

IN ARBITRATION BEFORE  
MICHAEL E. CAVANAUGH, J.D.

WASHINGTON FEDERATION  
OF STATE EMPLOYEES, )  
)  
Union, ) ARBITRATOR'S DECISION  
) AND AWARD  
and )  
) AAA No. 75-390-00471-10  
)  
STATE OF WASHINGTON, DEPT. )  
OF LABOR & INDUSTRIES, )  
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Employer. )  
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)  
(Randy Paddock Grievance) )

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I. INTRODUCTION

The Grievant is a workplace Safety Compliance Inspector with the Department. Early in the morning on January 8, 2010, prior to the start of his workday, Mr. Paddock's supervisor, Nick Stilnovich, telephoned him to ask if he could help Mr. Stilnovich in assisting a fellow

employee whose personal van had broken down on the way to work. Grievant agreed. Later, and after what would have been the start of the normal workday, Paddock and Stilnovich were waiting for a tow truck in a Starbucks coffee shop close to the Department's offices in Tukwila, Washington. A large group of Washington State Patrol ("WSP") Troopers were on a break sitting at a table toward the back, and other officers were arriving and departing. Mr. Stilnovich asked Grievant to take his picture with a cell phone camera with the Troopers at the table in the background, and Mr. Paddock took two photographs. Two Troopers who were in the process of leaving Starbucks at the conclusion of their break saw Mr. Paddock taking the photographs, and they testified that they thought he was acting suspiciously because he was "crouching" behind a display.<sup>1</sup> In addition, the Troopers at the table seemed unaware they were being photographed.

The two Troopers approached Mr. Paddock, and although there are substantial discrepancies between the testimony offered at the hearing by the Troopers as compared to the testimony of Grievant and Mr. Stilnovich, it is undisputed that a brief confrontation ensued and that at the end, as they were departing the shop toward the parking lot, Mr. Paddock turned and said something to the effect of "this is why bad things happen to you guys."<sup>2</sup> At that point, one of the Troopers called Mr. Paddock "an asshole." As Mr. Paddock was walking away toward the tow truck which had arrived on scene, the Troopers turned and noticed Mr. Stilnovich standing near the door. They asked him if he knew Grievant. He replied that he did, and he further offered that he was Mr. Paddock's supervisor and that they worked for the State, specifically L&I. The

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<sup>1</sup> Their concern derived largely from the murders of five law enforcement officers in the weeks immediately preceding this incident—four in a Lakewood (Pierce County) coffee shop, and one on the streets of Seattle. The Troopers testified that they had heightened sensitivity in matters of officer safety because of the recent shootings and that they approached Mr. Paddock to attempt to determine if he might pose a threat.

<sup>2</sup> There is no dispute that Mr. Paddock was referring, at least in part, to the recent shootings in Lakewood and Seattle.

Troopers promptly reported the incident to their Sergeant<sup>3</sup> who placed a call to Mr. Stilnovich.<sup>4</sup> Eventually, the incident came to the attention of L&I management who were concerned about the effect on the relationship between L&I and the State Patrol. Following an investigation, the Department imposed a 10% disciplinary reduction in Grievant's pay for six months. During the preliminary steps of the grievance and arbitration procedure, the penalty was reduced to 5% pay reduction for three months.

The Union contends that Mr. Paddock did nothing unlawful or inappropriate. In fact, the Troopers conceded at the hearing that it is not unlawful to photograph law enforcement officers in public. Moreover, argues the Union, Grievant was off duty at the time<sup>5</sup> and the Department has failed to establish the contractually required nexus between his off duty conduct and the legitimate interests of the Department. The Department counters that Stilnovich and Grievant were on duty even though they hastily attempted to erect a defense of "off duty conduct" upon their return to the office. In any event, says the Department, the contractual nexus for off duty misconduct was established because the confrontation imperiled good relations between the Department and the WSP, agencies who must cooperate in several respects in the course of carrying out their governmental functions, including cooperation in law enforcement matters.

At a hearing held July 27, 2011 at the offices of the Attorney General in Tumwater, Washington, the parties had full opportunity to present evidence and argument, including the

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<sup>3</sup> Although the Troopers reported the incident, apparently they did not immediately report that one of them had referred to Mr. Paddock as "an asshole."

