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Decision and Award in the matter of Arbitration between:

The State of Ohio, Department of Public Safety

And

Ohio State Troopers Association, Inc., Unit 1

Grievance # 15-03-20120322-0033-04-01

Grievant: Trooper Tiffany J. Wilson

E. William Lewis, Arbitrator

Date of Hearing: October 30, 2012
Date Briefs received: December 5, 2012
Date Decision issued: January 5, 2012

Representing the Union:

Hershel M. Sigall, Chief General Counsel
Ohio State Troopers Association
6161 Busch Blvd., Suite 130
Columbus, Ohio 43229

Representing the Employer:

S/Lt. Charles Linck
Ohio State Highway Patrol
740 East 17th Avenue
Columbus, Ohio 43211

By mutual agreement, the Hearing was convened on October 30, 2012, at 10:30am. The Hearing was held at the Office of Collective Bargaining, 100 East Broad Street, Columbus, Ohio.

In attendance for the Employer:

S/Lt. Charles Linck	Advocate
Ms. Aimee Szczerbacki	OCB-2 nd Chair
Sgt. Jeffrey Davis	Ohio State Highway Patrol(witness)
Cpt. Jeff Dickey	Ohio State Highway Patrol
Ms. Julianne Lee	Labor Relations Officer
Sgt. Corey W. Pennington	Ohio State Highway Patrol
Lt. Toby J. Smith	Mt. Gilead, Post Commander (witness)

In attendance for the Union:

Mr. Hershel M. Sigall	Advocate--OSTA
Ms. Elaine Silveira	Assistant General Counsel
Mr. Larry Phillips	President--OSTA (witness)
Mr. Dave Riley	Staff Representative-OSTA
Ms. Tiffany Koehl (Wilson)	Grievant (witness)

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

Joint Exhibit #1	Contract between OSTA, Units 1 & 15 and the State of Ohio, 2009-2012
Joint Exhibit #2	Grievance Trail #33
Joint Exhibit #3	Discipline Package, composed of: Statement of Charges, Pre-discipline Notice, Meeting Officer Reply, Removal Letter, Highway Patrol Rules & Regulation: 4501:2-6-02(I)(1) Conduct Unbecoming an Officer, Department Record.

The following were submitted as Management Exhibits:

Management Exhibit #1	Administrative Investigation # 2012-0111(AI) Trooper Tiffany J. Wilson(with CD)
Management Exhibit #2	Written record of AI interview of Tpr. Wilson
Management Exhibit #3	DVD of Channel 10's report of the incident
Management Exhibit #4	Unauthenticated Letter dated February 21, 2012- from Cleveland resident, regarding incident.
Management Exhibit #5	Morrow County Municipal Court Journal Entry- Supplemental Arraignment-Tpr. Wilson, plea of No Contest for OVI arrest.
Management Exhibit #6	April 29, 2011--Ohio State Highway Patrol Sworn Officer Grid
Management Exhibit #7	Roll Call Training Record--Tpr. Tiffany Wilson

Management Exhibit #8 OSHP Rule 4501: 2-6-07 CODE OF ETHICS
& OATH OF OFFICE: (A) Code of Ethics (9)

Management Exhibit #9 OSHP Statistics Report--OVI Enforcement
Highlighted -2011 compared to 10 months
of 2012.

The following were submitted as Union Exhibits:

Union Exhibit #1 Copy of CBA- Appendix C, DRUG-FREE
WORKPLACE POLICY

Union Exhibit #2 ARTICLE 21--WORK RULES, Section 21.01
copies of Work Rules

Union Exhibit #3 IOC dated February 15, 2012, to President
Phillips, re: Discipline for Conduct Unbecoming
an Officer

Union Exhibit #4 Trooper Wilson's Evaluations from 2/28/08 to
through 2/28/11

Union Exhibit #5 Multiple commendation letters from citizenry
regarding Tpr. Wilson

Union Exhibit #6 Morrow County Court granting Tpr. Wilson
work driving privileges--3/3/12 - 4/10/12

BACKGROUND:

The State Highway Patrol, a Division of the Department of Public Safety, hereinafter known as the Employer/OSHP, is responsible for highway safety within the State of Ohio. The Ohio State Troopers Association, hereinafter known as the Union/OSTA, represents bargaining unit employees in Units 1 & 15. Unit 1 is primarily composed of Troopers(Tpr.), and Unit 2 is composed of Sergeants(Sgt.). This particular case involves a Trooper assigned to Unit 1.

At approximately 12:30am, on Friday February 17, 2012, Trooper Wilson was stopped by her Post Commander. She was driving at an excessive rate of speed while being under the influence of alcohol(ME-1). Trooper Wilson, an eleven year trooper, was at the time of this incident assigned to the Mt. Gilead Post.

