

**In the matter of Arbitration between:**

**State of Ohio, Department of Public Safety  
Employer**

**And**

**Case # 15-03-2012012-0010-04-01  
Trooper Gary L. Griffeth, Grievant**

**Ohio State Troopers Association  
Union**

In attendance for OSTA: Ms. Elaine Silveira, Advocate-Asst. General Counsel; Tpr. Gary L. Griffeth, Grievant(witness); Mr. Larry Phillips, President-OSTA; Mr. Dave Riley, Staff Representative.

In attendance for the Highway Patrol: S/Lt. Charles J. Linek, Advocate; Ms. Aimee Szczerbacki, OCB/2<sup>nd</sup> Chair; Sgt. Jim Bryan(witness); Ms. Lora Marlow, DPS-Attorney; Lt. Heidi Marshall, OSHP; Sgt. Corey W. Pennington, OSHP.

**INTRODUCTION:**

This matter was heard at the Office of Collective Bargaining, in Columbus, Ohio, on January 9, 2013, at 12:10pm. All witnesses were sworn. There were no procedural issues raised and the parties agreed that the issue was properly before the Arbitrator. The following were submitted as Joint Exhibits: Jt. 1-Unit 1 Collective Bargaining Agreement(2009-2012); Jt. 2-Grievance Trail # 0010; Jt. 3-Discipline Package composed of—Statement of Charges, Pre-discipline Notice, Suspension Letter, Department Record, Highway Patrol Rules & Regulations: 4501:2-6-02(Y)(2) Compliance to Orders, and 4501:2-6-02(B)(1)(5) Performance of Duty. The Employer introduced the following Exhibits: ME 1-Administrative Investigation(AI) 2011-0835; ME 2-OHIO STATE HIGHWAY PATROL(OSHP) Policy-ARREST WARRANTS; ME 3-OSHP Policy-CUSTODIAL AND NON-CUSTODIAL CARE

AND SECURITY. The Union introduced the following Exhibits: UE 1- OSHP Policy-OFFICER SAFETY AND THE DEADLY ERRORS; UE 2-OSHP Policy-RESPONSE TO RESISTANCE.

**ISSUE:**

The parties submitted a jointly signed issue statement, which reads as follows:

Did the Grievant receive a five (5) day suspension for just cause? If not, what shall the remedy be?

**FACTS:**

Trooper Gary Griffeth, employed by the OSHP since December 1999, was and is assigned to the Bucyrus Patrol Post. On November 17, 2011, at approximately 2:00p, he made a traffic stop of a pickup truck heavily loaded with skids. There were three occupants in the vehicle. During the stop it was determined that the driver was driving with a suspended license and the other two occupants had warrants for their arrest. He instructed the driver to call for someone to drive the truck and took one occupant into custody, cuffed and placed in the back seat of his patrol car. The other occupant, a female, per dispatch, had warrants for unserved jail time and possible drug issues. She was not taken into custody immediately, and when the pickup transporters arrived she fled. She was apprehended nearby, shortly thereafter.

As a result of the suspect fleeing an AI was instituted and Tpr. Griffeth was charged with two violations of OSHP Rules and Regulations. He was charged with violating Rule #4501:2-6-02(B)(1)(5) Performance of Duty, and #4501:2-6-02(Y)(2) Compliance to Orders. On January 18, 2012, he was notified that he would be suspended for five (5) days. In lieu of the five days Tpr. Griffeth elected to forfeit some accrued vacation and/or compensatory time.

Trooper Griffeth filed a grievance on January 17, 2012, challenging the pending discipline. His claim was that the Employer violated Article 19, Section 19.01, the just cause standard. He requested that the appropriate leave categories be made whole equaling the amounts deducted for the discipline. The grievance was denied at Step 2 on February 8 and appealed to Arbitration by the Union on March 27, 2012. By mutual agreement between the parties, the Arbitration Hearing was scheduled for January 9, 2013.

### **DISCUSSION AND OPINION:**

The facts in this case are not in dispute. The activities that occurred during this stop are in clear view from the patrol car camera, and are accurately recorded on pages eight and nine of the AI(ME-1&video). Trooper Griffeth stopped a pickup truck, heavily loaded with skids at 1406. There were three occupants. At 1415, he learned, through dispatch, that one passenger(Campbell) had a warrant for FTA on a theft charge. He was arrested, cuffed and placed in the rear seat of the patrol car(1428). He also learned that the driver was under license suspension at 1425, and he was directed to call for a substitute driver.

The third passenger, a woman, without ID, was identified by dispatch at 1439. She had a minor misdemeanor warrant for petit theft, and she was told to remain in the pickup. Shortly thereafter, Tpr. Griffeth was informed that backup was on the way. By this time Tpr. Griffeth had moved his patrol car to a position of facing the suspects and the pickup truck. At 1447, dispatch advised him of a second MM warrant for the female passenger(Hootman). The substitute drivers arrived at 1452 and by 1454 the female suspect fled. She was apprehended shortly thereafter.

The OSHP argues, per policy, that the female passenger should have been arrested, cuffed and taken into custody as soon as a warrant was identified(ME-3). OSTA argues that for officer safety, without backup, the scene was too fluid for Tpr. Griffeth to additionally detain Ms. Hootman. Trooper Griffeth had no

place to put Ms. Hootman without moving patrol car equipment to the trunk, not a safe activity under the circumstances, per the Union.

Officer safety is a new excuse claims the Employer, raised only here at this Hearing. However, evidence shows that the danger concern was raised at the Step 2 Grievance meeting, by the Union(JT.2).

The female passenger, with warrants, was not detained per policy(ME-3). However, within five minutes of Tpr. Griffeth learning of a second warrant, the substitute drivers arrived, equaling five parsons at the scene. A situation, in the arbitrator's opinion, begging for backup support(UE-1). In the arbitrator's opinion, there is not a preponderance of evidence to convince me that a concern for officer safety should have been ignored in lieu of immediately cuffing the female passenger.

**AWARD:**

The grievance is sustained. Trooper Griffeth's leave status is to be reimbursed for the forfeited twenty hours of vacation time, and the twenty hours of compensatory time.

This concludes the Arbitration decision.

Respectfully submitted, this 28<sup>th</sup> day of January 2013.

E. William Lewis  
Arbitrator