

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO – DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF HIGHWAY PATROL

AND

THE OHIO STATE TROOPERS ASSOCIATION

Grievant: Robert J. Jacks

Case No. 15-03-20110930-112-07-15

APPEARANCES:

For the Union:

Advocate: Herschel M. Sigall, General Counsel

Witnesses:

Robert J. Jacks

Larry Powell, Judge

Margaret Evans, Judge

Richard Grau, Chief Deputy, Callipolis Sheriffs Department

Christopher Gill; Deputy, Gallia County Sheriffs Department

For the Employer:

Advocate: Lt. Kevin D. Miller

Witnesses:

Joseph R. Fetty, Sergeant

Daniel Kolcum, Lieutenant Colonel, Assistant Superintendent, OSP

Charles J. Linek, Office of Collective Bargaining

**OPINION AND AWARD**

Arbitrator: Dwight A. Washington, Esq.

Date: March 30, 2012

## **INTRODUCTION**

The matter before the Arbitrator is a Grievance brought pursuant to the Collective Bargaining Agreement ("CBA") in effect March 1, 2009 through February 28, 2012 between the State of Ohio Department of Public Safety, Division of the State Highway Patrol (hereinafter "OSP" or "Employer") and the Ohio State Troopers Association, Inc. ("Union").

The issue before the Arbitrator is whether just cause exists to support the removal of the Grievant, Robert J. Jacks ("Jacks") for violating the following Ohio State Highway Rules and Regulations: Rules 4501:2-6-02(B)(1) Performance of Duty; and 4501:2-6-02(I)(1)(3) Conduct Unbecoming an Officer.

The removal of the Grievant occurred on September 20, 2011 and was appealed in accordance with Article 20, Section 20.08 of the CBA. This matter was submitted to arbitration. The hearing was held on January 24, 2012, where both parties submitted evidence, and post-hearing briefs were submitted to the Arbitrator on February 27, 2012. This matter is properly before the Arbitrator for resolution.

## **BACKGROUND**

Robert J. Jacks ("Grievant") had been employed by OSP for approximately twelve years at the time of his removal. The Grievant was initially commissioned as a Trooper and was promoted to a Sergeant ("Sgt.") in 2006. The Grievant had no discipline on file at the time of his removal and was considered an exceptional supervisor, according to his most recent evaluations. The Grievant worked at the Gallipolis Post in the Division's Jackson District, and his immediate supervisor was Lieutenant ("Lt.") Richard Grau ("Grau").

On June 9, 2011, a formal complaint was received by Captain Tom Dean ("Dean"), Jackson District Commander, from a former trooper who made four (4) allegations regarding

Grievant's conduct. The complainant was former Trooper Chenoah-Harris Trip ("Trip"), and she alleged: (1) Grievant had used his patrol car to travel to a wellness center in Point Pleasant, West Virginia; (2) Grievant had misused state time by attending a graduation ceremony while on duty; (3) Grievant had misused state time by attending church services while on duty; and (4) Grievant had ordered a trooper to be photographed with a suspect, to embarrass the trooper by posting the photograph throughout the Post. (Management Exhibit ("MX") 1-N).

District Staff Lt. David Allwine ("Allwine") was initially assigned the investigation. He interviewed the Grievant on June 14, 2011 (MX-1, Q) and Lt. Richard Grau ("Grau") was interviewed on June 16, 2011. (MX-1, R). When Trip discovered that Lt. Allwine was assigned to the investigation, she sent an email to OSP's General Headquarters in Columbus, Ohio expressing her disappointment because Lt. Allwine was perceived as a personal friend of the Grievant's who would not be impartial in conducting the investigation. (MX-1, N). Consequently, the Administrative Investigation ("AI") was reassigned to Sgt. Joseph R. Fetty ("Fetty") on June 15, 2011 for completion. (MX-1, p. 1).

From June 20<sup>th</sup> through July 12<sup>th</sup>, Sgt. Fetty interviewed several troopers, obtained pin mapping information regarding the patrol vehicle assigned to the Grievant, reviewed the Grievant's payroll records back to January 2011, and spoke with other law enforcement officers in the area who may have information regarding the allegations made by Trip.

The Grievant was interviewed on July 13, 2011 and August 25, 2011 by Sgt. Fetty. The Grievant admitted attending the high school graduation of his nephew at Meigs County High School while on duty. The Grievant had sought permissive leave for the entire day, but his request was denied by Lt. Grau because it was the Memorial Day holiday weekend and staffing level was a concern.

Lt. Grau was interviewed on August 3, 2011 via telephone by Sgt. Fetty, and Grievant's alleged attendance at church services was discussed. During the interview, Lt. Grau indicated that he was aware that the Grievant had taken leave to attend a couple of meetings but stated he was unaware that the Grievant was attending the meetings on duty, and at no time did the Grievant claim those meetings as community contacts<sup>1</sup> for the Post. (Union Exhibit ("UN Ex.") 3).