Per evidence and testimony, Tpr. Wilson, while off duty, was at a friends house Thursday evening, February 16, 2012. She consumed an excessive amount of alcohol and elected to drive home around midnight. On I-71 north bound she was observed by two motorists driving erratically and at a high rate of speed. Both drivers called 911 and reported such.

The Delaware Dispatch Center dispatcher reported to their on-duty troopers, the callers complaints. Lt. Smith was in the area, and recorded Tpr. Wilson driving at 102mph and stopped her vehicle. Per his report, she had a strong odor of alcohol and had vomited on herself(ME-1). He arrested her for speeding and OVI. Her alcohol level was tested and she registered at a .16% BAC.

Trooper Wilson was released to her boyfriend from the Morrow County Jail, and ordered to court regarding the charges. She pleaded No Contest, to the OVI and the speed violation was dismissed on 4/25/12.

An AI was conducted by Sgt. Davis, and it was found that Tpr. Wilson was traveling 102mph in a 65 zone, and was arrested for operating a vehicle while intoxicated(OVI), testing over the legal limit. Thus, she was charged with violating OSHP Rule 4501: 2-6-02(I)(1) Conduct Unbecoming an Officer.

A Pre-disciplinary Meeting was held on March 7, 2012, and the Meeting Officer found just cause for discipline. Therefore, as a result of the PD and AI, Tpr. Wilson was notified on March 9, 2012, that she was being terminated effective immediately. Trooper Wilson grieved the termination on March 19, 2012. She claimed that the alleged violations and subsequent discipline was without just cause, and not progressive in nature. By issuing the discipline, the Employer violated Article 19 STANDARD, Sections 19.01 & 19.05. The Grievant requested to be reinstated to her former position and to be made whole.

A Step 2 Hearing was held on April 6, 2012, and the grievance was denied. The grievance was appealed to Step 3 (Arbitration) by President Phillips on April 10, 2012. A Continuance Agreement was signed by the parties on 5/9/12. The Agreement changed the date of record for back pay to May 15, 2012(should it become an issue), until the date of the rescheduled Hearing.

By mutual agreement, the Arbitration Hearing was scheduled for October 30, 2012. There were no procedural issues brought forward and the parties stipulated that the grievance was properly before the arbitrator.

ISSUE:

In conformance with their CBA, the parties stipulated to the following statement of issue for resolution by the arbitrator.

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

RELEVANT CONTRACT LANGUAGE:

ARTICLE 19 - DISCIPLINARY PROCEDURE

19.01 Standard

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

19.05 Progressive Discipline

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 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 or Removal.

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merit's the more severe action.

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant.

The deduction of fines from an employee's wages shall not require the employee's authorization for the withholding of fines from the employee's wages.

ARTICLE 20 - GRIEVANCE PROCEDURE

20.08 Arbitration

5. Limitations of the Umpire

Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration.

The umpire shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall the umpire impose on either party a limitation or obligation not specifically required by the language of this Agreement.

ARTICLE 21 - WORK RULES

21.01 Copies of Work Rules

The Employer agrees that existing work rules, and directives shall be reduced to writing and be made available to affected employees at each work location. To the extent possible, new work rules and directives shall be provided to the Union two (2) weeks in advance of their implementation. In the event that the Union wishes to present the views of the bargaining unit regarding a new work rule or directive a time will be set aside at the regularly scheduled Labor/Management Committee meeting. The issuance of work rules and directives is not grievable. The application of such rules and directives is subject to the grievance procedure.

APPENDIX C - DRUG-FREE WORKPLACE POLICY

Section 6. Disciplinary Action

On the first occasion in which any employee who is determined to be under the influence of, or using, alcohol or other drugs, while on duty, as confirmed by testing pursuant to this policy, the employee shall be given the opportunity to enter into and successfully complete a substance abuse program certified by the Ohio Department of Alcohol and Drug Addiction services. No disciplinary action shall be taken against the employee, provided he/she successfully completes the program. Last Chance Agreements shall not be effective for longer than five (5) years, except if any of the following situations led to the drug or alcohol testing, in which case the last chance agreement shall be of an unlimited duration:

1. Any accident involving a fatality;

2. Any accident in which there is disabling damage to the vehicle(s)
Requiring tow-away; or
3. Any accident in which off-site medical treatment was required.

Any last chance agreements entered into during the term of the last contract shall be subject to the above provision.

RULE 4501: 2-6-02(I)(1) CONDUCT UNBECOMING AN OFFICER

(I) Conduct Unbecoming an Officer

A member may be charged with conduct unbecoming an officer in the following situations:

- (1) For conduct, on or off duty, that may bring discredit to the division and/or any of its members or employees. A member shall not engage in any conduct which could reasonably be expected to adversely affect the public's respect, confidence, or trust for Ohio state highway patrol troopers and/or division.

