

Decision and Award in the matter of Arbitration between:

The State of Ohio, Department of Public Safety-Ohio State Highway Patrol
Division (Ohio Investigative Unit)

And

The Fraternal Order of Police/ Ohio Labor Council, Inc.
Unit 2

Case # 15-03-20130325-0020-05-02

Grievant: Timothy Gales

E. William Lewis, Arbitrator

Hearing dates: September 4, 2014
September 19, 2014

Dates Briefs received: October 28, 201

Date Decision issued:

November 24, 2014

Representing the Employer:
Lt. Cassandra Brewster, OSHP
Office of Personnel & Prof. Stds.
1970 West Broad St., 4th Floor
Columbus, Ohio 43223

Representing the Union:
Mr. Paul Cox, Chief Counsel
FOP/OLC, Inc
222 East Town Street
Columbus, Ohio 43215

By mutual agreement the Hearings were held on September 4, 2014 and September 19, 2014, at 10:00am. The Hearings were held at the Office of Collective bargaining, at 1602 West broad Street, Columbus, Ohio.

In attendance for the Employer:

Lt. Cassandra Brewster	Advocate, OSHP
Ms. Aimee Szczerbacki	2 nd Chair, OCB
Mr. James Hogan	Legal Office, OCB
SLT. Heidi Marshall	OSHP
Lt. Jacob Pyles	OSHP

Employer witnesses on 9/4/14:

Ms. Angelia Copley	Bureau of Motor Vehicles
Supervisor-Investigation	
Mr. Darren Lucas Investigations	BMV-Chief of
Ms. Bashira Hassanali	Sprint Store Manager
Mrs. Tahara Williams	Purchaser
Tpr. Tammy Getz	OSHP--Investigative Unit

In attendance for the Union:

Mr. Paul Cox	Advocate, Chief Counsel
Mr. Douglas Behringer	Staff Representative, FOP
Ms. Renee Engelback	Paralegal, FOP
Mr. Curtis Hundley	Associate, FOP

Mr. Timothy Gales	Grievant
Mr. Patrick O'Dowd	Enforcement Agent, OIU
Union witnesses on 9/19/14:	
Mr. Patrick O'Dowd	Enforcement Agent
Mr. Timothy Gales	Grievant
Employer witness on 9/19/14:	
LTC. George J. Williams	OSHP
Tpr. Tammy Getz	OSHP--Investigative Unit
The parties were asked to submit exhibits into the record. The following were submitted as Joint Exhibits:	
Joint Exhibit #1	Collective Bargaining
Agreement	2012-2015-between
the State of Ohio/	Fraternal Order of
Police/OLC	
Joint Exhibit #2	Grievance Trail--Timothy Gales
Joint Exhibit #3	Discipline Trail-Notification of
Pre-disciplinary Conference	Administrative
Meeting Officer's	Notice, Pre-disciplinary
Charges, Removal	Report, Statement of
Record	Letter, Department
Joint Exhibit #4	Department of Public Safety

Work Rules-
authenticity)

Sworn Personnel(for

The following were submitted as Management Exhibits:

Management submitted 45 Exhibits, I will list those that are referenced within the body of this document.

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Management Exhibit #5 Criminal Investigation interview
of Ms.

Hassanali by Tpr.

Getz
Management Exhibit #6 Copy of Checks equaling
\$15,450 to

Timothy Gales

from Mrs. Tahara

Williams

Management Exhibit #8 Text between Mrs. Williams &
Timothy

Gales

Management Exhibit #9 Criminal Investigation interview
of

Mrs. Williams by

Tpr. Getz
Management Exhibit #13 Spreadsheet developed by Tpr.
Getz

identifying the

vehicles involved in the

Criminal

charges brought against the

Grievant, for

selling motor vehicles

without a

license(backed up

through various

Management Exhibits,

ranging from

ME-14 through 21)

