

IN ARBITRATION PROCEEDINGS PURSUANT TO THE COLLECTIVE BARGAINING  
AGREEMENT BETWEEN THE PARTIES

IN THE MATTER OF:	:	
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Fraternal Order of Police, Ohio Labor Council, Inc.,	:	ARBITRATOR: Sherrie Passmore
	:	
and	:	Grievance: 15-00-20130510-0041-05-02
	:	Grievant: Ronald Robinson
	:	Issue: Termination
The State of Ohio,	:	
Department of Public Safety	:	

**ARBITRATOR’S OPINION AND AWARD**

This arbitration arises pursuant to the collective bargaining agreement (“Agreement”) between the Parties, the Fraternal Order of Police, Ohio Labor Council, Inc. (“Union”) and the Ohio Department of Public Safety (“Employer” or “Department”). Sherrie Passmore was appointed as the Arbitrator under the authority of the Agreement. The Parties stipulated that the grievance is properly before her.

A hearing was held on September 17, 2013. Both Parties were represented by advocates who had a full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make arguments. Post-hearing briefs were timely filed on or before October 11, 2013.

**APPEARANCES:**

Paul L. Cox, Chief Counsel, Advocate for the Union

Lt. Heidi A. Marshall, Advocate for the Employer

## JOINT ISSUE

Was the Grievant removed from his position at the Department of Public Safety, Ohio Investigative Unit, for just cause? If not, what shall the remedy be?

### RELEVANT PROVISIONS OF THE AGREEMENT

#### **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.

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##### **19.05 Progressive Discipline**

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. At the Employer's discretion, disciplinary action shall include:

1. Verbal Reprimand (with appropriate notation in employee's file);
2. Written Reprimand;
3. One or more fines in an amount of one (1) to five (5) days pay for any form of discipline. The first time fine for an employee shall not exceed three (3) days pay;
4. Suspension;
5. Leave reduction of one or more day(s);
6. Working suspension;
7. Demotion;
8. Termination.

However, more severe discipline may be imposed at any point if the infraction or violation merits the more severe action.

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##### **20.09 Disciplinary Grievances**

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3. In cases involving termination for dishonesty or making false statements, if the arbitrator finds dishonesty occurred or false statements were made, the arbitrator shall not have authority to modify the disciplinary action.

## BACKGROUND

The Grievant, Ronald Robinson, was employed by the Department of Public Safety as an Enforcement Agent in the Ohio Investigative Unit. He was hired by the

Department on November 9, 1998 and transferred into the Unit on September 13, 1999. Grievant was removed from the position of Enforcement Agent on April 23, 2013.

Grievant's removal stems from two incidents. The first incident involved a complaint letter received by the Department on October 4, 2012, alleging the Grievant had shown sexually explicit videos and/or photographs to his co-workers while on duty.

The second incident occurred on December 16, 2012. While in an off duty status and in his personal vehicle, a vehicle turned in front of Grievant on Stygler Road in Gahanna, Ohio. There were three people in the vehicle. Brandie Daniels was driving, Ryan Lohr was in the front passenger seat, and Mr. Lohr's four-year-old son was in the back. Grievant followed the vehicle to a private residence on Sandburr Drive. He stopped in the middle of the street, exited his vehicle, and became involved in an altercation.

In response to a 911 call reporting a road rage incident made by Brandie Daniels, the Gahanna Police responded to the scene within minutes. The Police obtained oral and written statements from witnesses at the scene who said the Grievant was yelling, threatening to murder them, and identifying himself as a police officer. Family members, including children, were gathered at the residence because of a death in the family earlier that day. One family member, Brandi Ramey, reported that when she came out of the house to try to calm the situation, the Grievant grabbed her, causing bruising to her upper arms.

Grievant told the Police that he felt he needed to follow the vehicle because he believed the driver was intoxicated. When he pulled up to the residence, the occupants of the vehicle jumped out and started yelling at him, other people at the residence joined in, and it turned into a shouting match, causing him to call 911. After completing their investigation at the scene, the Police were prepared to criminally charge the Grievant with Assault and Aggravated Menacing. They did not do so because Ms. Ramey did not want to press charges as she was dealing with the death of her grandmother.

