

Thomas J. Nowel
Arbitrator and Mediator
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In The Matter of a Controversy Between:)	Grievance No.
)	15-03-20140613-
The Ohio State Troopers Association)	0058-04-01
)	
and)	ARBITRATION
)	OPINION AND
Ohio Department of Public Safety, Division)	AWARD
Of the Ohio State Highway Patrol)	
)	Date:
Re: Disciplinary Suspension)	December 3,
Jennifer L. Beuck)	2014

APPEARENCES:

Elaine Silveira, Esq. for the Ohio State Troopers Association; Lieutenant Jacob D. Pyles for the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol; and Robert Patchen for the Ohio Office of Collective Bargaining.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the Ohio State Troopers Association and the State of Ohio, Department of Public Safety, Division of the Ohio State Highway Patrol. The parties are in disagreement regarding the disciplinary suspension of Jennifer L. Beuck who is assigned as a Dispatcher at the Sandusky Dispatch Center. The Grievant was suspended for one day without pay effective June 19, 2014. The suspension was appealed through the Grievance Procedure, and, when the Employer denied the grievance, the matter was appealed to arbitration.

The Arbitrator was selected by the parties, pursuant to Article 20 of the collective bargaining agreement, to conduct a hearing and render a binding arbitration award. The matter is arbitrated pursuant to Section 20.12 of the Agreement. The parties agreed that the Award would be issued not later than December 5, 2014. Hearing was held on November 25, 2014 at the offices of the Ohio State Troopers Association. At hearing the parties were afforded the opportunity for examination and cross examination of witnesses and for the introduction of exhibits. Witnesses were sworn by the Arbitrator. No procedural issues were raised by the parties.

ISSUE

The parties agreed to the Statement of Issue as follows. "In conformance with Article 20, Section 20.08 of the Collective Bargaining Agreement the parties submit the following statement of issue for resolution by the arbitrator. Was the

Grievant issued a one (1) day suspension for just cause? If not, what shall the remedy be?"

WITNESSES

TESTIFYING FOR THE EMPLOYER:

Sergeant Jennifer L. Burkhart, Administrative Investigation Unit
Matthew R. Leite, former Dispatcher and currently Motor Carrier Inspector

TESTIFYING FOR THE UNION:

Jennifer L. Beuck, Grievant

GRIEVANCE

The grievance of Dispatcher Beuck states as follows. Alleged contract violation: 19.01 & 19.05, Just Cause/Progressive Discipline. Grievance Facts: On June 5, 2014, I was informed that I am being suspended from my employment with the Ohio State Highway Patrol. This was for an alleged violation of Rule 501.01-15, improper release of LEADS information. I maintain that this discipline is being levied without just cause and it is not progressive in nature. The discipline is not progressive as I have no discipline on my department record with the division. Requested Remedy: I request that the discipline be reduced to a reprimand, which will be commensurate with the offense.

DISCUSSION AND OPINION

The Grievant has been employed as a Dispatcher for the Ohio State Highway Patrol for approximately two years. Prior to her employment with the Highway

Patrol, the Grievant was a dispatcher for the Sandusky Police Department for seven years. As a Highway Patrol dispatcher, the Grievant is LEADS certified and has held this certification for approximately ten years. The Grievant has not received any form of discipline as an employee of the Highway Patrol. She is assigned to the Sandusky Dispatch Center, and, on the day in question, April 13, 2014, the Grievant was handling calls for the Fremont post. Two other dispatchers were on duty in the dispatch center. The Grievant's son arrived at the center to retrieve his credit card which had been left in his mother's vehicle. The Grievant escorted her son into the dispatch center in order that he have an opportunity to see her workplace as he had never visited the facility. The Grievant showed him the computers and explained her duties. The Grievant was in the process of faxing a LEADS printout to a unit, and she explained the process of providing background information to an officer who is involved in an investigation. She handed the LEADS printout to her son and explained the information contained in documents which involve suspensions and other relevant data. The Grievant's son looked at the document for one minute or less and noted that it contained, in bold print, the suspensions of the subject. He then handed it back to his mother. Her son was in the center between five and ten minutes. The Grievant's son was nineteen years old at the time of the incident and had three pending felony charges. The other dispatchers in the center were concerned that the Grievant allowed her son to view a LEADS document in violation of policy, and later in the day Dispatcher Leite reported to the supervisor, Sergeant Wentworth, what had occurred. Dispatcher Leite reported that he observed the Grievant showing her son the LEADS document and that she had explained the listed

suspensions. Leite also expressed his concern that there were criminal charges pending against her son at the time of the incident.

Sergeant Jennifer Burkhart, a member of the Administrative Investigative Unit, was assigned to conduct an investigation of the incident. Sergeant Burkhart testified at hearing that she interviewed all involved including the Grievant who essentially confirmed her actions concerning her son. The facts regarding the incident are generally not in dispute. Sergeant Burkhart testified that LEADS control was informed of the incident, and she contacted the Erie County Prosecutor's Office who advised that the matter should be investigated internally. Testimony at hearing indicated that the Prosecutor's Office declined to prosecute over the incident. Dispatcher Leite testified at hearing that he believed the incident was a major violation of the LEADS policy and protocol.