Management Exhibit #22

Criminal Complaint against

Timothy	Gales for having
more that five casual	sales of salvaged
vehicles in a year	
Management Exhibit #23	Criminal Complaint against
Timothy	Gales, for having
more than five casual	sales of an
original titled vehicle within	one year
Management Exhibit #31	Audit Report of Agent Timothy
Gales	use of the Ohio
Law Enforcement	Gateway System
Management Exhibit #35	INDICTMENT FOR:
Theft(2913.02	R.C.) (F-5)(1
count)-1/22/13	
Management Exhibit #36	Administrative Investigation(AI)
#2012	-0586, Timothy
Gales	AI #2013-0059, Timothy Gales
Management Exhibit #37	Ohio Investigative Unit(OIU)
Management Exhibit #38	401.01-LEADS
Policy #	ures- C. Access
Operations & Proced-	LEADS/OHLEG Procedures,
to LEADS/OHLEG	by Timothy Gales
Management Exhibit #39	
read	CD recording of Pre-disciplinary
on 6/10/2008	
Management Exhibit #40	
Hearing	

The following were submitted as Union Exhibits

Union Exhibit #1	Management Exhibit #35,
with	
verdict	Attached Jury
Union Exhibit #2	Franklin County Court
dismissal entry	
ORC 4717.02 (A)(6)	For violation of
Union Exhibit #3	Franklin County
Court-Judgment and	
Entry-violation of ORC	And Sentence
Misdemeanor-	4738.15, Minor
Records	Maintenance of
Union Exhibit #4	Memo from Patrick O'Dowd
to Timothy	
OHLEG use, dated	Gales regarding
Union Exhibit #5	5/27/13
Usage-work	Memo-2/27/13-OHLEG
Union Exhibit #6	Purposes only
Arbitrator Harry	Arbitration issued by
Timothy Gales, Grievant.	Graham-re:

ISSUE:

The parties stipulated to and issued a joint Statement of Issue, which reads as follows:

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

RELEVANT CONTRACT LANGUAGE:

ARTICLE 18 - ADMINISTRATIVE INVESTIGATION

Section 18.09 Off-Duty Status

Disciplinary action will not be taken against any employee for acts committed while off duty except for just cause.

Section 18.10 Criminal Investigation Disposition

When the Department has initiated a criminal investigation to parallel an administrative investigation, the Employer shall notify the employee of the disposition of the criminal investigation.

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ARTICLE 19 - DISCIPLINARY PROCEDURE

Section 19.01 Standard

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

Section 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 the 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 of 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.

BACKGROUND:

The Ohio Department of Public Safety(DPS), Ohio Investigative Unit(OIU), hereinafter known as the Employer/DPS, provides law enforcement services in accordance with Title XLIII(43) of the Ohio Revised Code(ORC), and for food stamp alleged violations. The Fraternal Order of Police, Ohio Labor Council, hereinafter known as the Union/FOP, represents the Enforcement Agents of the Ohio Investigative Unit.

The alleged incidents involved in this case resulted in the termination of OIU Enforcement Agent Timothy Gales, on March 21, 2013. He was

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charged with a number of violations related to the buying and selling of vehicles from the Columbus Police Department's auto auction. Mr. Gales was a twenty nine year employee of the State of Ohio.

In August 2012, a person brought a title to be transferred to the Bureau of Motor Vehicles(BMV), Alum Creek office. The title was notarized by a person named Grace Terry. Grace Terry was a notary who had several criminal charges pending. Coincidentally, the previous owner of the vehicle was Enforcement Agent Timothy Gales. Mr. Gales had been previously charged with selling salvage motor vehicles without a license. This title was forwarded to the BMV's Investigative Unit.

The BMV's Investigative Unit ran a two year review of Timothy Gale's buying and selling activities. Per Management Exhibit #36, this review was conducted to determine if any criminal violations had occurred. It was determined that during the review period, Mr. Gales had bought and sold a number of salvage titled vehicles, and seven originally titled vehicles, without a license, in violation of the law. These alleged law violations by Mr. Gales, were forwarded through channels to the OSHP, Office of Investigative Services.