Sgt. Fetty's investigation disclosed that the alleged church services involved the Grievant's attendance at meetings of an organization called "Cops for Christ." The group consisted of Christian law enforcement officers who met twice a month at either the Hope Baptist Church in Middleport, Ohio or River City Fellowship in Gallipolis, Ohio.

At the conclusion of Fetty's investigation, he determined that, on May 27, 2011, the Grievant was improperly at Meigs County High School for one hour and fifteen minutes while on duty. Additionally, Fetty found that the Grievant attended nine Cops for Christ meetings while on duty between January and May of 2011. The patrol car assigned to the Grievant was analyzed, and the vehicle's location history allowed Sgt. Fetty to pinpoint with utmost accuracy its location and movement (or lack thereof) at all times. The Employer viewed the conduct of the Grievant as a serious breach of both the public trust and the higher standard expected of a supervisor.

The Grievant was charged with violations of rules associated with performance of duty and conduct unbecoming an officer. The Grievant was terminated from the Division effective September 12, 2011. The grievance was initiated in accordance with Article 20 of the CBA.

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<sup>1</sup> Community contacts are events that OSP law enforcement officers are assigned by the Post commander or volunteer to attend on behalf of the Post. The events include a variety of activities (i.e., parades, baseball games, health fairs, senior citizens events, etc.). The community contacts are supposed to be journalized and the list maintained at the Post. (UN Ex. 10).

OSP seeks affirmance of Jacks' removal, whereas the Union seeks reinstatement with back pay and any other appropriate remedy to make the Grievant whole.

### **ISSUE**

Was the Grievant terminated from his employment with the Ohio State Highway Patrol for just cause? If yes, what shall the remedy be?

### **RELEVANT PORTIONS OF THE CBA AND THE OSP RULES AND REGULATIONS**

#### **CBA:**

##### **19.01 Standard**

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

#### **Ohio Administrative Code 4501:2-06-02:**

4501:2-6-02(B): (1) Performance of Duty. A member shall carry out all duties completely and without delay, evasion or neglect. Members shall report for duty at the time and place specified or scheduled by their supervisor, properly attired, and ready to assume on-duty status.

4506:2-6-02(I): (3) Conduct Unbecoming an Officer. For any improper on-duty association with any individual for purposes other than those necessary for the performance of official duties.

### **POSITION OF THE PARTIES**

#### **Position of the Employer**

The initial complaint from Trip, a former trooper, led to four (4) specific allegations against the Grievant:

1. Grievant used a marked patrol car to travel to Point Pleasant Wellness Center to work out on June 8, 2011;

2. Grievant misused State time by attending a graduation ceremony at Meigs County High School while on duty on May 27, 2011.
3. Grievant misused State time by attending church services while on duty and in a State vehicle.
4. Grievant took a photograph of a trooper and a suspect to embarrass the trooper. The picture was alleged to have been hung throughout the Post. (Employer's Post-Hearing Statement, p. 2).

Sgt. Fetty from the Administrative Investigation Unit ("AIU"), completed the investigation and **found** that Grievant drove his patrol car to the Point Pleasant Wellness Center; however, he also determined the Grievant had permission from his Post commander to do so. The investigation **found** that the Grievant attended the graduation ceremony on May 27, 2011 while on duty. The investigation further **found** the Grievant attended "Cops for Christ" meetings while on duty. Finally, the investigation concluded that the photograph allegation was **unfounded** in that the photograph was taken not to embarrass anyone and it was not displayed throughout the Post.

As a consequence of finding merit in the second and third allegations, the Grievant was charged with violations of OSP Rules and Regulations for Performance of Duty and Conduct Unbecoming of an Officer. The Grievant was terminated, in part, due to his knowledge of the dire consequences associated with his lack of accountability and because supervisors are held to a higher standard given their greater responsibilities to enforce and observe the rules.

The Employer contends that, with respect to the May 27, 2011 graduation incident, the inconsistencies regarding the Grievant's and Lt. Grau's statements over the course of S/Lt. Allwine's and Sgt. Fetty's investigations are readily apparent and self-serving. S/Lt. Allwine

interviewed the Grievant within three weeks of May 27, 2011, and the Grievant stated that he was denied leave but stopped by the ceremony while on his lunch break. (MX-1, Q, p. 4). The Grievant further stated that he extended his lunch break for less than ten minutes. Lt. Grau when interviewed by S/Lt. Allwine on June 15, 2011. When asked about the Grievant's attendance at the graduation ceremony, Grau replied in part:

" . . . He had requested leave to attend the graduation, but was denied due to it being a reporting period. If he chose to stop in during his lunch period, I have no problem with it." (MX-1, R, p. 2).

The Employer submits that neither of these individuals' original statements contained the material representations that surfaced later: that the Grievant had express permission to use his lunch break; that the Grievant informed Lt. Grau the next morning he had assisted the sheriff's office with a disturbance at the graduation which caused the Grievant to stay longer than anticipated; or that the Grievant could have selected a partial shift in order to attend the graduation ceremony. (Employer's Post-Hearing Statement, pp. 4-6).