EMPLOYER POSITION:

The Grievant was terminated on March 9, 2012, for the Rule violation of Conduct Unbecoming an Officer. On Thursday 16th leading into Friday the 17th, 2012, the Grievant was at a friend's house. During that visit, she consumed approximately 3 ½ beers and between 4 and 5 shots of alcohol. She decided to drive herself home around midnight.

Shortly thereafter, the Delaware Dispatch Center received at least two calls about a possible drunk driver on I-71 north. One motorist advised that the driver of a white Toyota "almost killed me". Mt. Gilead Post Commander, Lt. Smith was working the midnight shift. He advised dispatch that he would wait at the crossover north of the Toyota's location, and intercept. After observing the fast moving vehicle, Lt. Smith activated his radar, and locked the vehicle speed at 102mph..

He pursued the Toyota and initiated a traffic stop. To a surprised Post Commander, the driver was his own Trooper Wilson, per OSHP. According to Lt. Smith, her eyes were glassy and red, and he noticed a strong odor of alcohol and vomit. Plus her speech was slurred. When she exited the car she stumbled. She refused a field sobriety test and she was arrested and transported to the Mt. Gilead Post.

At the Post, Lt. Smith notified his supervisor that he had arrested one of his troopers for OVI. Trooper Wilson was given an opportunity to consult an attorney. After consulting with a attorney and her boyfriend she agreed to a BAC test.

Trooper Wilson was transported to the Morrow County Jail, where the BAC Data Master was located. Her Blood Alcohol Concentration was .16%. She was charged with operating a vehicle while under the influence of alcohol and speed.

The Grievant's own admission during the AI shows that she was intoxicated, per the OSHP. The interviewer asked her if she was intoxicated when she left her friends? Her answer was yes.

Several media outlets, including TV channels 10 & 4, along with 610am radio, and the Columbus Dispatch broadcasted the news of this trooper's incident. Law enforcement officers are held to higher standard of conduct, states the Employer. Therefore, the Employer believes the discipline is commensurate with the offense, and requests the arbitrator to deny the grievance in its entirety.

UNION POSITION:

The facts are true, per the Union. A twelve year trooper mistakenly drove while off-duty, intoxicated. She pleaded no contest to the OVI. She already has paid a heavy price; \$577 fine, \$275-three day driver intervention course, a \$475 license reinstatement fee, plus a \$5000 attorney fee.

This, per the Union, is a contract case, not just cause. Section 6, of Appendix C, of the CBA should govern. Per Section 6, any trooper under the influence, on duty, gets no discipline for the first offense. However, they must enroll in EAP program and agree to a five year Last Chance Agreement. This includes random testing at the employee's expense, and if a BAC is above .04, they are automatically terminated, claims OSTA.

Also, the Employer violated Article 21, Section 21.01. They, through an IOC issued on 2/15/12, changed policy relating to OVI convictions to a termination. This did not meet the two weeks advanced notice to the Union.

The IOC was dated 2/15/12 and Tpr. Wilson's incident was on 2/17/12. The policy at the time of her arrest was a Last Chance Agreement for all, argues OSTA. And Appendix C provides for a LCA for an employee arriving at work under the influence.

After being arrested on 2/17/12, Tpr. Wilson got a letter from management instructing her to get driving privileges by 3/5/12, or she would be terminated. The Grievant got occupational driving rights, but on 3/2/12, she was told not to report to work.

Trooper Wilson was terminated before any court charges of guilt was found. This is an employee with a clean record, and a good employee, argues the Union. The OSHP should have applied the old policy of an LCA without discipline. Furthermore, there was not fourteen day notice of policy change. The grievance should be granted in its entirety, requests the Union.

DISCUSSION AND OPINION:

The facts in this case are not in dispute. Off-duty Trooper Wilson was stopped on I-71 north by Lt. Smith, at approximately 12:30am on February 17, 2012. Lt. Smith was given a "heads-up" by the Delaware Dispatch Center, that a white Toyota was traveling north on I-71 in an erratic manner and at a high rate of speed. Lt. Smith positioned himself at a crossover north of the location identified by dispatch. According to his testimony, he observed the vehicle approaching at a high rate of speed. He locked in his radar at 102mph. A pursuit ensued and the vehicle stopped at mile marker 148. When he approached the vehicle, he identified the driver as his Mt. Gilead Tpr. Tiffany Wilson.