A separate administrative investigation of each incident was conducted. In the investigation of the second incident, Grievant admitted to following a vehicle to a private residence, but claimed he simply wanted to ask if the people in the vehicle were trying to cause an accident. He specifically denied touching Ms. Ramey.

Based on those two incidents and the investigations thereof, Grievant was terminated from his employment for violating Department of Public Safety Work Rules for Sworn Personnel: Rule 501.02 (H) (1), Conduct Unbecoming an Officer and Rule 501.02 (D) False Statements, Truthfulness.

## **POSITIONS OF THE PARTIES**

### **Position of the Department**

The Employer argues that it had just cause to terminate Grievant. Through witness testimony and evidence presented, the Employer contends that it proved that the Grievant violated the Department's work rules and that those violations warranted his removal.

According to the Employer, the facts of the first incident are not in dispute. During the investigation of the October 4, 2012 complaint letter, Grievant admitted he had shown sexually explicit videos and/or photographs to co-workers while on duty.

In regard to the second incident, the Employer points out that Grievant's account is inconsistent with what everyone else reported to the Gahanna Police. All of the witnesses reported that Grievant immediately identified himself as a police officer, threatened to murder them, and was aggressive until he heard the police had been called. The Employer argues that these witnesses did not have time or motive to conspire against the Grievant.

Each witness involved in the altercation as well as the Grievant was also interviewed in the administrative investigation. The Employer points out that the only person with a different account of the events of December 16, 2012 in those interviews is the Grievant.

The Employer alleges that Grievant's conduct violated two work rules: the prohibition against engaging in conduct unbecoming an officer and the rule that requires officers to be truthful. The Employer argues that both incidents involved such conduct. In addition, Grievant was untruthful during the administrative investigation into the December 16, 2012 incident.

The Employer points out that Enforcement Agents, although peace officers, have limited authority. Their authority is limited to enforcing Ohio's liquor control laws and any laws related to food stamps in the State of Ohio. An agent does not have the authority to enforce motor vehicle laws and may only detain someone who

has committed a traffic violation after obtaining the permission of the supervisor of the department with jurisdiction.

The Employer contends that during the December 16, 2012 incident, Grievant initiated a traffic stop without the authority to do so. The manner in which he followed the vehicle after it turned in front of him suggests he was trying to stop it. He then stopped in the street directly behind the driveway of the residence the vehicle pulled into, blocking the vehicle in.

The Employer argues that Grievant's off duty misconduct and subsequent untruthfulness about the events is severe enough to warrant removal. The violations are serious and demonstrate that the Employer cannot trust Grievant. Based on his misconduct, the Department views Grievant as a liability.

Because the job of an Enforcement Agent requires the exercise of independent judgment, the Employer stresses that it needs to be able to trust that agents will act honestly, within the scope of their authority and make proper decisions when they are in the field. The Employer asserts it can no longer trust in Grievant's ability to do his job based on the on the December 16, 2012 incident and untruthfulness during the ensuing investigation.

The Employer also points out that in cases involving termination for dishonesty or false statements, the Agreement provides that if the arbitrator finds dishonesty occurred or false statements were made, then the disciplinary action cannot be modified.

### **Position of the Union**

The Union's contention is that the Employer failed to follow progressive discipline as required by the Agreement and failed to meet its burden of proof to show that this termination was for just cause.

The Union argues that the Employer has blown the December 16, 2012 incident way out of proportion. A vehicle dangerously cut Grievant off and he followed it because he thought the occupants were intoxicated. Upon arrival at the residence, Grievant only identified himself as a police officer when asked. He did not make a traffic stop.

The Union suggests the claim that Grievant said "I will murder you" lacks credibility because those are not terms someone would use. The Union also argues that Mr. Lohr's claim that Grievant was aggressive should be discounted since the evidence showed Mr. Lohr was intoxicated and acting agitated when the police arrived whereas Grievant was calmly standing beside his vehicle. The Union also notes differences between Lohr's testimony and police statement.