The Employer further points out, that for the Grievant to accurately report his status to the dispatcher, he should have put himself on lunch break or Signal 38. However, because the actual time he was at the graduation was one hour and fifteen minutes, an immediate "red flag" would have surfaced if the Grievant was in a Signal 38 status greater than thirty minutes. Instead, the Grievant claimed that he was not on lunch break but was on patrol, which supposedly kept him in on-duty status. (CD #1 and UN Ex. 1). In short, the Grievant cannot be on lunch break and on-duty status at the same time.

The Grievant also offered other justifications for his presence at the graduation. During the Sgt. Fetty interviews of July 13<sup>th</sup> and July 25<sup>th</sup>, the Grievant indicated that he had numerous enforcement citations in that area associated with moving violations and that the graduation

ceremony was a community event sanctioned by the Post. (UN Exs. 8, 10). The Employer argues that the testimony of Lt. Colonel Kolcum and Sgt. Fetty refutes any notion that operational activity, such as enforcement contacts, permits the Grievant to engage in personal business during his/her shift. Regarding the community contact contention, the Union failed to offer any evidence to indicate what specific activities the Grievant performed on behalf of the Post while he was at the ceremony. The Employer questions why, if the Grievant was claiming his presence as a "community contact," he didn't document the event as a community contact in the journal. The Employer further asserts that the Grievant's position regarding his attendance as a community contact at this event is untenable and would open the door for similar claims by any trooper who attended any event in the community.

The "Cops for Christ" meetings, which occurred twice a month, contained a religious component that usually included a "... 10-15 minute message of God speaking to them on what they've read or what they've seen." (UN Ex. 1, p. 16). The Grievant and Sgt. Christopher Gill ("Gill") both testified that a short Bible study occurred, led by one of the officers, which was followed by discussions about criminal activity, intelligence gathering, community events and/or attendees' personal testimonies involving a member or his/her family.

While OSP believes the discussion of personal matters such as marital problems at the meetings may be personally beneficial to a trooper, it maintains that such discussions are clearly inappropriate while an officer is on duty. Sgt. Fetty testified that the Grievant's patrol car was pinpointed at the meeting locations for a total of seventeen hours and sixteen minutes between January 2011 and June 2011.

OSP submits that the Cops for Christ meetings were wrongly portrayed as an outreach as part of the Post community contact. The Employer points out that community contacts are



normally recorded events that officers attend on behalf of the Post. Although the Grievant invited subordinates (Troopers Clingenpeel and Howard) to attend the meetings, no evidence was offered that Post Commander Lt. Grau requested his attendance or that he was aware the Grievant was attending the meetings in a patrol car while on duty. (CD #3, 00:45-01:17). Neither the Grievant nor Lt. Grau claimed the meetings as a form of community contact.

The Employer further points out that, of the documented nine occasions that the Grievant attended the meetings while on duty, his official log placed his official status as “. . . on patrol . . .” or “supervision on post.” The Grievant was intentionally deceptive by not stating that he was attending Cops for Christ meetings. On five (5) occasions “he only placed himself in a meeting status . . . [he] never gave the location of the meeting or the name of the meeting he attended.” (Employer’s Post-Hearing Statement, p. 11). According to OSP, one of the most acute example of his deception occurred on May 30<sup>th</sup>, while at River City Fellowship Church in Gallipolis, Ohio.

While attending the May 30<sup>th</sup> meeting, he placed himself in the status of being “on patrol.” In accordance with OSP policies, dispatch checked the Grievant’s status every thirty minutes. On two of the checks, the Grievant stated, “OK” and/or “Eastern Avenue” and on the third check, he stated, “OK . . . Gallipolis.” (MX-1, K, pp. 29-30). The investigation verified that the patrol car was at one specific location from 18:09:52 to 20:39:29, but the Grievant provided two different locations to dispatch. (MX-1, p. 11).

Another example occurred on May 29<sup>th</sup>, when the Grievant placed himself “on patrol” for almost two hours, but he remained (patrol car) in the parking lot of the River City Fellowship Church. On this date, the Grievant provided three different locations to dispatch while in “on patrol” status from 18:24:24 to 20:23:01. The Employer contends that if an officer is in a

specific location for an extended period of time, the appropriate response for dispatch would be "same 39" or "same location." As a supervisor, the Grievant did not ordinarily have his vehicle history reviewed regularly, and he was intentionally deceptive in hiding his real location and the length of time he attended the Cops for Christ meetings.

