

IN THE MATTER OF THE ARBITRATION

WASHINGTON FEDERATION OF STATE
EMPLOYEES

and

AAA 75 390 00031 10
Suspension

WASHINGTON STATE PATROL

Appearances:	For the Union:	Gregory M. Rhodes, Esq. Younglove & Coker
	For the Employer:	Morgan B. Damerow, Esq. Asst. Attorney General

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the American Arbitration Association. A hearing was held in the above matter on October 18 and 19, 2010 in Tumwater, Washington. The parties were given the full opportunity to present testimony and evidence. At the close of the hearing, the parties elected to file briefs. The arbitrator has considered the testimony, exhibits and arguments in reaching his decision.

ISSUE

The parties agreed upon the following issue:

Did the Employer have just cause to issue a fifteen day suspension to Grievant? If not, what is the appropriate remedy?

BACKGROUND

The Washington State Patrol, hereinafter referred to as the Employer, provides public safety throughout the State. It employs sworn personnel and non-sworn personnel. The Washington Federation of State Employees, hereinafter referred to as the Union, represents certain employees of the State Patrol. The Agreement in effect when the grievance arose began July 1, 2007.

Grievant is employed as a Communications Consultant 1 with the Employer. He is responsible for, among other tasks, producing a daily bulletin that goes out to all employees each day. He works at the Headquarters Building in Olympia. He is a civilian employee.

There was a great deal of snow in the Olympia area during the last two weeks of December of 2009. Road conditions were not good and there were days where both the Chief of Police and the Governor recommended people stay off the road if possible. Some State Government Agencies, such as the Department of Labor allowed some its employees to leave early during some of the snow days. This Employer had a leave policy that allowed employees to leave early or stay home if they felt they could not safely come to work. Employees were required to use their annual leave to cover the absence.

The Employer hires some employees as Cadets. These are individuals who will eventually attend the Academy and become State Troopers. Often the Employer places these cadets at the front counter to greet members of the public who might come to Headquarters for some purpose. They also provide security for those working in the area.

Cadet Chatterton¹ was working at the front desk on December 17, 2009. Grievant approached him. Grievant by his own admission often complains about things. On that day, he got into a conversation with the Cadet. There is some disagreement as to who said what during the course of the discussion. Grievant appears to have done much of the talking.² Grievant expressed his displeasure that the Chief did not let non-essential employees go home as other agencies had done. The Cadet testified that Grievant said if the Chief cared about its employees it would have allowed them to leave. Grievant also got into a discussion as to whether staying posed a liability issue for the Employer if employees were injured in an accident on the way home. Grievant maintains it was the Cadet who raised the issue first and Grievant merely responded with a hypothetical. The Cadet and Ms. Geppert stated Grievant raised the issue.

Sergeant Langford, a supervisor, was not in the immediate area at the time, but did hear some parts of the conversation between Grievant and Cadet Chatterton. Exactly how much she heard is unclear. In any event, she approached Grievant and told him she wanted to talk to him in private. They moved into the lobby area away from the front desk. Grievant as they were walking asked her what he said that was not true. She did not reply, but she did tell him it was inappropriate for him to call into question the actions of the Chief and not appropriate to do so in front of the cadets. She felt they were in a very impressionable position as new employees. She testified she then told him she did not want to hear that discussion again in front of the cadets. She also stated she then repeated she did not want to hear that again without limiting it

¹ Cadet Chatterton subsequently became a State Trooper, however, for the purposes here he will be continually referred to as Cadet since that was his designation at the time in question.

² Patricia Geppert during the investigation said Grievant did most of the talking.

to the cadets. Grievant denied she made this last statement. Grievant then left Sergeant Langford and walked by the front desk area. Ms. Geppert asked what happened and Grievant responded she told him what he was saying was too sensitive for a cadet's ear.

Grievant had other conversations with Cadet Chatterton after that. Both acknowledge that. They talked about the weather, which was a common topic at the time. The amount of snow they were getting was very unusual for the area. Cadet Chatterton also testified Grievant again raised the issue of the safety of employees being on the road in that weather, and placed blame on the Chief for them being at work.