The Union argues there is no evidence to support the claim that Grievant put his hands on someone and caused bruises. Photos of the alleged bruises included in the administrative investigation report were submitted long after the incident. The Employer did not establish when the photos were taken and the Police did not take any pictures. The Union also contends there is no way to know what caused the marks and suggests something else could have caused them. That medical treatment was not sought and no criminal charges were pressed is evidence that Grievant did not physically harm anyone.

The incident occurred, according to the Union, because Grievant felt a duty to follow the car since he had reason to believe the occupants were under the influence of alcohol or drugs and feared an accident. Although he did not have the authority to detain someone, he did have the authority to observe and report which is what he did.

The Union maintains that there is no evidence to show that Grievant was untruthful at any point during either investigation and he cooperated during both. Grievant says he identified himself as a police officer after being asked and admits he followed a vehicle. He says he called the Police and produced proof that he placed a 911 call. He says he did not put his hands on anyone and there is no proof he did.

Regarding the second incident, the Union points out that a fellow employee who is notorious for filing complaints against his fellow officers made the complaint. Three of his four allegations against the Grievant were unfounded.

The Union submits that the fourth allegation was unfounded as well. The accusation was that Grievant was showing nude photos of a fellow employee. The investigation did not result in a finding that he had done this. The only thing Grievant admitted to in the investigation was that at some point he might have shown a nude photo that had been forwarded to him on his personal phone. No evidence was presented to show this alleged activity interfered with his work or brought disrepute to the agency. Nor was there any implication of sexual harassment or sexual assault.

The Union notes that the review of evidence presented by the Employer in this case should be limited to documents that were properly identified and



substantiated during the hearing. It argues that the Employer introduced CD's, statements, and pictures that were not properly introduced. During the hearing, the Union objected to consideration of statements of any witnesses that did not testify at the hearing, but acknowledged that the statements introduced of witnesses who did testify could properly be considered.

With respect to the penalty imposed, the Union argues the Employer failed to prove that discharge was justified. Progressive discipline is required under the Agreement. The actions for which Grievant was disciplined were not so outrageous as to justify more serious discipline. The purpose of discipline is to correct behavior. A less severe form of discipline could have protected the interests of the Employer. In addition to not being commensurate with the offense, the discipline goes far beyond proportionate for a 15-year employee with a clean department record.

### **DISCUSSION**

This case involves the termination of the Grievant's employment for misconduct. As such, the Division has the burden of proving just cause, consisting of whether:

1. The Grievant did what he is accused of doing; and
2. Under all the circumstances, removal was appropriate.

#### **The Grievant's Alleged Misconduct**

The Division charged the Grievant with violating Rule 501.02 (H)(1) Conduct Unbecoming an Officer. The Rule provides, in pertinent part, that:

An employee may be charged with conduct unbecoming an officer in the following situations:

1. For conduct that may bring discredit to the Department of Public Safety, its Divisions, or its members.

Specifically, the Statement of Charges provides:

...It was found that Agent Robinson brought discredit to the Department where, while off-duty, he became involved in a verbal altercation and subsequent physical altercation with citizens at a private residence.

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Additionally...it was found that Agent Robinson showed sexually explicit videos and photographs to co-workers while at work.

The Division also charged the Grievant with violating Rule 501.02 (D) False Statement, Truthfulness that provides:

An employee shall not make any false statement, verbal or written, or false claims relating to the performance of, or fitness for duty.

For this rule violation, the Statement of Charges specifies "Agent Robinson was untruthful during the ensuing administrative investigation."

Grievant violated both of those work rules. He engaged in conduct unbecoming during the December 16, 2012 incident and when he shared sexually explicit videos and photographs with co-workers while on duty. Grievant was specifically untruthful during the administrative investigation of the December 16<sup>th</sup> incident when he denied grabbing Brandi Ramey.