<sup>4</sup> The Sergeant's primary concern seemed to be the Troopers' report that Stilnovich had told them safety inspectors had been directed to take pictures of groups of officers and forward them to a supervisor (it is not clear whether in L&I or in their law enforcement agency) because such gatherings posed a safety risk. Stilnovich told the Sergeant there was no such Department "policy," that he and Paddock had taken the pictures "on their own."

<sup>5</sup> When Grievant and Mr. Stilnovich returned to the office, Mr. Paddock promptly accessed the online HR system and retroactively requested leave from 8:00 to 10:30 AM that day, which Stilnovich approved electronically two minutes later. According to Grievant, however, Stilnovich had already orally "approved" his leave when they spoke on the telephone before his workday began.

opportunity to cross examine witnesses. The proceedings were transcribed by a certified court reporter, and I have carefully reviewed the transcript in the course of my evaluation of the evidence and argument. The advocates filed simultaneous post-hearing briefs September 9, 2011, and with my receipt of the briefs, the record closed. Having now carefully considered the evidence and argument in its entirety, I am prepared to render the following Decision and Award.

## II. STATEMENT OF THE ISSUE

The parties stipulated that the issue before me should be stated as follows:

Did the State of Washington Department of Labor & Industries violate Articles 27 and 28 of the collective bargaining agreement between the State of Washington and the Washington Federation of State Employees (WFSE) 2009 to 2011? If so, what should the remedy be?

Tr. At 3-4. The parties also stipulated that the matter is arbitrable and properly before me for decision, and they asked that I retain jurisdiction, in the event I should find that some remedy is appropriate, for the sole purpose of resolving any disputes over implementation that the parties are not able to resolve on their own. *Id.*

## III. FACTS

There is no dispute that a confrontation of some sort took place at the Tukwila Starbuck's between Mr. Paddock and the two Troopers, Stephanie Bjorkman and Scott Eng. The Troopers testified that Grievant was "crouching" behind a display, essentially "hiding" while surreptitiously photographing the Troopers at the rear table. When approached by the Troopers and asked if there was a problem or if they could do anything to help him, he reacted "defensively" and became "rude and aggressive." Mr. Paddock and Mr. Stilnovich contest the accuracy of that characterization, contending that Grievant politely asserted his understanding that he had a right to take photographs and that in fact it was the Troopers who were rude and

“antagonistic.”<sup>6</sup> For example, Trooper Eng told Grievant that although he had a right to take pictures of the officers, it would have been preferable to ask permission first. At that point, however, Trooper Bjorkman took out her cell phone camera and stuck it in Grievant’s face to take his picture.<sup>7</sup> Similarly, Trooper Bjorkman also threatened to take a picture of Grievant’s license plate in the parking lot, presumably to run the plate through the system.

In any event, Grievant testified that he decided to “disengage,” and when he saw the tow truck arriving in the parking lot, he turned to go outside. According to Mr. Paddock, Trooper Bjorkman followed him out the door, again suggesting that she would run his license plate. At that point, he turned around and said “you are antagonizing me and this is why things are happening to you guys.” Tr. at 18. Trooper Bjorkman remembers the comment somewhat differently: “And you wonder why the fuck you guys are getting shot and why these things are happening.”<sup>8</sup> The Troopers concede Trooper Eng then responded inappropriately by calling Grievant an “asshole.” After the incident ended, the Troopers noticed Stilnovich, who had followed the three of them outside, standing near the door (the Troopers described Stilnovich as “shaking his head”). They approached him and asked him if he knew Grievant, and Stilnovich

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<sup>6</sup> On the other hand, Grievant’s own testimony establishes that he was less than fully responsive to the Troopers’ concerns. For example, although Mr. Paddock testified that Stilnovich had asked him to take his picture with the Troopers in the background so he could “send it to his kids,” Tr. at 28, Grievant did not provide that innocent explanation for his actions to Trooper Bjorkman when she inquired why he was taking the photos. Instead, he testified that he responded with “And I was like, is it against the law? And she said, No. . . . and I was like, Well, then there is no problem.” Tr. at 22.