Suzee Smith is the Executive Assistant to the Chief. At some point during this timeframe, Grievant approached Ms. Smith. She said he queried her as to why the office was open. He noted that other agencies had released their employees so they must care more about their employees than the Chief. Grievant did not dispute her testimony. She then told him as he continued she did agree with him, but did not want to argue with him. He then left. The Chief was not in the office at the time of this conversation.

It was still snowing when Grievant came to work December 24. He parked his car in a temporary spot and went to Lila Kirekeby, who was his acting supervisor that day. His regular supervisor was not at work on December 24. Ms. Kirkeby was in a discussion by the water cooler with two employees, Sharon Aust, and Sylvia Lewallen. Grievant approached Ms. Kirkeby and asked her when he would be released to go home as he was parked in a temporary spot and wanted to know if needed to pay for parking. If he was going to be

leaving early, he would just leave then and not have to pay for parking. Ms. Kirkeby told him he would leave at 5:00, which was the normal quitting time. He then replied morale was low and that employees were being placed in jeopardy as a result of their being at work. He further told her he was going to talk to the Chief. She told him not to do that. As he was leaving, he told her he would then write to the Chief.

Grievant also talked to Cadet Rogers that day. The Cadet said Grievant seemed agitated. They discussed the memo that reminded employees of their right to leave early if they felt the need, but that they must use their annual leave if they do. Grievant told Rogers it was unfair to make employees use their leave to protect their own safety and the Agency did not care about them.

Ms. Kirkeby and Sergeant Langford discussed some of what transpired over these days. Sergeant Langford felt Grievant had not followed her directive. Ms. Kirkeby then determined an investigation into Grievant's actions was warranted. She reported this to her Superior, Dr. Sorensen. Dr. Sorensen agreed and appointed Gretchen Dolan to investigate. She was a supervisor as was Ms. Kirkeby. Since Ms. Dolan had no involvement in any of the incidents, he felt she could impartially investigate the situation. She immediately contacted the Grievant to notify him of the investigation. She also informed him he could not contact any potential witness to discuss the situation.

Grievant did contact Kristen Young shortly after meeting with Ms. Dolan. He asked her if she overheard any of the conversations with the different employees. If she had, he then could not talk to her. She stated she did not. He then asked her to confirm she had seen, as he was writing it, his letter to

the Chief. She confirmed that she had. Grievant testified that he realized at the end of the call it was a mistake for him to have made it.

Ms. Dolan concluded her investigation and submitted a report to Dr. Sorensen. Dr. Sorensen concluded that Grievant had violated three separate rules. Those rules in pertinent part read:

WSP 8.00.030

Employees should not engage in conduct:

c. Causes an adverse effect on the discipline or efficiency of the department.

d. Impairs their ability to perform their job.

f. Creates a hostile or discriminatory work environment.

WSP 8.00.120- Insubordination

(I)(B) Insubordination is also defined as not submitting to authority, willfully disrespectful or disobedient to authority, and being rebellious.

(II)(B) Failure to acknowledge the authority of any supervisor by obvious disrespectful or by disputing the supervisor's lawful orders shall be deemed insubordination.

WSP 12. 00.020- Complaints

(G) Interference with discipline states in part:

From the time a complaint is received until a case is completely adjudicated, employees shall not exert or attempt to exert any influence on any of the participants in a departmental disciplinary procedure, except as expressly provided by regulation.

Dr. Sorensen enumerated each act where he believed Grievant had violated one or more of the Regulations. He then determined, as the Appointing Authority, that these violations warranted the imposition of a fifteen day suspension. The Union grieved that decision.

POSITION OF THE EMPLOYER

The Employer has proven the allegations against the Grievant. He admitted that he is a complainer. He made up in his mind employees should be able to leave due to the weather and then told numerous employees the Chief did not

care about their safety. He could have gone home, but instead stayed and complained. There is a chain of command which he chose not to follow. He complained to cadets. As witnesses noted, he went off on a tangent with them. He continued to do that even after he was told to stop by a supervisor.