On December 16, 2012, Grievant brought discredit to the Department as a result of aggressively confronting private citizens at a residence about an alleged traffic violation without any authority to do so. His actions led to an altercation in

which he identified himself as a police officer. It is undisputed that the incident ended up with the Gahanna Police being called to the scene and after investigating, being prepared to file criminal charges against the Grievant. Adults and children at the residence observed Grievant's conduct. The Gahanna Police, Grievant's supervisors, and other agents also became aware of his conduct.

Grievant's account of the December 16<sup>th</sup> incident is not believable in general. His claim that he did nothing more than follow the vehicle is inconsistent with his contention that one of the passengers of the vehicle gave him the finger while he was following it and that the occupants immediately jumped out and started yelling at him upon arrival at the residence. Those are the sorts of reactions one could reasonably expect from someone who had been followed by a vehicle that was tailgating, flashing its brights, and/or honking its horn.

That Grievant followed the vehicle because he had safety concerns is inconsistent with his actions. Once the car pulled into the driveway of a private residence, concerns about drunken driving should have ceased.

Grievant's suggestion that he wanted to make sure the occupants were okay is not credible. Exiting his car after stopping in the middle of the street and asking the occupants if they were trying to cause an accident is not an expression of concern. It sounds more like the statement of someone who was upset that a vehicle had pulled out in front of him. The reason he gave for getting completely out of his vehicle was so he could be heard when he asked this question.

Grievant's claim at hearing that he had every intention of calling the police when he observed what he believed was a drunk driver was also not credible. He

testified he did not have time to call while he was following the vehicle because it was only a short time between when the vehicle pulled in front of him and then pulled into the driveway of the residence. This is not what he told the Gahanna Police. In his written statement to the Police, Grievant stated that the “shouting match” that ensued after he exited his vehicle caused him to call 911.

Grievant’s version of what happened when he arrived at the residence is inconsistent with what every other witness reported to the Gahanna Police. They consistently reported that Grievant was aggressive, threatened them and repeatedly identified himself as a police officer.

The account of those witnesses is credible. In their state of mind with their grandmother having just passed away, the witnesses would have been unlikely to conspire against the Grievant. The Police arrived at the scene within minutes of the incident and separated the witnesses before taking their statements. Given those circumstances, the witnesses did not have an opportunity to manufacture their story nor did they have any motive to do so. The Police responded to a call from Brandie Daniels. Daniels would not have requested Police assistance if she believed that she and/or Ryan Lohr had something to cover up. She would not have immediately reported the incident as one of road rage if Grievant had casually followed their vehicle and approached them in a non-confrontational manner at the residence. Although Grievant produced his personal phone record showing that he dialed 911 before the Police arrived, it showed he did so after Daniels placed her call and the Gahanna Police have no record of a call from Grievant.

While recognizing that there is a human tendency to recast events in a way that reflects more favorably on the person recounting the event, there are statements that go beyond mere recasting. Grievant's denial that he ever touched Brandi Ramey falls in that category and was untruthful.

The evidence supports a finding that Grievant grabbed Brandi Ramey by the arms with sufficient force to leave marks. Ryan Lohr testified that he saw the Grievant grab Brandi Ramey by the arms when she walked out of the residence and attempted to get the Grievant to leave. Although Lohr had been drinking earlier that day, his recollection was consistent with that of other eyewitnesses as well as supported by the observations of Officer Jones. His testimony should not be discounted because he was agitated. Under the circumstance, that he would be upset after being followed and confronted is understandable.

Within minutes of the incident, Ms. Ramey told Officer Jones that Grievant had grabbed her by the arms. Officer Jones testified to this and that he observed red marks on Ms. Ramey's arms that were consistent with being grabbed in the way she had described. He also testified that another witness at the scene, Brandie Daniels, told him she saw Grievant putting his hands on Brandi Ramey. Both Ramey and Daniels provided written statements to the Gahanna Police reporting that Grievant grabbed Ms. Ramey by the arms. Those statements were properly introduced into evidence through Officer Jones. (Management Exhibit 1, pp. 27-29). The statements corroborate the testimony of Ryan Lohr and Officer Jones. Officer Jones' testimony

about the circumstances under which the statements were taken, as noted above, provides indicia of their reliability.<sup>1</sup>

Given that family members at the residence were grieving, it is not surprising that criminal charges were not pressed. For the same reason, it is understandable that Ms. Ramey would not seek medical attention for bruising to her arms.