The Employer argues that the actions of the Grievant are a significant violation of Rule DPS 501.01 – 1.15 which states “LEADS information may only be shared for criminal justice purposes.” The policy stresses that “Practitioners have a responsibility to assist in maintaining the security of LEADS and the information it contains.” Although the Grievant had previously been LEADS certified, she participated in LEADS training at the Highway Patrol. The training manual states that one must “Use LEADS appropriately for criminal justice purposes only.” And “Responsibilities apply to each individual.” The training manual states further that a LEADS user must “not share information with persons outside criminal justice such as friends, family, acquaintances, or strangers.” The Employer argues that the Grievant violated the public trust. The Employer states that its discipline grid

allows for verbal reprimand to removal for first offense of violation of the LEADS policy. In this case, the Employer determined that a one day suspension was the appropriate penalty in light of the felony charges which were pending against the Grievant's son when he was permitted to view the LEADS document. The Employer asks that the discipline be sustained and grievance denied in its entirety.

The Union argues that a one day suspension is excessive and a violation of the progressive discipline provision in the collective bargaining agreement. The name of the individual on the LEADS document was never discussed and was never connected to the Grievant or her son. Neither the Grievant nor her son used the information on the LEADS document for anything. No information was leaked. The Grievant is only guilty of an error in judgment. The Grievant has been a dispatcher in various law enforcement departments for fourteen years and has been LEADS certified for many years. She has no record of discipline with the Highway Patrol. The Grievant simply wished to allow her son to see her work location with a brief explanation of her responsibilities including the use of LEADS. The Union argues that there is no violation of the public trust. Further, while it is true that felony charges were pending against the Grievant's son, he entered a diversion program in lieu of prosecution. The Union argues that the Employer's investigation was flawed when the investigator failed to consider the background of the felony charges which were pending against the Grievant's son at the time of the incident. The Union argues that the one day suspension of the Grievant is a violation of the progressive discipline provision of the Agreement and asks the Arbitrator to grant the grievance.

The facts regarding the incident on April 13, 2014 are not in dispute, and the Grievant was forthcoming during the Employer's investigation. The leaking of LEADS information and the sharing of said documents have the potential to cause significant harm to individuals and to the criminal justice system. The Grievant has been LEADS certified for years and is knowledgeable and experienced. The LEADS training, which was provided by the Employer, is thorough and clear in its message regarding the use of documents contained in the LEADS system. The investigation conducted by the Employer was thorough, balanced and fair. Neither the Union nor Grievant question the appropriateness of discipline but instead challenge the level of penalty. The Union's argument, that the incident involved a momentary error in judgment, holds merit. No harm came to the individual, whose record was contained on the LEADS document, and the criminal justice system was not compromised. There is no evidence that the Grievant or her son disseminated information contained on the document. The document was in the son's possession for one minute or less. The fact that three felonies were pending at the time of the incident is not controlling in this case in that his viewing of the LEADS document had nothing to do with his pending legal issues, but the Employer stated that it imposed the one day suspension, as opposed to a lesser penalty, based on this circumstance. Neither he nor his mother were attempting to gain advantage regarding his court case. If this had been the case, a greater disciplinary penalty would have been appropriate. This was a matter of a mother showing her son the workplace and the tools of her trade. This was nevertheless a violation of the LEADS policy, and the Grievant should have known better based on her training and

experience. The Union argues that the discipline grid is not a negotiated document and is unilaterally imposed. While this is true, and the Employer retains the right to promulgate reasonable rules, the discipline grid for a violation of the LEADS policy closely parallels the progressive discipline provision of the Agreement, Section 19.05. The Employer's discipline grid allows for a great deal of flexibility for a first offense, "verbal to removal." This is appropriate based on how a violation might impact an individual or the criminal justice system. In this case, the actions of the Grievant had no impact at all. It is also to be noted that a second offense may result in removal. The Grievant is on notice, but she testified to her error in judgment and stated that she "would not do this again." The satisfactory performance evaluation of the Grievant is duly noted. If progressive discipline is to be corrective in nature, the Union's argument has substance in this case, and the Grievant has learned a hard lesson. The Union's argument, that the one day suspension is not for just cause and a violation of progressive discipline, Section 19.05, is meritorious. The grievance is granted. The discipline of the Grievant is hereby reduced to a written reprimand, the second step on the discipline grid. She is to be made whole regarding lost wages, and the personnel record will reflect a written reprimand.

AWARD

The grievance is granted. Discipline of the Grievant is reduced to a written reprimand.

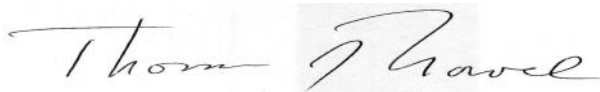
Signed and dated this 3rd Day of December, 2014 at Cleveland, Ohio.



Thomas J. Nowel
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd Day of December, 2014, a copy of the foregoing Award was served by way of electronic mail upon Elaine N. Silveira, Esq. for the Ohio State Troopers Association; Lieutenant Jacob D. Pyles for the Ohio Department of Public Safety, Ohio State Highway Patrol; and Alicyn Carrel for the Office of Collective Bargaining.



Thomas J. Nowel
Arbitrator