Grievant knew he was being told to stop what he was saying yet he continued anyway. He had several later conversations with cadets raising the same issues he was told not to raise again with them. He raised those concerns with two different cadets and with other employees as well. He raised it with his acting supervisor and raised it in front of other employees. He then went to the Chief's Executive Assistant to complain about being at work. Grievant also violated 8.00.12 when he disrespected Sgt. Langford by being rebellious when they talked. This is a form of insubordination. He then immediately disobeyed her order when he talked to Cadet Chatterton as he left his meeting with the Sergeant. All of these acts violated the order he was given to cease these comments. He was insubordinate on eight separate occasions.

Grievant by his conduct violated Regulation 8.00.030. He denigrated the executive staff in front of others. His conduct with the cadets and with his superiors was unacceptable. He acted in that manner on several separate occasions. He attempted to undermine the command structure, which is so important to a paramilitary organization like this Employer. His comments presented a negative impact on impressionable cadets. His conduct also impaired his ability to do his job and impaired the ability of others to do their jobs. All of these acts violated this Regulation.

Grievant improperly contacted a potential witness after the investigation began. He did so despite being directed not to contact any potential witnesses. This violated Regulation 12.00.020. Grievant contends that he did not attempt to influence Young when he spoke to her. This is not accurate. He is a very aggressive person by nature. In that manner, he is exerting influence on anyone he contacts, including this potential witness.

The penalty imposed was appropriate. Insubordination is a very serious offense. He also violated two other rules, including a rule against contacting a potential witness. These rules apply to all employees, not just the sworn officers. Other than recognizing the impropriety of contacting Young, Grievant has taken no responsibility for his acts. The Rules sets forth 11 factors that should be met before imposing discipline. All of these factors were met and the facts here clearly warrant a suspension like that imposed.

POSITION OF THE UNION

Grievant was having a general conversation with a Cadet about the weather. Given the weather conditions, this was not an unusual discussion at this time. Grievant commented that this Department's employees were not being given the same consideration as employees of other departments. The question of liability was initially raised by the Cadet and Grievant responded with a hypothetical. Grievant was not advocating anyone should sue the Employer. Ms. Geppart did not hear anything that she felt was inappropriate. None of these comments violated Regulation 8.00.030. They did not impede the Employer's ability to fulfill his responsibilities and did not violate any of the other sub-parts of this Regulation.

Grievant's conduct towards Sgt. Langford also did not violate this Regulation. His conduct and demeanor were not disrespectful towards her. She did not feel the need to institute action against him after their discussion. None of the other incidents referenced by the Employer violated this Rule. Cadet Chatterton had no specificity as to what was said to him after the initial conversation. His brief comment to Cadet Rogers made in passing that it was wrong employees had to use their leave to go home did not violate the Regulation. His comments to Ms. Smith that some other Agencies had let their employees go and that this Department did not give its employees the same consideration was not unacceptable conduct. Similarly, his discussion with Ms. Kirkeby asking if he was going to be let go early was not improper. He merely wanted to know if he should pay for parking. Ms. Aust heard the conversation and did not see anything wrong with what was said or how it was said.

The Employer alleges several acts of insubordination. Some of these charges center around discussions Grievant's had with Ms. Kirkeby and Ms. Smith. The directive from the Sergeant was not to speak to cadets about what he felt. It did not involve discussions with these two individuals. Ms. Kirkeby was his supervisor so charging him with insubordination for talking to her is troubling.

Grievant did contact Ms. Young. He asked her first if she witnessed any of the events. She said no and he then said that was good they could talk. He did not try to influence her, which is what the Rule requires.

The Employer raised at the hearing several issues that were not listed in the letter of discipline. The Arbitrator should not consider any allegation that was not specifically referenced in the disciplinary letter.

DISCUSSION

The Employer held a predetermination meeting with Grievant. It informed him prior to that meeting of the charges against him. The Employer listed three alleged violations of the Regulation involving unacceptable conduct. It then listed eight separate allegations regarding insubordination. Finally, it included one charge for allegedly violating the rule against contact with potential witnesses. Following the predetermination hearing the Employer sent a letter to Grievant informing him of which charges it concluded were sustained. In that same letter, it notified him of his fifteen day suspension. The Union has alleged that the final letter did not contain all of the allegations listed in the predetermination notice and that were discussed during this hearing. The Arbitrator will follow the format of the predetermination letter during this discussion. If there are any charges, not set forth in the final letter, it will be addressed as that charge is discussed.

