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**ARBITRATION PROCEEDING PURSUANT TO  
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE  
PARTIES**

|                                    |   |              |
|------------------------------------|---|--------------|
| In the Matter of                   | ◆ |              |
|                                    | ◆ |              |
| THE OHIO STATE TROOPERS            | ◆ |              |
| ASSOCIATION                        | ◆ |              |
|                                    | ◆ |              |
| and                                | ◆ | ARBITRATOR'S |
|                                    | ◆ | OPINION      |
| STATE OF OHIO,                     | ◆ | and AWARD    |
| OHIO DEPARTMENT OF                 | ◆ |              |
| PUBLIC SAFETY, DIVISION OF THE     | ◆ |              |
| OHIO STATE HIGHWAY PATROL          | ◆ |              |
|                                    | ◆ |              |
| Grievant: Richard L. Anderson      | ◆ |              |
| Case No. 15-03-20131001-0085-04-01 | ◆ |              |

This Arbitration arises pursuant to the collective bargaining agreement ("the Agreement") between the Parties, THE OHIO STATE TROOPERS ASSOCIATION ("the Union") and the STATE OF OHIO ("the State," "the Department," or "the Division") under which SUSAN GRODY RUBEN was appointed to serve as sole, impartial Arbitrator. Her decision

shall be finding and binding pursuant to the Agreement. The record indicates no procedural impediments to a final and binding Award.

Hearing was held March 27, 2014. Both Parties were represented by advocates who had full opportunity to examine and cross-examine witnesses and introduce documentary evidence. Both Parties filed timely post-hearing briefs.

**APPEARANCES:**

On behalf of the Union:

ELAINE N. SILVEIRA, Esq. and HERSCHEL M. SIGALL, Esq., The Ohio State Troopers Association

On behalf of the State:

LT. CASSANDRA L. BREWSTER, Ohio State Highway Patrol

**ISSUE**

Was the Grievant issued a ten-day suspension for just cause?  
If not, what shall the remedy be?

**RELEVANT PORTIONS 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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. . .

## **ARTICLE 25 – UNIFORMS, WEAPONS, EQUIPMENT**

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### **25.02 Patrol Vehicles**

**The Highway Patrol may assign departmental vehicles for certain employees to use to properly perform their duties. If the Highway Patrol chooses to assign departmental vehicles to any patrol personnel for use in performing their duties, then it shall assign a patrol motor vehicle to each sergeant in field and plain clothes jobs. It is understood that the assignment of vehicles is the sole right of the Employer and will be made on the basis of operational need. Such vehicle assignments are based upon responsibilities of the employee and in part, on an employee's availability to return to duty in a timely fashion when an emergency situation arises. The use of divisional vehicles is for official business purposes only and not for pleasure or personal use.**

**If departmental vehicles are unavailable and an employee is required to use the employee's own vehicle for official business purposes, the employee will be reimbursed with a mileage allowance set by the Director of the Office of Budget and Management (OBM)....**

**No employee will lose the opportunity to drive a motor vehicle to and from his/her residence if that restriction is imposed in conjunction with another form of discipline under Article 19....**

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. . .

## **FACTS**

**The Grievant is employed by the State as a Trooper. He is assigned to the Milan Post.<sup>1</sup>**

**On February 8, 2013, the Grievant's patrol car commuting privileges were revoked by Milan Post commander Lt. Peterson; i.e., the Grievant was no longer permitted to take his assigned patrol car home at the end of his shifts.<sup>2</sup> On February 15, 2013, the Grievant wrote an Inter-Office Communication ("IOC") to Lt. Peterson and Sgt. Reeder. The IOC states in pertinent part:**

**I would like to know why I am unable to take a patrol car home and how long this will last.**

**The Grievant did not receive a response to his February 15, 2013 IOC. He wrote a second IOC on March 7, 2013 to Lt. Peterson, which provides in pertinent part:**

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<sup>1</sup> The Grievant's Department Record lists his "hire date" as January 24, 2000; the Grievant testified at the arbitration he has been employed by the State since September 2003. Presumably, that is when he entered the Academy; the State's brief states the Grievant was commissioned as a trooper on September 12, 2004. The Grievant's exact date of employment is inconsequential in the context of analyzing the instant grievance.

