

Arbitration Between:

Ohio Department of Public Safety, Division of the State Highway Patrol

And

Ohio State Troopers Association

Grievance of Thomas Schoenfeld; DPS-2018-03851-01

State Highway Patrol Representatives

James Thompson

Lt. Darrell Harris

OSTA Representatives

Larry Phillips

Elaine Silveira

*Witnesses for the Grievant:* Grievant, Sgt. Thomas Schoenfeld OSTA, Bruce Elling, OSTA Staff Representative

*Witnesses for the OSHP:* Sgt. Anthony Percy, Sgt. Rod Murphy

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OSHP), issued a three-day suspension to Sergeant Thomas Schoenfeld (Grievant) for a violation of Ohio State Highway Patrol Rules and Regulations, Rule 4501:2-6-02(I)(1) – Conduct Unbecoming an Officer. OSHP issued this discipline because the Grievant, while off-duty, chose to pursue a speeding motorist in order to slow him down and, while doing so, violated several traffic laws.

OSHP has employed the Grievant for five and one-half years. Before joining the OSHP, the Grievant was a police officer and a deputy sheriff for about 15 years. On August 20, 2018, the Grievant observed a vehicle on Route 35 near Jeffersonville, Ohio, traveling well above the

speed limit. With his black Dodge Charger, outfitted like a police car, the Grievant pursued the speeding driver and paced his vehicle with the motorist's vehicle to determine that the motorist was traveling at about 95 mph. The Grievant's vehicle was equipped with an onboard spotlight. Using that spotlight and his headlights, the Grievant flashed the motorist to encourage him to slow down. Although the facts are disputed as to whether the other driver pulled over and stopped or just pulled over and drove slowly on the berm of the highway, the parties agree that the Grievant rolled his window down as he approached the other vehicle and yelled, "Slow the fuck down." The Grievant left the scene and then used the median to make a u-turn and head the other way on Route 35. The other driver, Ben Miskle, had, in the meantime, called 911 because he wasn't sure if he was being followed by the police or another citizen. From the car description, Sergeant Rodney Murphy determined that it was the Grievant driving the pursuing vehicle. Sergeant Murphy called the Grievant and asked if he had followed the car on Route 35. The Grievant answered yes and admitted he should have called 911 rather than go after the speeding car himself.

Finding that the Grievant engaged in conduct unbecoming an officer, the OSHP imposed a three-day suspension on the Grievant. Other than the question of whether the Grievant's behavior caused the motorist to pull over and stop or just slow down, the facts are undisputed. The question is whether this behavior violated the rule prohibiting conduct unbecoming an officer and, if so, whether the Grievant's behavior justified the imposition of a three-day suspension.

The Grievant disputes that off-duty misconduct justifies discipline and, even if it does, argues that it does not justify a three-day suspension. He emphasizes that the conduct occurred off-duty, that he was driving an unmarked car, that he did not engage significantly with the

motorist he followed and that the citizen himself did not, on reflection, find the incident problematic.

He also noted two other situations in the recent past where other troopers engaged in similar conduct, yet received minimal discipline. He cites one case in which an off-duty officer, Bradley Baker, after observing a physical altercation during which a man struck two other people, went to his vehicle to obtain a gun, and then attempted to engage the perpetrator in further interaction even though that perpetrator was leaving the scene and Baker had already summoned the police. Baker received only a counseling for violation of work rule 4501:2-6(I)(1) Conduct Unbecoming an Officer. The Administrative Investigator, Sergeant Anthony Percy, who conducted the investigation in the Grievant's case, conceded that the behavior of Trooper Baker was much worse and more problematic than was the Grievant's in the case. The Grievant identified another case involving an off-duty trooper who initiated a traffic stop with a motorist while he was operating a marked vehicle. That trooper received only a written reprimand for his off-duty misconduct. The OSHP offered little rebuttal for these factually similar cases.

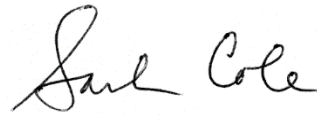
It is a basic tenet of labor law that similarly situated employees should be treated similarly. While discipline need not always be identical, an employer issuing discipline should act consistently when addressing similar situations. Here, the administrative investigator in the Grievant's case testified that he considered the brandishing of a weapon off-duty to be a much more serious infraction than the Grievant's actions in following a motorist. Yet the OSHP offered no explanation for the very different treatment.

While I conclude that the Grievant violated the rule at issue in this case, I find that the discipline was excessive and therefore reduce the discipline to a written reprimand, as well as ordering restoration of all benefits, wages, and seniority lost due to the previously instituted three-day suspension, with shift differential, if applicable.

### Conclusion

The discipline shall be reduced to a written reprimand. All benefits, seniority, wages, and shift differential, if applicable, shall be restored to the Grievant in a manner consistent with this Opinion.

April 26, 2019

A handwritten signature in black ink, reading "Sarah Cole". The signature is written in a cursive style with a large, looped "S" and a distinct "C".

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Arbitrator Sarah R. Cole