Also, during the month of October 2012, a Mrs. Tahara Williams arrived at the BMV's Alum Creek office to file a complaint against Mr. Gales. She claimed that she gave Mr. Gales a check for \$15,450, to purchase four vehicles from the Columbus Police Department. The complaint alleged that Mr. Gales only purchased two vehicles, and failed to give her back the money for the difference(ME-37). These allegations were also forwarded to the OSHP, and Mrs. Williams was put in touch with Tpr. Tammy Getz, of the Investigative Unit.

As a result of Tpr. Getz's investigations of the alleged illegal vehicle sales, and Mrs. William's claim of theft by Agent Gales, criminal charges were brought against him(ME-22,23,35,36,37). Furthermore, through Tpr. Getz's investigation, it was alleged that Agent Gales misused the Ohio Law Enforcement Gateway System(OHLEG)(ME-31,36).

The Ohio State Highway Patrol's investigation resulted in Enforcement Agent Gales being charged criminally. He was charged with a 1st degree

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and a 2nd degree misdemeanor for not having a required Dealer's License for the sale of the vehicles. He was also indicted on a theft offense, a 5th degree felony(ME-22,23,35).

Timothy Gales was placed on Administrative Leave, with pay, on September 16, 2012. There were two separate AI's conducted, one regarding the vehicle sales and the OHLEG misuse, and another, regarding the alleged theft complaint brought by Mrs. Williams(ME-36,37). These AI's resulted in Enforcement Agent Gales being charged with violating Ohio Department of Public Safety Work Rules. They are Work Rule # 501.02(H)(1) conduct Unbecoming an Officer, and 501.02(W)(2) Compliance to Orders.

A Pre-disciplinary(PD) Hearing was conducted on March 11, 2013(JE-3b). The PD Meeting Officer found just cause for discipline(JE-3c). On March 21, 2013, Agent Gales was notified that he was being terminated, effective immediately, for violation of ODPS Work Rules 501.02(H)(1) Conduct Unbecoming an Officer, and 501.02(W)(2) Compliance to Orders. It was found that as a result of AI 2012-0586, that you brought discredit to the Department when you engaged in the sale of vehicles without the proper Dealers License. It was also found that you used the Ohio Law Enforcement Gateway(OHLEG) portal for personal use. Additionally, as a result of AI 2013-0059, you brought discredit to the Department when you were indicted on one count of theft, a 5th degree felony offense(JE-3e).

A Grievance was filed on 3/23/13, by Mr. Gales. He alleged multiple violations of the CBA, specifically: Sections 18.01, 18.02, 18.06, 18.08, 18.10, 18.11, 18.09, 19.01, 19.02, 19.03, 19.05, 20.08-Section #4. Plus Article 9-Non-Discrimination. The Grievant requested to be made whole and to order the Employer to follow the CBA.

The parties agreed to waive Step 2 of the Grievance Procedure. By mutual agreement between the parties, the Arbitration Hearing was scheduled for September 4, 2014. At the Hearing, the parties stipulated to there being no procedure issues, and that the Grievance was properly before the arbitrator.

MANAGEMENT POSITION:

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On August 28, 2012, a customer of the BMV brought a title into the BMV, at Alum Creek. The title had been notarized by a Grace Terry. There were several pending criminal charges against Notary Terry, and the title transfer was forwarded to BMV's Investigative Section.

Ms. Copley, the Investigative Supervisor, will testify that she also noticed that the previous owner was Timothy Gales. Ms. Copley knew him to be an OIU Enforcement Agent, and that he had been criminally charged for selling salvaged vehicles without a license, in the past. Ms. Copley forwarded the title to the BMV's Assistant Chief, because of the notary involved and Mr. Gales previous activity involving vehicle sales.

The Assistant BMV Chief, Darren Lucas, will testify that he ran an Automated Title Processing System Records(ATPS) check, regarding Mr. Gales. The check was for a two year period between 12/10/10 and 9/8/12. The records check showed that Mr. Gales sold 23 salvaged titled vehicles and 7 original titled vehicles, during the period. Mr. Lucas will provide testimony that these sales were a violation of law. He forwarded his findings to the Chief of the BMV, and to Tpr. Tamara Getz of the Investigative Services Unit, of the OSHP.