Grievant does not dispute that he ended up in a shouting match at the residence. Although the Grievant disputes how it came about, he does not deny that he identified himself as being a police officer. Regardless of the manner in which Grievant followed the vehicle to the residence and the words that were exchanged after Grievant exited his vehicle, his actions lead to an altercation, which so upset and concerned Ms. Daniels that she called 911.

As a law enforcement officer with 15 years of experience, Grievant should have known that his actions would be alarming. It is not disputed that Grievant was a total stranger to the citizens he followed in his personal vehicle at night when it was dark out. He claims that he believed the occupants of the vehicle were intoxicated and that one of the occupants flipped him off. He admits that after they parked in the driveway of a private residence, he stopped his vehicle in the middle of the street, got out, and asked them if they were trying to cause an accident. He says he did so without identifying himself as a police officer.

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<sup>1</sup> The Union strenuously objected to consideration of the recordings of the interviews done during the administrative investigation of witnesses who did not testify at hearing. Based on the testimony and other evidence discussed above, consideration of those interviews was not necessary for reaching the findings and conclusions herein. Nor was it necessary to consider the photographs provided by Ms. Ramey during the administrative investigation.

With all of his years of law enforcement experience and training, it is not credible that Grievant believed confronting someone in this manner under these circumstances was appropriate. Nor was it credible he believed it would serve any legitimate purpose. If anything, Grievant's experience and training should have told him that taking such action would likely result in an altercation. He also should have known that he had no authority to take such action.

Grievant's conduct during the December 16<sup>th</sup> incident cannot be justified based on duty. Enforcement Agents have limited authority. They are not on duty twenty-four hours a day, seven days a week. Grievant concedes that his authority during this incident was limited to observing and reporting, which is the same as any private citizen. The problem was he went beyond that and confronted citizens at a private residence which is what lead to an altercation in which he identified himself as a police officer.

Grievant also engaged in conduct unbecoming an officer by showing sexually explicit videos and photographs to co-workers while on duty. Although Grievant initially attempted to equivocate when asked about this allegation during the investigation saying he "may" have engaged in such conduct, he ultimately admitted to it. At hearing, Grievant directly admitted the allegation. In response to being questioned about showing sexually explicit videos to coworkers while on duty, Grievant testified, "I do acknowledge that I did show videos and/or pictures."

Grievant also testified it was "common" among his co-workers to share those types of videos and photographs. That others allegedly engaged in the same conduct does not make it acceptable. There was no evidence that management was aware of

and condoned such alleged conduct. Absent such evidence, “everyone else is doing it” is not a defense. That his conduct did not end up in the public eye or result in a sexual harassment charge does not excuse it either. The prohibition against conduct unbecoming includes conduct that may bring discredit to the Department. Passing around sexually explicit videos and photographs on work time falls in that category.

### **The Appropriate Penalty**

It is not necessary to reach the issue of whether Grievant’s conduct was sufficiently serious to overcome the requirement of progressive discipline or to consider mitigating circumstances in this case. Because of the nature of their work, law enforcement officers are legitimately held to a high standard of conduct both on and off duty. Honesty and integrity are essential requirements of the job. The premium placed on those qualities is reflected in Article 20.09 (3), which prohibits an arbitrator from modifying the penalty in cases involving termination for dishonesty or false statements if the arbitrator finds dishonesty occurred or false statements were made. Having found that the Grievant was untruthful during the investigation of the December 16, 2012 incident, the penalty in this case cannot be modified.



**AWARD**

For the reasons stated above, the grievance is denied. The Department has carried its burden of proving it had just cause to remove the Grievant.

A handwritten signature in black ink that reads "Sherrie J. Passmore". The signature is written in a cursive style with a large initial 'S'.

Sherrie J. Passmore  
Arbitrator

November 15, 2013