Finally, the Employer contends that the Grievant has shown no contrition at any stage of these proceedings for his behavior and has provided contradictory statements in the following areas:

1. He informed S/Lt. Allwine that he extended his lunch break. (MX-1, p. 20) but told Sgt. Fetty he wasn't on lunch break. (UN Ex. 1, ll. 811-813).
2. Grievant testified that he had permission from his Post commander to attend the graduation ceremony but at no time during his interviews with S/Lt. Allwine or Sgt. Fetty did he state he had permission from his Post commander to attend.
3. Grievant testified at the arbitration hearing that he informed Lt. Grau the next day that he was required to remain longer at the graduation to assist a sheriff deputy, but neither the Grievant nor Lt. Grau ever informed the Employer of this alleged story.

The Employer submits that Lt. Grau has also been less than candid and has been untruthful while under oath. In the Grievant's unemployment hearing, Lt. Grau testified that he had knowledge of the Grievant's attendance at the Cops for Christ meetings. However, during the administrative investigation with Sgt. Fetty he testified that he was unaware of the Grievant using his patrol car while on duty to attend the meetings. (CD Lt. Grau's interview 8-3-11; Tr. p. 1).

OSP also argues the Grievant's behaviors breached the higher standard of conduct required of supervisors. The Grievant's inability to accept responsibility and acknowledge that

any of his behavior was unacceptable demonstrates that the Grievant is unfit to serve. The evidence indicates that he violated the standard of conduct, broke the public trust, and abused the authority required of his position.

Given the disciplinary options available and based upon the record as a whole, the Employer submits that termination was just.

### **Position of the Union**

The Grievant was terminated for violation of Rules 4501:2-6-02, Performance of Duty, and 4506:2-6-02, Conduct Unbecoming of an Officer. The Union submits that the Employer must prove the Grievant violated these Rules by a preponderance of the evidence.

The Union points out that the Grievant, a twelve-year employee with no prior discipline, worked his last six and one-half (6-1/2) years at the Gallipolis Post. In 2006, he was promoted to sergeant. The Grievant's distinguished work record includes:

- Three times as Post Trooper of the Year;
- District Trooper of the Year;
- State of Ohio Criminal Patrol Award: given to trooper who makes most criminal arrests;
- ACE award winner: given to trooper who recovers five or more stolen vehicles in a year;
- Field training officer: assigned a newly graduated trooper from the Academy for initial field work.

In addition, the Grievant was trained as a technical crash investigator and has received other meritorious service awards during his career. The Grievant is active throughout his community and highly-regarded by those who have worked with him in the criminal justice

system. In fact, two sitting judges who have worked with the Grievant testified on his behalf as to his ethics, character and integrity. Both judges submitted letters of recommendation extolling the Grievant's work habits and reliability that they have observed by working with him for an extended period of time.

The Union further states that the Grievant's work record included excellent evaluations, and, in 2008, every content area was evaluated as "exceeds expectations" but one. (UN Ex. 4). For frivolous reasons only known to the Employer, the Grievant was terminated in an effort to clean up the Gallipolis Post which was viewed as "rogue" by upper management at OSP. The Union asserts that by transferring Lt. Grau and terminating the Grievant, OSP apparently believed it could "clean up" the Gallipolis Post. However, the Grievant's removal was not for just cause, in that the cited rules were not proven by a preponderance of the evidence.

The Employer provided four reasons to initiate the administrative investigation. After the conclusion of the investigation by Sgt. Fetty, it was determined that only three of the allegations were well-founded. They were: (1) the Grievant improperly used his patrol car to drive to a gym in Point Pleasant, West Virginia; (2) while on duty, he attended his nephew's graduation ceremony; and (3) while on duty, he attended numerous meetings with other law enforcement officers in a group known as Cops for Christ. Sgt. Fetty concluded that the fourth allegation, regarding a photograph being posted throughout the Post, was not warranted, and this charge was dismissed as unfounded.

The Union is troubled by the fact that the Grievant had permission to drive his patrol car to the gym in Point Pleasant and even though the Grievant had authorization to drive his patrol car there, this allegation was "founded" by Sgt. Fetty as well. The issue was whether or not the Grievant had consent to drive to the gym. Therefore, the Union finds it ludicrous for Sgt. Fetty

to have found a rule violation regarding the gym allegation. Ultimately, the Employer did not rely on the gym allegation to remove the Grievant. As a result, it is the Union's position that the remaining two charges must be directly tied to "unpermitted conduct."

According to the Union, the high school graduation charge is not one of misconduct. The Union contends that, if the Grievant "... elected to attend the graduation in the face of being told he could not do so, the allegation is one of misconduct." (Union Post-Hearing Statement, p. 4). The Grievant admitted that he requested a full day of leave that was denied by Lt. Grau. What the investigator failed to do was to inquire and determine if the Grievant's time (one hour and fifteen minutes) at the ceremony was permitted or unpermitted.

The Grievant was permitted to attend the ceremony on his paid lunch time "if he chose to do so." There is no evidence that the Grievant took a lunch break that day, other than the time he spent at graduation. The reliance upon some technicality that the Grievant did not sign off as a Code "38" while at the graduation amounts to form over substance. It is also undisputed that Grievant assisted the Meigs County Sheriffs Department with a minor disturbance during the ceremony. The Grievant did not document the assistance to formalize what occurred, but Sherriff Deputy Weisenmuller's recollection is identical to the Grievant's.

