

Decision and Award in the matter of Arbitration between:

State of Ohio, Department of Public Safety

and

**The Fraternal Order of Police/Ohio Labor Council, Inc.
Unit 2**

Case # ¹⁵⁻00-20080707-0084-05-02

Grievant: Mr. Darin Plummer

**E. William Lewis
Arbitrator**

Hearing date: June 4, 2009
Decision issued: July 6, 2009

Representing the Employer:

Ms. Samantha Genders
Labor Relations Officer
Office of Human Resource Management
1970 West Broad Street, 3rd floor
Columbus, Ohio 43218

Representing the Union:

Mr. Paul L. Cox, Chief Counsel
FOP/OLC, Inc.
222 East Town Street
Columbus, Ohio 43215

By mutual agreement, the Hearing was convened at 10:00am, on June 4, 2009. The Hearing was held at the Office of Collective Bargaining, Columbus, Ohio.

In attendance for the Union:

Mr. Paul Cox	Chief Counsel
Mr. Joel Barden	Sr. Staff Rep.--FOP/OLC
Ms. Renee' Engelbach	Para Legal - FOP/OLC
Mr. Darin Plummer	Grievant(witness)

In attendance for the Employer:

Ms. Samantha Genders	Labor Relations Officer
Ms. Ashley Hughes	Labor Counsel/OCB
Mr. Michael McCann	Assistant Deputy Director Ohio Investigative Unit(witness)

The parties were asked to submit exhibits into the record. The following were stipulated to by the parties, and submitted as Joint Exhibits:

Joint Exhibit #1	Agreement-The State of Ohio & The Fraternal Order of Police, Ohio Labor Council, Inc. --Unit 2 (2006-2009)
Joint Exhibit #2	Grievance, dated 07/01/2008
Joint Exhibit #3	Submitted Letter of Intent to Arbitrate; dated January 30, 2009
Joint Exhibit #4	Suspension Letter-dated July 3, 2008
Joint Exhibit #5	Ohio Department of Public Safety Work Rules-Sworn Personnel, DPS 501.02
Joint Exhibit #6	Notice of Pre-disciplinary meeting dated June 10, 2008
Joint Exhibit #7	Agent Plummer's Department Record
Joint Exhibit #8	Administrative Investigation Record AI # 2008-250(stipulated to by FOP as the Record, questioned relevancy of some inclusions)

The following was submitted as a Employer Exhibit:

Employer Exhibit #1	List of stolen items including purchase costs
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The following was submitted as a Union Exhibit:

Union Exhibit #1 OIU--Policy Number 501.03-Revised 5/17/2009
(Mgmt. objected re: Post incident date)

BACKGROUND:

The State of Ohio, Department of Public Safety, Ohio Investigative Unit, hereinafter known as the Employer/OIU, is an investigative and law enforcement unit. The unit focusses on illegal use and distribution of drugs and alcohol. The Fraternal Order of Police, Ohio Labor Council, hereinafter known as the Union/FOP, represents the Police Officers (1 & 2), Liquor Control Officers, and Enforcement Agents, assigned to OIU.

The grievant, Darin Plummer, is an Enforcement Agent assigned to the Alum Creek Facility. Darin Plummer was hired in September 1998, and has worked as an Enforcement Agent for ten years.

Agent Plummer works a second job as a Security Officer. On February 18, 2008, while working security at Walgreen's, on East Broad Street, Columbus, Ohio, his personal car was stolen. Locked in the trunk was his state issued Enforcement Agent equipment. According to submitted evidence, it included his pistol and other items valued at nearly \$6000.00. He immediately reported the loss to his State Employer and the Columbus Police Department.

An Unusual Incident Report was filed by Agent Plummer at 8:55pm on 2/18/08. According to Agency Policy, the Incident Report was reviewed by a committee of three, including a Union Representative. The Joint Committee ruled the incident as preventable(JE-8). The Department of Public Safety instituted a Administrative Investigation(AI), as a result of the loss of the issued equipment.