Ms. Copley, of the BMV, will also provide testimony that she received a complaint against Mr. Gales, at BMV. Mrs. Tahara Williams, told Ms. Copley that Timothy Gales agreed to purchase vehicles for her from the Columbus Police Department. Mr. Gales, per Mrs. Williams, did not purchase the vehicles he agreed to purchase, and she was unable to get her money back from him. This complaint was also forwarded to Supervisors of the BMV.

Mrs. Williams and her daughter Bashira Hassanali, will provide testimony regarding their arrangements with Mr. Gales to purchase four vehicles.

They trusted Mr. Gales, a police officer, to make the purchase agreed to. Mr. Gales only purchased two of the four vehicles for them. He failed to return Mrs. Williams's money for the two vehicles not purchased. Mr. Gales, per Mrs. Williams gave her two personal money orders(\$650 & \$1500) that she was never able to cash.

This matter was assigned to Tpr. Getz to conduct a criminal case

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investigation on Mr. Gales. The investigation on Mr. Gales would be for the sale of the salvage and the original titled vehicles, theft of the monies taken from Mrs. Williams, and for his misuse of the OHLEG system.

As a result of Tpr. Getz's criminal investigation, and through testimony, Mr. Gales was charged with a misdemeanor of the 1st degree for Motor Vehicle Dealer Licensing--ORC 4517.02(A)(6), and a misdemeanor of the 2nd degree--ORC 4738.02(B) Motor Vehicle Salvage Vehicle Dealer's license Required. Testimony and evidence will show that the Grievant was found guilty of an amended charge of ORC 4738.02(B) Salvage Motor Vehicle Licensing Violation on March 20, 2014.

Evidence and testimony will also be provided regarding the theft of monies from Mrs. Williams. Enforcement Agent Gales gave Mrs. Williams two personal money orders equaling \$2150.00, for monies he owed her. However, Mrs. Williams could not cash them because the Grievant had not signed them. Thusly, per the DPS, Mr. Gales was indicted by the Franklin County Grand Jury on a theft offense, a felony of the 5th degree.

Furthermore, per the Employer, the Grievant misused the Ohio Law Enforcement Gateway, when he ran the records of family members and his supervisor. This was a violation of Departmental Policy INV 401.01, and a clear violation of DPS B501.02(W)(2) Compliance to Orders.

Evidence and testimony will show that Enforcement Agent Gales clearly brought discredit to the DPS. He was charged criminally for sale of vehicles without the proper dealer's license, and he failed to return monies owed to Mrs. Williams.

Due to the egregiousness of the offense, the Employer claims that they had no other choice but to terminate Mr. Gales. Therefore, the Employer asks that the arbitrator uphold the termination and deny the grievance in its

entirety.

UNION POSITION:

There are only three factual charges against the Grievant. One is that Agent Gales brought discredit to the DPS by engaging in the sale of vehicles

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without a proper dealer's license. That charge requires factual support that the Grievant did violate the statutes. Proof that there was a sale involved in the transfer, and that he needed a proper dealer's license. The union argues that he does not need a license for any of the transactions that he is accused of. He will testify that what he did does not violate the statute, and why the charges are not correct.

The second factual charge is that he was found to have used OHLEG for personal use. At the time of the allegation for OHLEG misuse he believed that they were not in violation of Departmental Policy. In order for him to be found guilty of a OHLEG violation they must prove that; (1) he knowingly violated a policy that he should have been aware of, and (2) he was aware of the policy he violated, argues the Union.