<sup>2</sup> The record indicates the Grievant's commuting privileges were revoked because AI #12-0437 found him to have followed a vehicle too closely in a construction zone, to have used his take-down lights to force the vehicle into the right lane, and to have been traveling at excessive speeds while commuting.

**I have not received a response from my prior IOC regarding the reason I am not allowed to take a patrol car home and for how long.**

**The Grievant did not receive a response to his second IOC either.**

**On June 26, 2013, Lt. Gockstetter, the recently appointed Milan Post Commander who had replaced Lt. Peterson who had recently retired, was driving the Grievant to Columbus for the purpose of the Grievant signing a Last Chance Agreement regarding a prior discipline.<sup>3</sup> On the ride back, the Grievant asked Lt. Gockstetter when he would get his patrol car commuting privileges back. Lt. Gockstetter told the Grievant he would get his patrol car commuting privileges back after the 2<sup>nd</sup> Quarter TEV<sup>4</sup> results came out and it was determined the Grievant had satisfactory results. The Grievant asked Lt. Gockstetter, “On July 1?” Lt. Gockstetter**

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<sup>3</sup> The Last Chance Agreement dated June 26, 2013, signed by the Grievant, the Union, and the State provides in pertinent part:

As a result of administrative investigation #13-0174, the Employee was found to have violated Ohio State Highway Patrol Rules and Regulations, specifically: Rule 4501:2-6-02(E)(1), False Statement, Truthfulness, 4501:2-6-02(B)(5), Performance of Duty, and Rule 4501:2-6-05(D)(1), Motor Vehicle and Aircraft Operations.

The investigation revealed Trooper Anderson intentionally entered improper CAD statuses to increase his TEV. While reviewing his CAD statuses it was found that Trooper Anderson traveled at excessive speeds, in his Division issued patrol car without being dispatched to an incident. Additionally, Trooper Anderson was found to have falsely entered locations and statuses into CAD and also failed to respond to a call to service.

<sup>4</sup> Time Efficiency Value reports.

responded, "I'll check on that." The record indicates Lt. Gockstetter did not get back to the Grievant with a specific date.

On June 30, 2013, the Grievant's wife drove him to his 10pm shift at the Milan Post. The next morning, on July 1, 2013, at the end of the Grievant's 10 pm shift at 6 am, the Grievant, on his own volition, took home a patrol car.

On July 2, 2013, Sgt. Davis asked the Grievant why he had taken a patrol car home the previous day. The Grievant told Sgt. Davis that Sgt. Reeder had given the Grievant permission to take the patrol car home the previous day. Sgt. Reeder denies having given the Grievant that permission.

On July 18, 2013, the Grievant was interviewed by Lt. DeChoudens regarding the Grievant having taken home a patrol car on July 1, 2013. The Internal Investigation Pre-Interview form, signed by both the Grievant and his Union representative, states in pertinent part:

You are the subject of an administrative investigation. The known allegations are:

Trooper Anderson took a patrol car home after being given an order that he was not allowed. When questioned about taking the patrol car he was dishonest by indicating that a post sergeant had given him permission.

**Also on July 18, 2013, 2<sup>nd</sup> Quarter TEV results were released. The Grievant had satisfactory numbers and was given back his commuting privileges that day.<sup>5</sup>**

**The Grievant was given a pre-disciplinary letter dated September 12, 2013. The letter provides in pertinent part:**

**Notice is hereby given to you, that it is being recommended that you will be suspended for ten (10) days from your employment with the Ohio State Highway Patrol for violation of the Rule and Regulations, specifically of Rule 4501:2-6-02(Y)(2) Compliance to Orders. Through administrative investigation #2013-0452, it was found that you failed to follow a directive regarding commutation privileges to and from your residence in a state vehicle.**

**...**

**Ohio State Highway Patrol Rule 4501:2-6-02(Y)(2), Compliance to Orders, provides:**

**A member shall conform with, and abide by, all rules, regulations, orders and directives established by the superintendent for the operation and administration of the division.**