Rule 8.00.020- Unacceptable Conduct

There are several sub-parts to this Rule. Three parts of the Rule were cited as violated. Part F, one of the provisions cited, involves the creation of a hostile work environment. The Union points out that this Section concerns issues of discrimination. They are correct in this assertion. None of the acts with which Grievant was charged involved discrimination. Therefore, there is no basis to support a finding that this provision in the Rule was violated.

The other parts of the Rule alleged to have been violated are causing an adverse affect on the efficiency of the Department or impairing the ability of employees to perform their jobs. The first event the Employer contends violated

this Rule involves the conversations with Cadets Chatterton and Rogers where he questioned the reason the Employer remained open. It is alleged that these conversations impaired the ability of the employees to perform their job and with their efficiency. While the discharge letter does not specifically itemize this as a violation of this rule, the rule is cited and the letter does refer to his demeanor during these discussions and Sergeant Langford's concerns at the time over it. This charge is thus sufficiently set forth so as to provide notice to Grievant.³ Nevertheless, there is no indication Cadet Chatterton at the time of their initial discussion or any subsequent conversation was being interrupted from doing any tasks. He was at the front desk and was there to greet the public and maintain safety. The same can be said for the conversation with Cadet Rogers. There was no public present during these conversations. All the testimony confirmed if a member of the public had approached, conversation would have ceased. There was no testimony to the contrary. While Grievant's complaining might have been an annoyance to the Cadets, there is no evidence it kept them from doing their assigned tasks or interfered with the efficiency of Agency. As was noted during the testimony, it was not uncommon for people to engage in discussions at the front desk regarding personal or non-business related matters when the public was not present. Thus, the Arbitrator does not sustain this allegation.

The next charge involved Grievant's encounter with Ms. Smith. The charge alleges Grievant was "abusive, opinionated, questioning authority, derogatory

³ The Letter of Discipline also refers to Grievant's manner towards Sgt. Langford when she first approached him. Interestingly, this charge is not in the predetermination letter. Regardless, the Arbitrator does not find anything in that encounter that impacted efficiency and thus not a violation of this Rule.

and disruptive.” Grievant did not dispute her testimony as to what was said and how it was said. There was no apparent reason for Grievant to engage Ms. Smith in this conversation. He was critical of her immediate boss and knew she had no authority to deal with Grievant’s concerns. To go to her simply to vent his frustration was unfair to her and did disrupt her work and the efficiency of the Agency. By all accounts, she had a heavy workload. His conduct during this encounter was unacceptable and violated this Rule. This charge is sustained.

Rule 8.00.120- Insubordination

Insubordination can take several forms. A failure to obey orders is one form. It is also being “willfully disrespectful or disobedient to authority or being rebellious.” The Employer indicated in its predetermination letter that there were eight separate instances of insubordination.

The first allegation is that Grievant was willfully disrespectful to Sgt. Langford when she first asked to speak with him. His question to her to “tell me what I said that isn’t true” together with his mannerism during the encounter was the basis for the charge. During the conversation, Grievant’s feet were apart and he admitted to being a little agitated. Does this constitute insubordination? Grievant is obviously a very hyper individual. The fact that he was in a defensive position, as alleged, does not appear to be out of the ordinary for him. Similarly, his question to her was not out of character. She was as a supervisor in the chain of command too whom he should bring his grievances. While he might have been more demonstrative than he should have been, his conduct here was not so outrageous so as to be considered

disrespectful. Clearly, Sergeant Langford did not feel what happened was so egregious that she felt she should file a complaint immediately afterwards. For these reasons, this charge is not sustained.

