon entered the office being used by Sergeant Bower. Bower had his back to

Maroon. He did not turn around. While Maroon asserts he gave the test materials to Bower, that is not so the Union contends. Bower did not turn around. He did not accept materials from Maroon. Maroon placed the answer sheet and the study guide on the desk. Bower did not ask for the materials nor was he aware he had received them from Maroon. When he was informed the exam had begun he left the office and went to the test room. He did not take the materials provided by Maroon with him. He had no reason to believe they had been distributed to other officers prior to the test. Nor upon entering the room did he see anything amiss.

Some time after his arrival at the test he saw Inspector Yanni of the Health Department and another officer, Trooper Blubaugh, in conversation. They left the room. That was the extent of his knowledge of their interaction. He did not overhear their conversation.

Upon returning to the Sergeant's office he learned for the first time that Trooper Maroon had distributed a reduced size copy of the answer sheet to test takers. This was the first time he knew of it. He had left the material given him by Maroon on the desk. When Inspector Yanni came to the office the Grievant gave him the material and indicated it had been provided by Maroon. He made no effort to hide or destroy the material.

When it appeared that cheating had occurred Sergeant Bower moved to address the situation. He summoned Trooper Maroon and questioned him. He determined that Maroon had made a reduced size copy of the answer sheet and distributed it. He directed Maroon to inform Yanni of the situation. He called the

District Headquarters and reported the event. He put Yanni on the phone to District Headquarters to explain the situation. He prepared a list of all present who took the test. Later in the day he contacted Trooper Maroon and ordered him to report back to the Post for an interview.

The Union points out that it was Trooper Maroon who implicated the Grievant in this incident. It was Maroon who made the cheat sheet and distributed it. At arbitration he testified that when he raised the possibility of providing the answers to Bower the latter asked him to "hook me up." That is implausible according to the Union and is denied by the Grievant. While Maroon claimed that Bower asked for an answer sheet, that is denied by Bower as well. The Employer cannot prove that the Grievant received or used the cheat sheet with the exception of the fact that Maroon placed it on his desk.

In fact, the testimony of Maroon should be viewed skeptically according to the Union. It was he who made the cheat sheets and distributed them. When this incident came to light he did not come forward. To the contrary, he destroyed his cheat sheet. The Union was sufficiently concerned about Trooper Maroon's conduct in this incident that it declined to process his discharge grievance to arbitration. The Ohio State Employment Relations Board dismissed a charge of failure to represent filed by Maroon against the Union. As Maroon was the chief protagonist in this affair his testimony should not be credited according to the Union.

Administration of the test on April 4, 2008 was slipshod. Inspector Yanni hinted to test takers which answers were problematic. He permitted talking during

the test. He absented himself from the test room on occasion. Had Inspector Yanni been doing a proper job of test administration cheating could not have occurred. He received a written reprimand for his actions. Sergeant Bower was discharged. The disparity in their treatment is remarkable in the opinion of the Union.

There is another instance of disparate treatment in this situation. Among others, Trooper Todd Bradic was implicated in this incident. He chose to resign rather than be discharged. On March 1st, 2009 he was restored to his employment. He had contacted the head of the Highway Patrol and sought reinstatement. He subsequently met the Superintendent of the Patrol as well as the Director of the Department of Public Safety. They decided he should be returned to work. The Union did not present any of the merits of Trooper Bradic's situation. Rather, it points out that he resigned prior to discharge. Sergeant Bower was fired, though the case against him is non-existent in the opinion of the Union. Such a situation should not be permitted to occur the Union contends.

The Grievant has eighteen years of service with the Patrol. He did not cheat on April 4, 2009, the assertion of the Employer to the contrary. He has a good record. As that is the case, the Union urges the grievance be granted and a make-whole remedy directed.

DISCUSSION: It is axiomatic in discharge and discipline disputes that the Employer must carry the burden of proof. In situations involving moral turpitude, such as this, arbitrators frequently hold the Employer to the highest standard, that of "beyond all reasonable doubt." Put more colloquially, the arbitrator must

be entirely satisfied that the dischargée did the deed with which he is charged for discharge to stand. In this situation the Employer cannot meet its burden.

The case on behalf of the Employer rests on the testimony of Tony Maroon, the central figure in this situation. That raises the rhetorical question, why should Mr. Maroon be believed rather than Sergeant Bower? The latter has eighteen years of service with the Patrol. During that service he compiled a good record. The former copied the answer sheet by his admission. He distributed it to test takers. He used it himself. He shredded the remaining cheat sheets in his possession. The Union would be expected to advocate the plea of a dischargée to arbitration. It rejected the appeal of Mr. Maroon. So too did the State Employment Relations Board when it considered an Unfair Labor Practice Charge filed by Mr. Maroon against the Union for failing in its duty to represent him. This background does not inspire confidence in his testimony.

At arbitration the Grievant steadfastly denied the central claims made by Maroon. He disclaimed knowledge that Maroon had the answers to the test. He denied asking Maroon for a study guide. He received test material from Maroon on April 4, 2008 but denied looking at it as he was performing other tasks on a computer. That he did not report receipt of the material from Maroon immediately is insufficient to prompt his discharge as he had been advised he was late for the test. He hurriedly left the office to go to the room where the test was being administered. He did not use the cheat sheet when he took the test. There is nothing to indicate he cheated on the exam. His testimony cannot be contradicted.


When the April 4, 2008 cheating came to light Sergeant Bower acted properly. He informed his superiors at District Headquarters of the event. He put Inspector Yanni of the Health Department in touch with his superiors. He made a list of test-takers. He had Maroon return to the Post for an interview. In short, it cannot be determined with any degree of confidence that the Grievant committed the actions with which he is charged or that he acted improperly. The case of the Employer is unproven.

That Inspector Yanni received minor discipline from the Health Department is given no weight in this proceeding. He works in a Department different from Public Safety. That his superiors saw his actions of April 4, 2008 to provide grounds for minimal discipline has no bearing on this proceeding.

More to the point is the history of Trooper Todd Bradic subsequent to April 4, 2008. When these events came to light Bradick came forward and acknowledged cheating on the 2007 and 2008 tests. He resigned. In March, 2009 he was restored to employment after a personal appeal to the Superintendent of the Patrol and the Director of Public Safety. Bradic was a self-confessed cheater. Bower has denied cheating and it is not proved otherwise. There is disparate treatment in this situation. Why Bradic would be permitted to return to duty and the Grievant not is inexplicable given the former is culpable and the charge against Sergeant Bower is unproven. Along with the lack of proof against Sergeant Bower, the treatment of Bradic represents a fatal defect in the position of the Employer in this proceeding. Thus, his discharge cannot stand.

AWARD: The grievance of Sergeant William Bower is sustained in its entirety. He is to be promptly restored to employment at the Canton post of the Highway Patrol. He is to be placed on the same shift and perform the same duties he was performing prior to his discharge. He is to receive back pay for all straight time hours he would have worked but for this incident. Any funds paid to him from Unemployment Compensation may be used by the Employer to reduce its backpay obligation. Any wage or salary earnings received by the Grievant from the date of his discharge may be used to reduce that obligation as well. All record of this incident is to be removed from Sergeant Bower's personnel file. All seniority and pension credit he would have earned but for this incident is to be restored to him. Jurisdiction is retained for 60 calendar days from the date of this award to resolve any issues concerning remedy.

Signed and dated this 14th day of April, 2009 at Solon, OH.



Harry Graham
Arbitrator