The final charge of violation is that he was indicted for a criminal offense of a 5th degree felony, and that indictment brought discredit to the Department(JE-3(d)(e)). It is possible, after a conviction of a 5th degree felony, that the conviction was just cause for their actions. An indictment is not fact so far as to the guilt or innocence of an employee. If the arbitrator permit's the Employer to fire an employee just because of an indictment, when no guilt has been determined, they would be allowed to do something that is highly improper. A mere indictment is not evidence of guilt, claims the Union. An indictment is not just cause for termination or any other form of discipline. At the time that they took action on March 1 and March 21, 2013, whether they charged him with anything other than being indicted, the notice that terminated him, was simply a charge of being indicted(JE-3(d)(e)).

Arbitrator Graham ruled on a similar case involving Mr. Gales dealing automobiles without a license. Arbitrator Graham decided that case adversely to the Employer. The exhibits given to the Grievant on March 1 and 21, contained the reasons why he was removed. Arbitrator Graham's Award is a notice to the Employer that they ought to take into account the

issues that were raised by the Grievant, in that case. Because of Arbitrator Graham's decision the Employer is obligated to address his decision. It is mutually binding, declares the Union.

There is no allegation that there are any prior disciplines involved in any of

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these three alleged charges. Therefore, the Employer violated Section 19.05 of the CBA. They must show that they complied with the progressive discipline required in Section 19.05.

As of March 1 and 21 of 2013, there are three charges made by the Employer, and therefore, at that time, he violated the rules cited then, and he should be terminated. There is no way the arbitrator can find him guilty of the factual charges made. One, that of transferring vehicles without a required dealer's license; and two-using the OHLEG portal, when he knew or should have known that he was not allowed to do so; and third- firing someone for a mere indictment. On March 21, 2013, they only charged him with being indicted, without evidence of conviction.

The union requests that he be restored to his job with full back pay and benefits.

DISCUSSION:

As stated in Dr. Graham's decision the reason the Grievant was terminated for work rule violations, was that the DPS believed he violated ORC Law(UE-6). As in this case, except for the alleged OHLEG violation, the Grievant was criminally charged with ORC violations, that led to the allegations that Work Rules were violated. Therefore, the arbitrator will address the incidents that led to the Administrative and Criminal charges that were incorporated into the Work Rule violations.

With regard to the sale of vehicles without a proper dealer's license, the Grievant denies that any of the transactions violated the statutes contained in the charges. It is concerning to the arbitrator that there were no interviews of Mr. Gales regarding the transactions(sales), as to his explanation of the activities.

The Grievant is charged with three infractions that led to the discharge. He was charged with violating Work Rules #501.02(H)(1) Conduct Unbecoming

an Officer, and #501.02(W)(2) Compliance to Orders. The first specific charge was that the Grievant engaged in the sale of vehicles without a proper dealer's license, an alleged criminal violation of the Law(ME-22,23). The second, an Administrative violation of a Policy that

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restricts the use of OHLEG to purposes of criminal justice only. And third, another alleged criminal violation of the law, for being indicted on one count of theft, a 5th degree felony charge(ME-35).

Regarding the sale of vehicles without a proper license, we must first examine the environment in which these activities occurred. Mr. Gales, per his testimony and submitted evidence, has been purchasing vehicles from the Columbus Police Department's auction for over twenty years(UE-6). This activity, per the Grievant's Hearing testimony and Arbitrator Graham's case, has been a hobby. These vehicles have been disposed of by the Grievant through various means throughout the years. On two previous occasions, 2002 and 2005, the Grievant was criminally charged with the sale of these vehicles without a license, per evidence and testimony. Neither of the two previous criminal charges resulted in a conviction. In fact, Mr. Gales was terminated in August 2005, and reinstated through Arbitrator Graham's decision on August 23, 2006(UE-6). Which, by the way, contained an arbitral warning about a potential risk of violating Ohio Revised Codes, in the future.