The next group of allegations center on Grievant's alleged failure to follow the Sergeant's order. There are several issues raised by Grievant that need to be addressed before discussing these next allegations. Grievant first maintains he did not believe he was being given a directive or order, because Sergeant Langford did not use the words I direct or order you to cease from saying what he had been saying. The Arbitrator must disagree with this contention. It was clear Sergeant Langford was displeased about what he was saying and wanted it stopped. It is not necessary for her to say this is an order. It was implicit.⁴

There is some dispute as to exactly what Sgt. Langford told Grievant he should refrain from doing. When Sgt. Langford testified she said she told him she did not want to hear Grievant speak that way again in front of the cadets. She then said she repeated that she did not want to hear him speak that way again without specifying cadets. She believed her order covered all employees, not just cadets. Grievant maintains she only was referring to cadets and she did not make a second general statement that applied to all employees. Sgt. Langford gave a statement during the investigation. In that statement, she indicated she said "I don't want you to talk that way in front of the cadets again. I don't want to hear that." Assuming she did repeat the statement, it is certainly plausible Grievant considered the directive to apply only to discussions with cadets as that was what prompted their encounter in the first

⁴ Charge 2 in the predetermination letter is a general charge of insubordination with no specific incident referenced. Instead, it addresses the issue of whether Grievant was given an order by the Sergeant. Thus, this charge is covered in this discussion.

place. While she may have meant this second statement to be broader than the first, it was not unreasonable for the Grievant to conclude based on the entirety of the discussion with her that she was still referencing only the cadets and the repetition was simply for emphasis. Accordingly, the Arbitrator will view the statement as applying to cadets alone.

Finally, Grievant maintains that he understood the directive to be limited to a prohibition on discussing the issue of liability and not directed towards his comments about the executive staff's concern for its employees. He testified he was not sure she heard the beginning of the discussion and that was why he thought the order was limited to only what he believed she heard. Grievant on cross examination noted that as he and the Sergeant were going to a private area, he was thinking about the entire conversation with Cadet Chatterton and that was why he asked her what he said was not true.⁵ Given his thoughts at the time, it is more likely that Grievant understood the directive covered the entire scope of the conversation he had with the Cadet. That is how the Arbitrator shall treat it.

This then leads to the third charge of insubordination. As Grievant left Sgt. Langford, he replied to Ms. Geppart, in front of Chatterton, that he was told his comments were too sensitive for a cadet's ears. He indicated he meant this as a joke. This allegation is in the predetermination letter, but not in the letter of discipline. In this case that makes no difference. Even if it were included, the Arbitrator does not see this statement as a violation of the directive. He was responding to an inquiry and did not repeat his earlier comments.

⁵ Tr: 272

The fourth charge is that Grievant spoke to Cadet Chatterton on at least one if not more than one occasion again raising the issue of safety and whether they should even be at work. He then again attributed the decision to keep them at work to the Chief.⁶ The seventh allegation concerns conversations with Cadet Rogers where they discussed the memo allowing employees to go home if they felt they needed to do that. Grievant felt it was not right they had to pay for their own safety by being forced to use annual leave. He then blamed the Chief for this decision. The Arbitrator is taking these charges together since they both involve conversations with Cadets.

Given the directive from Sgt. Langford, the Arbitrator finds these comments to be a direct violation of her directive. While he did not raise the issue of liability, he did express his thoughts to Chatterton and again with Rogers about the Chief's apparent lack of concern or as Grievant says consideration for the safety of the staff. The topics he addressed with them were no different than the topic of conversation he had with Chatterton, which led directly to the imposition of the directive. These allegations are sustained. They are flagrant violations of the Order and the Rule.

The fifth charge involves Grievant's encounter with Ms. Smith. The allegation is that he violated the directive by speaking with Ms. Smith about his concerns. While the subject matter for the discussion was similar to the subject matter of his discussion with Chatterton, Ms. Smith was not a cadet. This Arbitrator has already found that it was reasonable for Grievant to conclude the directive was limited to cadets. The other part of the Rule, being

⁶ Tr: 44-45

disrespect towards a supervisor also does not apply. Ms. Smith was not a supervisor. While the Arbitrator previously found fault with Grievant over his handling of this incident, it is not a violation of this Rule and it must be dismissed.