The AI resulted in Agent Plummer being notified on June 10, 2008, that there would be a Pre-disciplinary meeting on June 17, 2008. He was advised that he was in violation of Ohio Department of Public Safety Policy DPS Policy 501.02, to wit: Care of Equipment.

Director Guzman, on July 3, 2008, notified Agent Plummer, that he was to be suspended for one (1) day, effective July 9, 2008. He was charged with violating ODPS Work Rule 501.02(A), Care of Equipment.

A grievance was filed at Step 2, on July 1, 2008. The grievance alleged that the Employer violated the CBA's Sections 19.01-Suspended without just cause, Section 9.01-Discrimination to avoid the Spirit of the Contract, and Section 18.09-Discipline for acts during off duty without just cause. On January 30, 2009, the FOP appealed the grievance to arbitration. The parties mutually agreed to hear the case on June 4, 2009. At the Hearing, both parties stipulated that the grievance was properly before the arbitrator.

ISSUE:

The issue was stipulated to by the parties as follows:

Was the Grievant disciplined for just cause? If not, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE:

18.09 OFF-DUTY STATUS

Disciplinary action will not be taken against any employee for acts committed while off duty except for just cause.

19.01 STANDARD

No bargaining unit member shall be reduced in pay or position, suspended or removed except for just cause.

19.04 Pre-suspension or Pre-termination Meeting

When the Employer initiates disciplinary action which is covered by this Section, written notice of a pre-disciplinary meeting shall be given to the employee who is the subject of the pending discipline. Written notice shall include a statement of the charges, recommended disciplinary action, a summary of the evidence being brought against the employee and the date, time and place of the meeting. -----

19.05 Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. -----

Ohio Department of Public Safety WORK RULES 501.02 EQUIPMENT

A. CARE OF EQUIPMENT

1. An employee shall be responsible and accountable for any equipment assigned or placed under their control.
2. An employee shall not intentionally or willfully damage, abuse or misuse any equipment.
3. An employee shall keep all assigned equipment in good condition and ready for immediate use.
4. An employee shall not install any accessories, modify or alter any assigned equipment without authorization from a supervisor.
5. An employee shall immediately report to a supervisor any damage or loss of state-owned equipment.

Ohio Investigative Unit---Policy Number: inv. 302.01

A. Issued Equipment

2nd Paragraph--The Ohio Investigative Unit will supply sworn personnel with all of the required Divisional approved equipment. Generally, issued equipment will be carried by the officer or stored in their issued state vehicle, depending on assignments or circumstances. It is the responsibility of all sworn personnel to ensure that they have all needed supplies in order to complete day to day enforcement operations.

EMPLOYER POSITION:

The Employer argues that the grievant violated Work Rule 501.02(A) Care of Equipment, when his personal car was stolen, containing his OIU issued equipment. His firearm as well as numerous other items of state owned equipment were locked in the stolen car. The Work Rule states, that the employee is responsible and accountable for equipment.

The DPS's Personal Issued Equipment Policy states: "Generally, issued equipment will be carried by the Officer or stored in their issued state vehicle, depending on assignments or circumstances." State vehicles are equipped with alarm systems to reduce theft risks. That, according to OIU, is where issued equipment is to be stored. There was no cause, other than personal convince, to move the issued equipment from the state car to his personal car. If not for the grievant's lack of responsibility the equipment would not have been stolen, claims the Employer.

The state's car keys were stolen along with the grievant's car keys. This, according to the Employer, added to the State's replacement expenses of a new car alarm and keys. Coupled with the equipment and handgun, the total replacement costs were nearly \$6000.00(EE-1).

The discipline imposed was progressive, even though the magnitude of the theft could have justified more severe discipline. Therefore, the Employer requests that the grievance be denied.

UNION POSITION:

The charge, according to the Union, is the violation of Work Rule 501.02(A)-Care of Equipment. The CBA requires notice of what the charge is about. Management ignored those requirements. Section 19.04, requires a statement of charges and summary of evidence. There was no summary of evidence, argues the FOP. This violates the CBA.