The Grievant reaffirmed in the unemployment compensation hearing key events which occurred on May 27, 2011 as follows:

1. I notified my dispatch where I was in Meigs County;
2. I was working on patrol/available for call;
3. I had permission from Lt. Grau to be there;
4. I responded to a call for service.

The Union asserts that a review of the unemployment compensation hearing transcript reaffirms that the Grievant did not enter code "38" because he was using his lunch period to attend the ceremony, i.e., the Grievant was at lunch while he was at the high school. The hearing transcript contains Lt. Grau's testimony, stated as follows:

"Kohler: . . . Did you give him permission to be at the graduation?

Lt. Grau: Yes sir, I did." (UN Ex. 1 Tr., p. 24).

The Union questions which Rule was violated when the Grievant utilized his lunch break to attend the graduation after obtaining permission to do so. Regardless, the Union maintains that the next day, the Grievant informed Lt. Grau he stayed longer than anticipated as a result of assisting the Sheriff's Department with a minor disturbance during the graduation services. Both the Grievant and Lt. Grau verified the above conversation at both the grievance hearing and the unemployment hearing.

Regarding the Cops for Christ meetings, the Union contends that the Employer wrongly assumed that the meetings were "church services." All parties agree that the Grievant could not attend church services while on duty. Sgt. Fetty, however, did not attempt to ascertain whether the Cops for Christ meetings were the type of community activity where on duty attendance was permissible.

The Union argues that once the Employer equated Cops for Christ with church services, a blinder was attached and the overwhelming facts in the record which suggest it was a community activity were ignored. It asserts the administrative investigation was "perfunctory and intellectually disingenuous" in that it reduced the breadth of the Cops for Christ organizational efforts to being simply "church services."

Cops for Christ is a group of law enforcement officers who are Christians and who live within a two-county area in southeast Ohio. Their meetings, as testified to by the Grievant and Sgt. Gill, consisted of intelligence sharing of potential criminal activity, a devotional period, discussion of community-wide programs/celebrations, and the offering of support to fellow officers who might be going through personal troubles related to their job in the law enforcement field.

The devotional period in the Cops for Christ meetings was short in duration and lasted about ten minutes or so, similar to invocations given at other public events. The meetings lasted between forty and sixty minutes, and Deputy Gill testified that intelligence sharing involving drugs, theft and other county-wise crimes was a focus of the group.

According to the Union, Cops for Christ must be viewed as a quasi-law enforcement organization but not “. . . a religious organization for which on duty attendance would be impermissible per se.” (Union’s Post-Hearing Statement, p. 110). The broader community, including the judges, testified they applauded the Cops for Christ organization for its work to address and resolve community based issues.

The Union submits that, at the end of the day, the Employer has not established that the Grievant’s attendance at the Cops for Christ meetings was impermissible while in on duty status or that advance permission to attend was mandatory because his Post commander testified that the Grievant would have received permission to attend if he had requested it.

In support of his unemployment compensation testimony, Lt. Grau testified that not only was he aware that the Grievant was attending the Cops for Christ meetings but also this was the exact type of active community involvement that was beneficial to OSP. (UN Ex. 8).

Finally, the Union submits that no evidence remotely suggests that Rule 4501:2-06-02 "Performance of Duty" was violated. Therefore, the Employer is left with demonstrating that the Grievant's on duty association with Cops for Christ was improper and was not for "purposes other than those necessary for the performance of official duties." Rule 4506:2-06-02 (in part). The Union argues that Cops for Christ was in compliance with and furtherance of OSP Policy 203.30 "Community Relations Activities," Section (B)(1)(a) and (b) in that the Grievant was interacting with an organization that was involved with programs that directly related to safety and criminal activities within the community. As such, the Grievant's participation in Cops for Christ was necessary for the overall performance of his job.

Ultimately, the Union argues that the Employer's termination of the Grievant improperly rendered his exemplary performance over his career meaningless and the progressive discipline moot; the Grievant's termination was not warranted nor supported by the evidence.

## **DISCUSSION AND CONCLUSIONS**

The grievance is granted in part and denied in part. My reasons are as follows.

The Grievant was charged with two rule violations by the Employer regarding behavior related to the May 27, 2011 attendance at his nephew's graduation and his attendance at Cops for Christ meetings from January 2011 until May 2011. The removal was based upon the violation of two rules which were:

### **(1) Performance of Duty**

A member shall carry out **all duties** completely and **without delay, evasion** or neglect. Members shall report for duty at the time and place specified or scheduled by their supervisor, properly attired and ready to assume on-duty status . . . . (Emphasis added).

and

### **(2) Conduct Unbecoming an Officer**



For any **improper on-duty association** with any individual for purposes other than those necessary for the performance of official duties. (Emphasis added).