The sixth allegation centers on his discussions with Ms. Kirkeby. Specifically, the charge alleges Grievant's "manner and content" in response to his question as to when he would be released to go home was "inappropriate when addressing a supervisor." Ms. Aust in her statement indicated she did not observe anything out of the ordinary. She observed: "he talked in a way, that seems to me, that like he always talks." While she did indicate she did not see the whole conversation, she saw most of it. Grievant stated he went to Ms. Kirkeby before taking his jacket off to see if he would go home right away or would work a full day. He could then either park his car for the day or simply leave. He stated he waited until there was a lull in the conversation Ms. Kirkeby was having with other employees before talking. Grievant is clearly an aggressive person, but as was noted by Ms. Aust, he was not acting out of character. Ms. Lewallen in her statement said she did not think Grievant was angry during the conversation. On the other hand, it does appear Grievant was somewhat demanding during this encounter. He did not ask his question open-ended waiting for whatever response she might give. His tone expressed more of an implication that they were leaving early and she should just confirm that. Notwithstanding the thoughts of Ms. Aust, Grievant's demeanor does appear to be less than respectful of Ms. Kirkeby's authority. The Rule makes it a violation to be "willfully disrespectful" to one's supervisor. Ms. Kirkeby was clearly upset

by what transpired and went to talk to Sergeant Langford about it shortly thereafter. She then filed the charges. The Arbitrator finds this was a violation of the Rule. However, when compared with the other violations of this rule noted, it is less egregious than those violations.

The last charge concerns Grievant's contact with Ms. Young during the investigation. Grievant admitted during his testimony it was wrong for him to contact her. While it is laudable that he asked her in the beginning of the call if she witnessed any of the conversations, he nevertheless intended her to possibly be a witness on his behalf. He was directed not to contact potential witnesses. She fell into that category and Grievant was correct when he realized in retrospect he erred. This was a violation of a directive and was insubordination.

Rule 12.00.120-Interference with Discipline

There are several components to this rule. More than just contact with "a participant in a disciplinary proceeding" is required. During the contact, the person making contact must not "exert or attempt to exert influence" on the participant. Ms. Young testified she did not feel like Grievant was attempting to influence her. He wanted to confirm she had seen him write the letter to the Chief. She said she had, but did not want to get involved in the matter. This Arbitrator has found that the contact was insubordinate. This Rule requires more. It requires intent to influence the person. Neither the predetermination letter nor the Letter of Discipline even discussed this element of the Rule. It was only the testimony of Dr. Sorrenson that addressed this requirement. He testified Grievant's passionate manner amounted to an attempt to influence

and that he was taking advantage of Ms. Young. While Grievant is passionate, the fact that the person contacted did not perceive any attempt to influence her is significant. The absence of this key component of the Rule makes this charge unsustainable.

Conclusion

There were numerous charges against Grievant. Based on all of the charges, the decision was made to impose a fifteen day suspension. This Arbitrator has sustained some of the charges and not others. Given that finding, he cannot sustain the full suspension. A suspension, however, is warranted. Insubordination is a very serious charge. His later discussions with the Cadets were insubordinate. His conduct towards Ms. Kirkeby was unacceptable and a violation. His conduct towards Ms. Smith was a separate violation. His refusal to accept responsibility for his acts, except for the one instance involving Ms. Young must also be given consideration in deciding on the level of discipline. There was testimony that a ten day suspension is listed as the penalty for a single instance of insubordination. Considering all of the facts and these findings, the Arbitrator shall reduce the suspension to a ten day suspension. It is appropriate to issue that length of suspension here, despite the numerous instances where the Arbitrator did not sustain the allegation. It is appropriate because of the importance of following orders at an institution like this one. It is a paramilitary organization that relies on its staff to comply with directives. Grievant simply did not do that. Accordingly, the ten day suspension is warranted.

AWARD

1. The grievance is granted in part and denied in part.
2. The fifteen day suspension is hereby reduced to a ten day suspension.
3. Grievant shall be made whole for the loss of pay for the five day difference between the initial suspension and the one imposed here.

Dated: February 5, 2011

A handwritten signature in cursive script, appearing to read "Fredric R. Dichter", is written over a solid horizontal line.

Fredric R. Dichter,
Arbitrator