The criminal charges against Mr. Gales regarding the "sale" of motor vehicles without a license were two fold. The Employer alleged that he made more than five casual sales of originally titled vehicles without a license. A violation of ORC 4517.02(A)(6). And a violation of ORC 4738.02(B), by selling salvaged motor vehicles without a license(ME-22,23). Evidence was submitted showing that the Grievant was involved in the alleged sale of 7 initially titled vehicles in a twelve month period. If so, this was violation of ORC 4517.02(A)(6)-(ME-13). Also, evidence was submitted alleging that the Grievant sold 11 salvaged motor vehicles in a twelve month period. If so, this violated ORC 4738.02(B)-(ME-13). ME-13 is backed up by specific titles in other Management Exhibits. The specific vehicles identified in ME-13 that are involved in these transactions are not in dispute.

In following the evidence and testimony that led to the criminal charges, and thusly, discipline, the arbitrator must first examine the vehicle "sale"

allegations. ME-13 summarized the originally titled vehicles and the salvaged vehicles in question. These title transactions are backed by a # of

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Management Exhibits showing the ATPS research results run by the BMV, and copies of the title transfers themselves.

The seven originally titled vehicles identified in ME-13 are: a 1996 Ford CGL, 1994 Ford TAG, 1996 Ford CVP, 1995 Chevrolet Lumina, 1999 Chevrolet L/S, 1999 Chevrolet Malibu, and a 1998 Ford TSE. Two of the vehicles "sold" in this twelve month period were sold to family members(sisters) of the Grievant(ME-36). Management Exhibit #23, criminally charged Mr. Gales with violating ORC 4517.02(A)(6), by making more than five casual sales in a twelve month period, without a license. The title transfer, in itself, is not necessarily considered a sale. A title transfer to a family member does not constitute a sale, per BMV testimony introduced and considered in Arbitrator Graham's decision(UE-6). Also, per Arbitrator Graham's discussion in his decision, there must be consideration involved in the transaction. Exclusive of the consideration factor, deducting the two family member transactions, Mr. Gales would not have violated 4517.02(A)(6). Furthermore, the Court did not find him guilty as charged, of violating 4517.02(A)(6), by selling more than five vehicles without a license.

Next I will address the eleven salvage titled vehicles "sold" between 3/30/11 and 1/9/12(ME-13). Again, the specific vehicles listed are not in dispute. The Grievant was criminally charged for violating ORC 4738.02 by selling the vehicles(ME-22). None of the vehicles were sold to family members. Of the eleven vehicles involving a title transfer, four of the purchasers were not found by the OSHP Investigator, and/or not interviewed(ME-15,17,18,20).

The Grievant claims that the vehicles identified in ME-11, and the charged vehicles summarized in ME-13 are covered in ORC 4513.61 & 62. They are impound vehicles and not salvaged as defined in ORC 4738.01(B). He alleges that none of the salvaged vehicles he transferred were wrecked, dismantled, in a worn out condition, or unfit for operation. Therefore, they do not require a license, per Mr. Gales's testimony. However, in reviewing ORC 4513.61 & 62, there is no specific reference to a license requirement, one way or the other. On the other hand, testimony from the BMV's

Investigative Section Chief identified the need for a license to sell both types of salvaged vehicles.

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Therefore, the arbitrator will examine the salvage vehicles in question on the basis of the criminal charge of a violation of ORC 4738.02, of selling without a license. The examination will also include the criteria for a sale contained in Arbitrator Graham's decision(UE-6).

Regarding the four vehicles sold or transferred where there was no interview of the buyers, the only evidence of a purchase price was found on the Titles. None of those vehicles showed evidence of consideration(profit)(ME-13). Therefore, with the only evidence being submitted was the title work, the arbitrator will not include these vehicles as counting as anything but a transfer, not a sale. These vehicles are a 1996 Ford Explorer, a 2002 Dodge Stratus, a 1999 GMC Denali, and a 1999 Oldsmobile Intrigue.

The remaining seven vehicles titled as salvage vehicles will be examined for compliance with the criminal charge and Arbitrator Graham's criteria(ME-13;UE-6). The first vehicle, is a 1997 Chevrolet GMT400(ME-14). This vehicle was purchased by Timothy Gales for a total of \$800.63, and the title was transferred to a Rigoberto Umana, which showed he paid \$875.00, a profit of \$75.00(ME-13).