She, per his testimony and the AI, appeared to be intoxicated, and smelled of alcohol and vomit. Lt. Smith arrested her, charging her with OVI and a speed violation. Trooper Wilson was transported to the Mt. Gilead Post, where she consulted an attorney. As a result, she consented to BAC test, administered at the Morrow County Jail(ME-1). She tested a .16% BAC, and was ordered to report to Morrow County Court on 2/23/12. Once test results were confirmed she was placed on administrative suspension, and released to her boyfriend, who accepted responsibility(ME-1).

Morrow County Municipal Court, on 4/25/12, accepted a No Contest plea for OVI from Tpr. Wilson, and they dismissed the speed violation(ME-5). In the interim, Tpr. Wilson, with a suspended drivers license, was directed by management to obtain occupational driving privileges, however, she was terminated on March 9, 2012(UE-6). She was charged with violating OSHP Rule 4501: 2-6-02(I)(1) Conduct Unbecoming an Officer(JE-3).

It is law and accepted practice, that law enforcement officers while on duty or off duty, are held to a higher standard¹. And in the arbitrator's opinion, two off-duty nexuses occurred as a result of the incident; first, this Trooper was convicted of violating a law that the OSHP vehemently enforces, and second, this incident received widespread media coverage in central Ohio, which harmed the reputation of the OSHP².

This was Tpr. Wilson's first offense, and Appendix C, Section 6, of the CBA should apply, argues the Union. The Grievant should have been given a five year Last Chance Agreement, being randomly tested at her expense, per the Union. Even though this was an off-duty incident, unrebutted Union testimony claims that off-duty under the influence OVI situations have been treated the same as on duty violations. However, when the Grievant was convicted of the OVI offense, it became a level 1 misdemeanor(ME-5,UE-3). Evidence and supporting testimony demonstrated that the Discipline Grid (4/29/11), identified removal as the penalty for the first offense(ME-6). Additionally, the Grievant testified that she was aware and received training regarding such(ME-6,7). Thus, in the arbitrator's opinion, Appendix C does not limit the Employer's response.

The Union Claims that the OSHP did not meet the fourteen day requirement of a policy change. The IOC dated 2/15/12 regarding Conduct Unbecoming an Officer, did not, per the Union, meet the time requirement in this incident(UE-3). This is not a convincing argument in the arbitrator's opinion. The IOC only reiterates what the Discipline level is, regarding criminal convictions(UE-3&ME-6). Had the courts, in this case, agreed to a plea of a lesser penalty, then the Union claim might have been applicable here.

¹ Ohio Supreme Court-City of Cincinnati-v-Queen City Lodge #69: Elkouri&Elkouri, 6th Ed. Pg. 1327

² 28LA434; Kesselman

This IOC clarification, in the arbitrator's opinion, resulted from the Arbitration Decision issued by Arbitrator Ruben, dated December 9, 2011³.

Based on a review of the submitted evidence, the Hearing testimony of the witnesses, and the parties arguments, the arbitrator finds that the Employer met its burden of proving just cause for discipline.

In all the submitted brief evidentiary cases by the parties, the OSHP terminated the alleged violators. However, only one termination was sustained by multiple arbitrators. Additionally, research identified a similar Ohio Highway Patrol case, with a .18%-BAC, and the grievant was reinstated after a ninety day suspension⁴. Although this was monumental mistake on the Grievant's part, discharge, in the arbitrator's opinion, is too harsh⁵. There was no accident (luckily), as in the Sharpe discharge case, which involved a trooper with less than two years service⁶. There is no evidence of a prior or subsequent drinking issue. Trooper Wilson had over eleven years of service with a clear Department Record and good Evaluations(ME-1&UE-4). Her personnel file contained numerous letters of commendations from citizens. Noteworthy, her Post Commander(Arresting Officer) testified that she had been a great trooper, and if she came back she would be a better person.

AWARD:

The Grievant's termination is to be reduced to a ninety (90) day suspension without pay. The Grievant is to be reinstated to her former position with seniority, benefits and back pay restored but for the period of the ninety (90) day suspension. Additionally, the Grievant is to be placed on a Last Chance Agreement, to be effective upon the date of her return to work for a duration of five (5) years.

³ Grievance # 15-03-20110307-048-04-01

⁴ 96LA614-Bittel

⁵ Elkouri&Elkouri, 6th Ed. Pgs. 954,960

⁶ OSHP-v-FOP, 2/23/90-Calvin Sharpe, Arbitrator

It is to provide for random alcohol and drug testing at her expense, and if her alcohol BAC percentage is above .04 or is positive for illegal drugs, she is to be immediately terminated.

This concludes the Arbitration Decision.

Respectfully submitted this 5th day of January 2013.

A handwritten signature in cursive script that reads "E. William Lewis". The signature is written in dark ink and is positioned above the printed name and title.

E. William Lewis
Arbitrator