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<sup>5</sup> Leading up to the return of the Grievant's commuting privileges, Union Representative Riley exchanged some emails with then S/Lt. Linek regarding when the Grievant's commuting privileges would be restored. On July 10, 2013, S/Lt. Linek responded to Union Representative Riley in pertinent part:

**Anderson will be getting commutating privileges restored when he returns to work. It is my understanding he is off the rest of the week.**

**The Grievant waived his pre-disciplinary meeting.**

**The Grievant received a suspension letter dated September 20, 2013. That letter provides in pertinent part:**

**This letter is to advise that you are suspended from your employment with the Ohio Department of Public Safety, Ohio State Highway Patrol, for a period of ten (10) days without pay for violation of OSHP Rules & Regulations Rule 4501:2-6-02(Y)(2), Compliance to Orders.**

**Specifically, as a result of Administrative Investigation #2013-0452, it was found that you failed to follow a directive regarding commutation privileges to and from your residence in a state vehicle.**

**In accordance with the terms set forth in the attached Memorandum of Understanding and the signed Discipline Substitution Notice, you have elected to forfeit accrued vacation leave and personal leave in lieu of a ten (10) day suspension....**

**If you continue to violate the Work Rules and Procedures, further progressive discipline may lead to termination.**

**The instant grievance was filed September 25, 2013. It states in pertinent part:**

**Grievance Facts**

**On September 12<sup>th</sup>, 2013 I was informed that I am to be suspended from my employment with the Ohio State Highway Patrol for ten (10) days. This discipline was for an alleged violation of rule 4501:2-6-02(Y)(2) Compliance to Orders. I assert that this punishment was enacted without just cause and that the entire**



issue arose when the employer violated the contract by withholding access to my patrol car for transportation to and from my home in violation of article 25.02.

**Requested Remedy**

I would like this discipline removed from my record and that I be made whole for my losses to include shift differential, holiday pay, and fitness pay.

**POSITIONS OF THE PARTIES**

**State Position**

The Grievant chose to violate a direct order when he took a patrol car home on July 1, 2013. The Grievant testified he believed he should get his commuting privileges back on July 1 because that was the start of the 3<sup>rd</sup> Quarter. He also testified he was not told by any supervisors his car would be returned to him on July 1, and that he knew the 2<sup>nd</sup> Quarter TEV results had not been released by July 1. On cross-examination, the Grievant admitted that neither Sgt. Reeder nor any other supervisor told him he could take a patrol car home on July 1.

Even if the Union is arguing the revocation of the Grievant's commuting privileges violated Article 25.02, the Grievant is not permitted to unilaterally decide to take his car home. The principle of "obey and grieve" is that:

Employees do not have an unfettered right to disregard supervisory instructions. Rather, an employee must obey the agency order, even if he believes it to be improper, and protest the propriety of the order later.

*Howarth v. U.S. Postal Service*, 77 MSPR 1, 5 (1997).

The Grievant's most recent previous discipline was a five-day suspension given in the context of a Last Chance Agreement; that discipline was ineffective in changing the Grievant's behavior. The next step of progressive discipline would have been termination. The State chose to be lenient with a ten-day suspension. The discipline imposed was not arbitrary, capricious, or discriminatory, and it was commensurate with the offense.

#### Union Position

The State failed to meet its burden of proving the suspension was for just cause and that it was commensurate with the offense. The ten-day suspension cost the Grievant approximately \$2,000. The Grievant's financial loss resulted from a situation created entirely by the State in a series of violations of the Agreement.

**There is no record evidence of a written order given to the Grievant revoking his commuting privileges. Additionally, the State chose not to charge the Grievant with a False Statement violation.**

**Indicative of the fact that no order existed is the fact that patrol supervision did not notice the Grievant's patrol car was missing from the Milan Post parking lot during the day on July 1 and July 2. The explanation is that everyone knew the Grievant was driving his assigned car.**

**The June 26, 2013 Last Chance Agreement included a five-day suspension but did not include the continued withholding of the Grievant's commuting privileges. The State is adept at writing the language it wants in these agreements.**

**The e-mails between Union Staff Representative and S/Lt. Linek is also instructive. S/Lt/ Linek does not mention the pretext of TEV numbers in any of his e-mails. If TEV numbers were the reason the Grievant's commuting privileges had not yet been restored, S/Lt. Linek would have addressed that.**

**The Grievant's vehicle was taken from him during the course of an AI that ended with a Last Chance Agreement that by its terms**

incorporated a five-day suspension but did not call for any continued loss of commuting privileges. When the Last Chance Agreement was signed, the continued denial of commuting privileges was no longer justifiable and was in violation of Article 25.02.