Vehicle #2, a 2002 Ford Taurus(ME-16). The vehicle was purchased by Timothy Gales for a total cost of \$773.94. Although the title work showed the buyer paying \$0.00, she was interviewed by Tpr. Getz. The buyer stated that she gave Mr. Gales \$1200.00, which included a repair cost for a cracked windshield(ME-16). A profit for Mr. Gales of \$226.06.

Vehicle #s 3,4,5,6- titled from Mr. Gales to Darlene M. Smith(ME-19). An interview was conducted by Tpr. Getz and evidence recorded(ME-19). There were a total of four vehicles purchased by Timothy Gales for Ms. Smith, with the total purchase price, including tax of \$7045.50. Although Ms. Smith stated in her interview that she believed that she gave Mr. Gales \$7500.00, she stated it was not a definite number. Pages 16 and 17 of ME-19, show copies of checks from the buyer to Mr. Gales in the amount of \$6375.00. Although the Employer's Brief claims that Mr. Gales profited on this transaction in the amount of \$2000.00, submitted evidence does not clearly support the claim(ME-19,13;EB-pg.14). If in fact, which has not been established by evidence, Ms. Smith gave Mr. Gales \$7500.00, page 5

of ME-19 shows repair expenses possibly incurred by Mr. Gales. The Employer has failed to prove to the arbitrator's satisfaction, that this was a sale for profit by Mr. Gales.

Vehicle #8, a 2002 Chevrolet Impala(ME-21). The buyer was located and interviewed and she claimed to have paid Timothy Gales \$1500.00. Mr. Gales purchase price with tax was \$560.44(ME-21). According to submitted evidence, Mr. Gales profited through this transaction in the amount of \$939.56.

According to the Arbitrator's review of the evidence, Mr. Gales received consideration or profit in only three of the eleven salvage vehicle title transactions. According to Arbitrator Graham's 2006 decision a title transfer does not qualify as a sale without consideration(UE-6). Therefore, without exceeding five casual sales, the Grievant did not violate ORC 4738.02, in the arbitrator's opinion. Furthermore, Mr. Gales was not found guilty of selling motor vehicles without a license, by the Franklin County Court. The Court's final disposition of this criminal charge was a Minor Misdemeanor of failing to maintain good records(UE-3).

It is alleged that as a result of the criminal investigation of the Grievant, Tpr. Getz ran an OHLEG audit of him(ME-31). This audit showed that on five occasions between 12/22/11 and 7/5/12, Enforcement Agent Gales ran a check on four family members and a co-worker(ME-31). This activity is prohibited according to Ohio Investigative Policy # : INV 401.01(ME-38). According to Section C. (1) "access to any criminal justice system such as LEADS/OHLEG, is restricted to law enforcement personnel for criminal justice purposes only". Section C. (3) states that improper use of or dissemination of information obtained will result in progressive departmental discipline as appropriate.

Union witness, Patrick O'Dowd, was the Assistant Agent-in-Charge for the OIU from 2006 to 2010. He testified that when OHLEG was first introduced in 2008, Agents were encouraged to practice navigating the data base by running relatives. His testimony was substantiated by a memo from him to Tim Gales, albeit, dated 5/27/13(UE-4). It is clear that Agent Gales received and read Policy 401.01 on June 10, 2008(ME-31). The OHLEG hits by Agent Gales between December 2011 and July 2012, would not in

the arbitrator's opinion, still reflect the need for practice activity. Attachment E of ME-36, the first AI, shows that Agent Gales was very familiar with using OHLEG for criminal justice purposes. However, there was no testimony or evidence to connect his misuse to criminal or any other intended harm. Therefore, progressive discipline should have been instituted per Policy 401.01 (C)(3).