Therefore, the evidence was analyzed based solely upon the cited rule violations to determine whether "just cause" existed to remove the Grievant in accordance with Article 19.01 of the CBA.

The May 27, 2011 graduation incident involves the alleged violation of the Performance of Duty standard, whereas the Grievant's actions regarding the Cops for Christ meetings was allegedly violative of both rules, Performance of Duty and Conduct Unbecoming an Officer.

#### **I. May 27, 2011 – Graduation Incident**

The resolution of what actually occurred on May 27th and thereafter is based upon the Grievant's and Lt. Grau's credibility. Both parties participated in several interviews and provided sworn testimony at the December 19, 2011 unemployment hearing and before this Arbitrator on January 24, 2012. As pointed out by the Employer, the numerous inconsistencies contained in their various statements and omissions of material facts in them indicate their untruthfulness.

When asked about the graduation in Lt. Grau's initial interview with Lt. Allwine on June 15, 2011, he stated (in part):

"Q. Are you aware of Sgt. Jacks attending the Meigs County High School graduation ceremony this past May? If so, please explain the circumstances.

A. He had requested leave to attend the graduation, but was denied due to it being a reporting period. If he chose to stop in during his lunch period I have no problem with that."

(MX-1, R, p. 2).

Sgt. Fetty did not interview Lt. Grau<sup>2</sup> regarding the graduation incident, and the next opportunity for Grau to present his version of the facts occurred on December 19, 2011 when Lt. Grau testified under oath during the unemployment hearing as follows (in part):

“Q. . . . the Meigs County High School graduation, May 27, 2011? Did you give him permission to be at the graduation?”

A. Yes sir, I did. (UN Ex. 1, Tr., p. 24, ll. 541-543).

Q. Okay.

A. Here’s my point . . . I had agreed that he could attend that graduation because of his nephew graduating and that he could stop by there during the course of his shift. (UN Ex. 1, Tr., p. 24, ll. 547-550).

Q. Okay, you had denied him having leave time to be there but you said it was alright to go during the shift?

A. The reason that I denied the leave time was because it was for the entire shift rather than just a short time frame.

Q. He had asked for the entire shift off?

A. Right and I had told him then that if he wanted to take a couple of hours that he could do that . . . [and] . . . I told him that was fine then if he went ahead and just stopped there when his nephew graduates.”  
(UN Ex. 1, Tr., p. 25, ll. 555-563).

The significance of Lt. Grau’s recollection is that if the Grievant had prior consent to attend the ceremony for a couple of hours, his conduct would be permissible and not in violation of any OSP rule. Noticeably, absent from Lt. Grau’s unemployment hearing testimony is any reference that permission was limited to the Grievant’s lunch break. During the arbitration hearing, Lt. Grau testified that he offered the Grievant the opportunity to take a couple hours of paid leave or to stop by the graduation during his lunch period to attend the graduation.

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<sup>2</sup> Lt. Grau was employed at OSP from November 1982 until June 17, 2011. Lt. Grau resigned from OSP and is currently employed as Chief Deputy at the Gallia County Sheriff’s office.

The initial inquiry is whether or not the Grievant had permission to attend the graduation ceremony while on duty. This Arbitrator concludes that the evidence fails to establish that Lt. Grau gave permission for the Grievant to attend the graduation ceremony while on duty. The most credible evidence indicates that Lt. Grau provided two options for the Grievant: either take a couple hours of paid leave and/or use his lunch break to attend. No evidence indicates that Lt. Grau gave permission for the Grievant to remain in on-call status, as opposed to Signal 38, for one hour and fifteen minutes. Resolution of the foregoing also dispenses with the need to determine the relevancy of the Grievant's participation in enforcement activity, his CAD status for one hour and fifteen minutes, his assistance during a disturbance at the ceremony, that graduation was an example of a community contact, and the conversation with Lt. Grau on May 28 regarding what occurred on May 27.

Sufficient credible evidence exists to find the Grievant violated Rule 4501:2-6-02(B)(1) Performance of Duty when he attended the May 27, 2011 graduation ceremony on duty without express permission that extended beyond his lunch break. It must also be noted, that the Grievant's lunch break of thirty (30) minutes if included in the one hour and fifteen minutes, indicates that forty five (45) minutes would represent the total time spent on duty by the Grievant while at the graduation.

## **II. Cops for Christ**

The Employer presented undisputed evidence regarding the Grievant's presence at Cops for Christ meetings while on duty. On at least nine occasions, the Grievant attended meetings with other Christian law enforcement officers. (MX-1, G, pp. 1-8). The Employer contends that the organization was religious because church services occurred during its meetings. Additionally, a key component included discussing personal and/or family issues. Neither

church services nor personal business of an employee is necessary in the performance of official OSP duties.

The Union insists that the meetings were not church services but community contacts as outlined in OSP's Community Activities Policy. (UN Ex. 8). The Community Activities Policy requires each Post commander to establish liaisons with or attempt to influence the formation of community groups to assist the Division in traffic safety or other programs.