Additionally, management added a charge at this Hearing. The grievant was not charged with violating DPS Policy 302. Without knowing all the charges, the Union cannot argue the case. Even though Policy 302 may

have been part of the AI, he was not charged with violating it, states the Union advocate.

This discipline is stupid, claims the FOP. Agent Plummer had the firearm and equipment in a locked car trunk. Therefore, nothing was improper. He did not violate any of the provisions of Work Rule 501.02(A). Management knew they couldn't make a case without claiming a violation of DPS Policy 302. According to the FOP, no rule or policy states you cannot have state issued equipment in your personal car. Supervision regularly sanctions use of personal cars. The grievant and others, have had issued equipment in personal cars for years, claims the Union.

This, according to the Union, is about Rule 501.02(A), and not Policy 302. Work Rule 501.02(A), was not violated. If something would have been done differently, there may have been different results, is always the case. The FOP requests the arbitrator reverse the discipline, and give the lost day back.

DISCUSSION AND OPINION:

The facts in this case are not in dispute. On Monday, February 18, 2008, the grievant was not scheduled to work for OIU. However, he was scheduled to work his second job as a security officer. He was assigned to Walgreens, on East Broad Street, Columbus, Ohio. Upon leaving his residence he removed his equipment bag from his state issued vehicle, and placed it in the trunk of his personal car. The large equipment bag contained his state issued equipment, handgun included, as well as personal items used on his security job.

According to the grievant's testimony, upon arrival at Walgreens, he parked under a light in their parking lot. Around 9:00pm, while doing a parking lot check, he noticed his car was gone. He also determined that his car keys were missing from his security vest pocket. It was determined that they had fallen from his vest pocket, and the perpetrator had used them to steal the car. Agent Plummer immediately made the necessary and required calls to the Columbus PD, and his supervisory personnel(JE-8).

The Equipment Lost or Stolen Joint Review Committee, determined that the loss was preventable. Considering the loss of a firearm and equipment worth nearly \$6000.00 an AI was conducted. Agent Plummer was ultimately charged with violation of ODPS Work Rule 501.02(A) Care of Equipment(JE-4,5,6). The AI did consider other potential Rule and Policy violations, such as 302.01 and 203.02.

In their deferred opening statement, the FOP alleged a procedural issue, after initially stipulating that the grievance was properly before the arbitrator. The arbitrator regards this allegation as very tardy. However, they allege that there was no summary of evidence in the June 10, 2008 PD Notice(JE-6). The Notice refers the FOP to AI 2008-0250, as the basis of discipline. Even though the AI is voluminous in its content, it was available for one week prior to the Pre-disciplinary Meeting. Furthermore, the AI included a summary, and substantially more than one-half of the AI was duplicative, and included the Columbus PD stolen property reports.

The FOP also objected to the Employer "adding to the charge". They claimed that the OIU's opening statement added a charge of violation of DPS Policy 302.01(A)-Issued Equipment. It was not part of the charge, they declared. The AI(JE-8), did reference 302.01 as being included in the investigation, however, it was not included in the charge. Therefore, the arbitrator will address the charge as written.

There was no convincing evidence or testimony restricting the carrying of OIU issued equipment (shotgun excepted) in a personal vehicle's locked trunk. However, in these circumstances, was the grievant acting in a responsible and accountable manner regarding his issued equipment? Grievant testimony described him removing valuable and dangerous state equipment from his secured state vehicle's trunk, placing it in a less secured vehicle, and transporting it to a non-state duty assignment. Other than for his own personal convenience, there was no apparent need for the inclusion of the state equipment.

Also, per grievant testimony, his car keys were in a vested type pocket, and not a secure deep pocket. His choice, as a law enforcement officer, as to where to store his car keys, considering the circumstances, was not a

responsible act. In the arbitrator's opinion, the grievant was in violation of ODPS Work Rule 501.02(A)(1.), and the Employer was in compliance with Section 19.05 Progressive Discipline.

AWARD:

The grievance is denied.

This concludes the arbitration decision.

Respectfully submitted, this 6th day of July, 2009.

A handwritten signature in cursive script, reading "E. William Lewis".

E. William Lewis
Arbitrator