Finally, the arbitrator will address the last charge brought against the Grievant as contained in AI #2013-0059. The Grievant was charged with bringing discredit to the Department when he was indicted with one count of theft, a 5th degree felony offense(JT-3e). The indictment led to a jury trial which resulted in a verdict of not guilty, on February 11, 2014(UE-1). It is agreed, that a mere indictment as the Union argues, is not proof of wrong doing. However, it is a preliminary court charge of suspected wrong doing. It would be inappropriate for the arbitrator to disregard the jury verdict of not guilty on the 5th degree felony charge of theft, even with all the evidence and testimony submitted by Management. However, there is a nexus between off-duty behavior and professional responsibility and duties of a police officer(M Brief, pg43;E&E¹). Especially when the police officer makes it known that he is a police officer(ME-3). Therefore, the arbitrator will examine the activities and behavior of Enforcement Agent Gales that occurred surrounding the indictment charge, relative to the discrediting of the Department.

According to evidence and testimony, Mr. Gales established a relationship with Ms. Hassanali, at her workplace(ME-3). Per her unrefuted testimony, Mr. Gales made it known to her that he had access to vehicles at a substantially reduced price. This was through the Columbus Police Department's impound lot. He could get vehicles at 50% below the "blue book" value(ME-3).

The commencement of the transactions for Mr. Gales to buy four vehicles for Mrs. Williams began with Mrs. Williams giving Officer Gales checks for \$15,450, on 8/23/13(ME-6). Enforcement Agent Gales stated that the vehicles and titles would be issued to him on September 2 or 3(ME-3).

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On 9/5, Mr. Gales, said he only got two of the four vehicles. An Amanti and a Lincoln, and Mrs. Williams could get the two cars on 9/6(ME-5). The

¹ Elkouri&Elkouri, 6th Ed. Pg. 1326-27; 112LA811

first

of the two vehicles was not available for pickup until September 12, and the second car had been allegedly “sabotaged” and had extensive damage. The Lincoln was not ready until October 6.(ME-3,5,8,9).

Complaints were filed by Mrs. Williams with BMV and forwarded for investigation. Allegations of theft, defrauding, and lies were made against the Grievant(ME-5,9). Testimony from Ms. Hassanali and Mrs. Williams were creditable, in the arbitrator’s opinion. Timothy Gales did discredit the Department all through these interactions with Ms. Hassanali and Mrs. Williams. One only needs to read the text messages to see that they, at minimum were given the “run-around”(ME-3,8). The reasons for the delays in getting the two vehicles to Mrs. Williams would give a reasonable person suspicions, if not disbelief. Even when Mrs. Williams picked up the Lincoln, a tire split on her way home, due the tire being mounted on the wrong rim(ME-8).

The fact that the Grievant was involved in thirty eight title transfers from the Columbus Police Department in a two year period, without profiting, is difficult for the arbitrator to fathom(ME-37). The frequency of this activity looks more like an obsession than a hobby. This is the fourth criminal allegation against the Grievant for “selling” motor vehicles without a license. In the arbitrator’s opinion, a Law Enforcement Officer should not put themselves in a situation where they could be suspected of wrong doing, a violation of their Code of Ethics.

I do not find that there exists clear and convincing proof that the charges of selling motor vehicles without a license can be sustained. Mr. Gales is a twenty nine year employee of the State of Ohio, with a clean Department Record. His offenses do not rise to the level of termination, in the arbitrator’s opinion. However, considering his OHLEG misuse and his behavior regarding the car sales to Mrs. Williams, discipline is in order.

AWARD:

The Grievant is to be considered suspended without pay from his

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termination date of March 21, 2013 through April 21, 2013. He is to be immediately restored to the same position he held before his discharge. He

is to receive all straight time wages he would have received but for this incident. Upon request from the Employer the Grievant is to supply records of all receipts for wage earnings and Unemployment Compensation, if any. The Employer may use these amounts to reduce its obligation to the Grievant. All expenditures for health incurred by the Grievant that would otherwise have been paid by Employer-provided health insurance are to be reimbursed to Mr. Gales. Appropriate seniority credit is to be restored to the Grievant. Appropriate pension contributions are to be made on his behalf as if this incident did not occur.

This concludes the Arbitration Decision.

Respectfully submitted this 24th day of November 2014.

E. William Lewis
/s/