The initial inquiry for this Arbitrator is whether the record supports a finding that the Cops for Christ meetings were church services. The testimony of the Grievant and Sgt. Christopher Gill (Gill) indicates that a ten to fifteen minute devotional period occurs at the beginning of each meeting and the remaining forty five to fifty minutes are spent discussing community issues, criminal activity, law enforcement and any other issue a particular officer would like to discuss. Sgt. Gill has been a member of Cops for Christ since its inception and is employed by the Gallia County Sheriff's Department. Neither Sgt. Allwine nor Sgt. Fetty interviewed Sgt. Gill or any other member of Cops for Christ as part of the investigation.

The Arbitrator finds, primarily through Sgt. Gill's testimony and supported in part by the Grievant, that the Cops for Christ meetings were not primarily secular in purpose. It is undisputed that Christianity principles bond the group together, but the evidence in the record fails to establish that the meetings were "church services." The Employer unpersuasively contends that the name itself supplies the "religious component" in conjunction with the Grievant's testimony/interviews. An example includes the following statement in the Grievant's July 13, 2011 interview with Sgt. Fetty. During that interview, the Grievant indicated that the group came together "and it's for God." In addition they attempt to "hold each other accountable and try to serve God." (UN Ex. 1, p. 15, ll. 432-433). The reason Cops for Christ was formed or

their laudable attempt to hold each other accountable does not convert their meetings into church services. The record lacks sufficient evidence to find that Cops for Christ meetings were church services and an improper association for an on-duty officer.

Moreover, the Employer did not specifically define which Cops for Christ activities were viewed as inappropriate "church services." It appears that the Employer relies upon Lt. Grau's cross examination during the hearing, and concluded that Bible study even for ten to fifteen minutes at the Cops for Christ meeting is inappropriate on-duty behavior. The murky depth of uncertainty leaves unresolved numerous issues such as: Is one minute of Bible study acceptable? Is Bible study different than prayer and/or devotional activities that precede Post-sponsored events? Are officers allowed to attend church services as a community contact when preaching, devotion, communal worship, call to worship, singing, etc. is scheduled as part of the worship agenda? The burden rested with the Employer to prove by reliable evidence that the Cops for Christ meetings were church services and an improper association by the Grievant. It did not sustain its burden in this regard. Nothing in the record suggests that the attendance at the meetings was necessary (required), but on the other hand, the record does not contain sufficient credible evidence to find that the Grievant's attendance was improper. The Employer's investigation did not contain any statements or interviews from any Cops for Christ member, other than the Grievant.<sup>3</sup> No other inference can be made by the Arbitrator except what is contained in this record. Finally, this Arbitrator does not find persuasive the Employer's argument that the Cops for Christ meetings were improper for the Grievant to attend due to the

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<sup>3</sup> The only other apparent contact by Sgt. Fetty with a Cops for Christ member occurred on July 6, 2011 with Meigs County Deputy, Danny Leonard. Leonard indicated that Bible study, discussion of community issues, crime patterns, ways to help each other, and ways to better serve the community were discussed at the meetings. This contact was not recorded and only a summary is contained in the AI. (MX-1, pp. 8-9).

topics discussed at the meetings. Therefore, I find that the Grievant's conduct did not violate Rule 4506:2-6-02(I)(3).

The next issue is whether the Grievant had permission to attend the Cops for Christ meetings while on duty. This inquiry relates directly as to whether his on duty association was permissible or in violation of the rule cited earlier regarding performance of duty.

This analysis begins with Lt. Grau's initial statement on June 15, 2011 to Sgt. Allwine:

"Q. Are you aware of Sgt. Jacks attending church services during his shift?

A. Yes, he has used permissive leave."  
(MX-1, R).

The above statement has little instructive value regarding Cops for Christ meetings since Lt. Allwine did not equate church services with Cops for Christ meetings. The first opportunity in which Lt. Grau addressed whether the Grievant had permission to attend the meetings occurred on August 3, 2011. Sgt. Fetty recorded the telephone interview which included only three questions regarding the Cops for Christ meetings:

Q. And I just need to know did you have any knowledge of him going to the Cops for Christ meetings while on duty?

A. I know that he has taken some time to go to a couple of them. That's all I recall.

Q. Okay so you were aware of the ones where he actually took leave but you were **not aware that he was attending** them on patrol time and in a patrol car on duty?

A. No.

Q. Okay, alright. He never made mention of any of that stuff to you, that he was **attending them on duty** and he was kind of looking at it as a community contact or anything like that? He didn't claim those as community contacts for the Post?

A. **Not that I'm aware of.**  
(Emphasis added). (MX-1, B, Lt. Grau interview 8-3-11, p. 1).

Lt. Grau's next opportunity to specifically address the issue occurred under oath on December 19, 2011 during the unemployment compensation hearing. When questioned by the ODJFS Hearing Officer, Lt. Grau responded as follows:

Q. Okay. Alright, now you're also aware that certain days that he spent time at a meeting at a church for Cops for Christ?