While there is conflict in the recollections of conversations regarding the date for the Grievant to reclaim his vehicle, the right to reclaim his vehicle was never at issue. That the Grievant believed the State had acknowledged his right to reclaim his assigned vehicle as of July 1, 2013 is clear from his actions. He took possession of the car in full view of the entire Post and openly announced it was in his possession when he entered his commuting status code on the night of July 2 when he left his home for work. From any reasonable view, the Grievant's actions were understandable, logical, and justified.

## **OPINION**

The stipulated issue, whether the ten-day suspension was issued for just cause, governs what is before the Arbitrator. Just cause in this context consists of whether the Grievant did what he is accused of doing,

**and if he did, whether a ten-day suspension is an appropriate discipline under all the circumstances.**

**The record shows the Grievant was awarded Milan Post Trooper of the Year in 2009. In June 2011, he was issued a written reprimand for Failure to Render Assistance to Public (Failure to Respond/Assist).<sup>6</sup> In December 2011, the Grievant was issued a one-day suspension for Unsafe/Illegal Patrol Car Operations.<sup>7</sup> Beginning July 11, 2013, the Grievant served a five-day suspension for Failure to Render Assistance to Public (Failure to Respond/Assist), Untruthfulness/Dishonesty, and Unsafe/Illegal Patrol Car Operations.<sup>8</sup> Moreover, what had been very**

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<sup>6</sup> The Remarks section in the Grievant's Department Record states:

Complainant was disabled on Ohio Turnpike approximately one mile east of the Milan Post. Called dispatch and requested Trooper at 2159 hours. Dispatch advised Post 90 at 2200 hrs. Trooper Anderson was on post and didn't arrive at the scene until 2258 hours. Complainant alleges 58 minutes is not a timely response. Complainant called DHQ 10 the following day to file a complaint.

<sup>7</sup> The Remarks section in the Grievant's Department Record states in pertinent part:

Complainant contacted the Delaware Post to report that Patrol Car SP-174 was driving significantly over the posted speed limit of 65 mph, on I-71 near milepost 121....

<sup>8</sup> The record indicates this discipline began as a recommended termination, but was converted into a five-day suspension as part of the June 26, 2013 Last Chance Agreement. The Remarks section in the Grievant's Department Record states in pertinent part:

good annual performance reviews (see, e.g., March 2010-March 2011)<sup>9</sup>, became by the March 2012-March 2013 evaluation, serious reservations about his performance<sup>10</sup>. The record indicates that during the period of documented decline in the Grievant's performance, he did not get along well with his then-supervisor, who is now retired. The subject of the instant grievance is not the Grievant's overall performance; accordingly, the Arbitrator is unable to judge any relative fault between the Grievant and his then-supervisor as being the cause of the deteriorating situation.

What the Arbitrator can observe from the record is that some thing or things happened between 2009 and 2013 that caused the Grievant's

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Trooper Anderson operated his patrol car at high rates of speed during routine patrol and while commuting to and from his residence. He intentionally utilized incorrect CAD statuses, provided improper reporting locations, and failed to immediately respond to calls for service....

<sup>9</sup> RATER COMMENTS: To justify overall rating.  
Trooper Anderson is a true leader, hard worker, and is dedicated to his job. Rick takes pride in his work and has continued to improve on setting goals for himself....

<sup>10</sup> COMPETENCY SUMMARY  
Trooper Anderson struggles with division's core values and policy and procedures. Rick's cavalier attitude has prevented him from continuing his successful career path. He needs to take ownership of his poor decisions and the consequences of those decisions....

Moreover, when directed on cross-examination at the arbitration hearing to read aloud excerpts from his 2012-13 performance review, he did so with obvious disdain and disrespect.

formerly positive attitude toward his job to sour. This was manifested by the Grievant's apparent unwillingness to toe the line by 2013.

We all know the Ohio State Highway Patrol is a para-military, safety enforcement organization that cannot accommodate troopers who are unwilling to toe the line. Regardless of an individual trooper's opinion of his or her supervisor, a trooper is required to function competently in the top-down organization that is the Division. By the time of the incident that is the subject of the instant grievance, the Grievant was no longer functioning at the high level at which he had proved himself capable in the past.

Yes, the Arbitrator finds it unacceptable that neither of the Grievant's IOC's regarding the restoration of his commuting privileges were answered. And yes, even Lt. Gockstetter, who, the record shows, was trying to work positively with the Grievant, did not get back to the Grievant with a date certain for the restoration of the Grievant's commuting privileges.

The Grievant understandably was aggravated by the lengthy loss of his commuting privileges, and understandably further aggravated by the lack of a date certain when his privileges would be restored. But the

Grievant knows that the tenet of both a para-military organization and a labor-management relationship is to “work now, grieve later.”<sup>11</sup> In the context of the instant matter, the Grievant should not have taken his patrol car home on July 1, 2013. While it is impossible to know exactly what went into the Grievant’s decision to do so, looking at the decision even in a light most favorable to the Grievant, he felt he was entitled to take the car because the 2<sup>nd</sup> Quarter had ended and he knew his 2<sup>nd</sup> Quarter TEV numbers would be satisfactory. Common sense, however, tells us that the Grievant’s commuting privileges would not be automatically restored the moment *the Grievant* concluded his 2<sup>nd</sup> Quarter TEV numbers were satisfactory. Rather, the restoration would occur upon administrative release of the 2<sup>nd</sup> Quarter TEV numbers<sup>12</sup> and someone in the Grievant’s command structure informing him his privileges were being restored.

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<sup>11</sup> See, e.g., *Multi-County Correctional Center and FOP Ohio*, 124 LA 1519 (Bordone, 2007):

It is a well-established principle that employees (1) must obey management’s order and carry out their job assignments, even if such assignments are believed to violate the agreement, and (2) then turn to the grievance procedure for relief.

<sup>12</sup> The record indicates the Grievant knew the 1<sup>st</sup> Quarter TEV numbers were released on approximately April 18, 2013.



**The Grievant wrote in the instant grievance in pertinent part:**

**[T]he entire issue arose when the employer violated the contract by withholding access to my patrol car for transportation to and from my home in violation of article 25.02.**

**It appears that because the Grievant believed the Division had violated Article 25.02, the Grievant felt he was entitled to the self-help of choosing to take his patrol car home on July 1. Self-help, however, violates the tenet of “work now, grieve later.” The Grievant violated the chain of command when he resorted to self-help.**

**The Union questions the existence of an actual order to the Grievant depriving him of his commuting privileges. While there is no written order in the record, just from the Grievant’s repeated queries to his supervisors asking when his commuting privileges were going to be restored, it is clear the Grievant knew his commuting privileges had been revoked and not yet restored. And despite his asking various supervisors if his privileges would be restored on July 1, 2013, the Grievant admits no supervisor answered “yes” to that question. Rather, the supervisors that responded told him his privileges would be restored after it had been determined his 2<sup>nd</sup> Quarter TEV numbers were satisfactory. By no stretch**

of the imagination except the Grievant's, can it be said that had occurred by July 1.

Accordingly, it is clear from the record that the Grievant violated Rule 4501:2-6-02(Y)(2) Compliance to Orders. As accurately stated in AI #2013-0452, the Grievant "failed to follow a directive regarding commutation privileges to and from [his] residence in a state vehicle."

The question of whether a ten-day suspension was appropriate under all the circumstances is largely governed by the fact the Grievant was under the strictures of a Last Chance Agreement. Pursuant to that Last Chance Agreement, the State could have terminated the Grievant's employment. The State chose instead to issue a ten-day suspension. Under all the circumstances of this matter, that discipline was appropriate and not arbitrary, capricious, or discriminatory.

#### **AWARD**

For the reasons stated above, the grievance is denied.

The State has proven it had just cause to issue the Grievant a ten-day suspension.

June 19, 2014

Susan Grody Ruben  
Arbitrator