A. I am.

Q. Did you **give him permission** to do that during working hours?

A. I did not give him permission nor did I deny him permission.  
(Emphasis added). (UN Ex. 1, p. 26, ll. 577-581).

Therefore, Lt. Grau's reply on August 3, 2011 and December 19, 2011 indicates that he did not give permission to the Grievant to attend the Cops for Christ meetings. At the arbitration hearing on January 27, 2012, Lt. Grau testified on direct examination that he was unaware of the Grievant's attendance but that **if** the Grievant had asked to attend, Lt. Grau would have allowed it. Without express permission to attend, the only remaining inquiry is whether or not his on-duty presence violated either of the rules for which he was disciplined.

Rule 4501:2-6-02(B)(1) prescribes the standard for performance of duty which required the Grievant to ". . . carry out all duties completely and without delay, evasion or neglect. Members shall report for duty at the time and place specified or scheduled by their supervisors, properly attired, and ready to assume on-duty status." Evidence indicating that the Grievant failed to completely carry out his duties due to ". . . delay, evasion or neglect . . ." involves the Grievant's failure to accurately report his status while attending the Cops for Christ meetings. The Grievant is in charge of communicating to the dispatcher his official status while on duty. The Employer submitted evidence that at no time did the official log indicate that the Grievant, while at any Cops for Christ meeting, indicated such to the dispatcher. The log contained entries

such as “on patrol,” “supervision on Post,” “ok,” and “Eastern Avenue.” The Arbitrator finds these entries to be significantly deceptive and evasive.

What is absent from the log is any entry which contains “Cops for Christ meeting at Hope Baptist Church’ or “Cops for Christ meeting at River City” from January 2011 through May 2011. The explanation by the Grievant of either unfamiliarity with the CAD system or that in reporting his general location, the dispatcher had sufficient information and could contact him because he was on call, fails to address the Grievant’s evasiveness in reporting his location.

The Grievant’s explanation would have some validity if some of the entries contained the actual meeting locations. The entries of May 29<sup>th</sup>, May 30<sup>th</sup> and the five (5) occasions the Grievant placed himself in “meeting status,” supports that the Grievant violated Part (1) of the Performance of Duty Rule and discipline was appropriate.

The evidence indicates that the Grievant violated the performance of duty standard by attending the May 27<sup>th</sup> graduation and similarly by his failure to accurately report his status on at least nine (9) occasions while at the Cops for Christ meetings.

The final inquiry is whether the discipline issued was commensurate with the Grievant’s violations. The Employer submits that, as a supervisor, the Grievant must be held to a higher standard of behavior than a trooper. I agree. On the other hand, the Union contends that his exemplary service highlighted by various distinguished accomplishments must be considered as mitigation for any discipline rendered. I also agree.

Discipline is appropriate here due to Grievant’s deceptive behavior in consciously planning to and attending the Cops for Christ meetings while not creating a footprint in the system that would reveal his actual whereabouts and activities. I view this conduct as serious and certainly not becoming of a supervisor nor appropriate for his subordinate troopers to

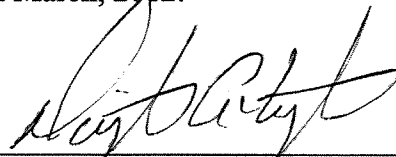


emulate. I further find the Grievant's conduct at the May 27<sup>th</sup> graduation improper because he attended the ceremony despite being denied leave and knowing that his attendance time was limited to his lunch period. The Grievant selected to attend and place himself "on-call" even though his presence and purpose for being at the graduation was personal. Finally, the relatively minor disturbance that he participated in while at the ceremony fails to eradicate his overall behavior and the poor exercise of discretion he displayed as a supervisor.

The evidence in this matter warrants discipline, but not removal. A balancing of the conduct proven and a review of the twelve years of good service requires an adjustment to the issued discipline. The record overall, in this Arbitrator's opinion, fails to support by credible and reliable evidence, that termination was the proper discipline. Therefore, the grievance is granted in part, and denied in part as follows:

1. The Grievant shall be reinstated to the Gallipolis Post in the Division's Jackson District but reduced in rank from a sergeant (Sgt.) to a trooper commensurate with his years of service.
2. The Grievant shall be suspended for ten (10) days without pay. The remainder of Grievant's back pay shall be based upon the appropriate trooper's scale, less any interim earnings.
3. The Grievant shall be entitled to no other remedy except for continuous service for seniority purposes consistent with Article 36 of the CBA.
4. The Arbitrator shall retain custody for sixty (60) days, in the event any issues arise regarding the implementation of this award.

Respectfully submitted, this 30<sup>th</sup> day of March, 2012.

A handwritten signature in black ink, appearing to read "Dwight A. Washington", written over a horizontal line.

Dwight A. Washington, Esq.  
Hearing Officer