<sup>7</sup> Grievant testified that Bjorkman held the cell phone in front of his face, but he could not say for certain that she had taken a picture. Stilnovich testified that she did, in fact, take a picture, during which Grievant “smiled” in what could reasonably have been construed as a “smart aleck” gesture. Tr. at 138. Both Troopers denied that Bjorkman held her cell phone to Grievant or took his picture. Bjorkman testified, in addition, that taking a picture with the iPhone she used at that time is a multi-step process that she would have been very unlikely to attempt in the middle of a potential physical confrontation with a citizen who is much larger and stronger than she is. Tr. at 44-45.

<sup>8</sup> Tr. at 38. Similarly, Trooper Eng testified “it started to get a little heated. He made a comment about ‘that’s why cops get shot at.’” Tr. at 55. I note that Trooper Eng did not confirm the profanity reported by Trooper Bjorkman although, as I understand it, he was standing close behind Trooper Bjorkman when Grievant turned and made his comment as they followed him out the door.

explained that he was Grievant's supervisor, that they worked for the State of Washington at L&I. The Troopers said they were shocked a State employee would treat a fellow State employee the way they felt Grievant had treated them. The Troopers also understood from Stilnovich that safety inspectors had been "directed" to photograph any groups of law enforcement officers they saw and to forward them to the Troopers' supervisors (or a supervisor in L&I), which the Troopers apparently understood represented a belief by someone in L&I that officers gathering in groups might constitute a workplace safety hazard within the jurisdiction of the Department.<sup>9</sup>

The Troopers reported the incident to their Sergeant who called and left a message for Stilnovich. When Stilnovich returned the call, he told the Sergeant that there was no Department policy about photographing groups of officers. When the Department's investigator interviewed the Sergeant during the course of the investigation, he told her that Stilnovich had denied there was a policy of photographing officers and said that "this is something we did on our own." Tr. at 155. On cross examination, Stilnovich did not deny making the comment, but testified that having Grievant take that *specific photo* with the Troopers in the background was something they did "on their own," not in furtherance of any Department policy, i.e. he denied raising the gathering of officers as a potential safety hazard. The Appointing Authority ultimately determined that Grievant should receive a 10% reduction in pay for six months because of the impact on the relationship between the Department and the WSP. He pointed out that the agencies cooperate and rely upon each other in investigations and in enforcing the law. He also noted that the WSP is an employer subject to the workplace safety jurisdiction of the Department, and in fact the Department has investigated safety complaints involving WSP a

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<sup>9</sup> Stilnovich testified, by contrast, that the Troopers misunderstood, that he was relating to the Troopers a comment someone affiliated with the Seattle Police Department had made about the hazards posed by safety inspectors interviewing officers in groups of more than two at a time. In addition, Stilnovich said that he mentioned that he heard that the Lakewood police, as a result of the shootings of the Lakewood officers, had instructed its officers not to gather in large groups. Tr. at 136.

number of times in recent years. In that context, it is critical in his view that the WSP and the Department have a continuing good relationship based on fairness and mutual respect because of the sensitivity of having one law enforcement agency investigating another. Finally, the WSP provides security for the L&I office building in Tukwila, another reason maintaining a cooperative and productive working relationship is critical to the Department's mission.

During the processing of the grievance, the Assistant Director of HR for the Department reduced the penalty on appeal to a 5% reduction in pay for three months. Grievant and the Union continued to protest the disciplinary action, however, and these proceedings followed.

#### IV. DECISION

The Union contends that Grievant's conduct occurred while off duty and thus is beyond the Department's disciplinary authority except under the very limited circumstances set forth in Article 28.3 of the Agreement:

The off-duty activities of an employee will not be grounds for disciplinary action unless said activities are a conflict of interest as set forth in RCW 42.52, or are detrimental to the employee's work performance or the program of the agency.

As the Union notes, the Department has not alleged a conflict of interest in this situation, and thus the contractual propriety of the discipline depends on the second clause quoted above, a clause that appears to codify the widely-accepted proposition that an Employer's right to discipline for off-duty misconduct is limited to those circumstances in which a substantial "nexus" exists between that misconduct and the legitimate interests of the Employer. *See, e.g. St. Antoine, ed., The Common Law of the Workplace at 180 et seq., § 6.6 (Second Ed., BNA, 2005); Brand & Biren, eds., Discipline and Discharge in Arbitration, Ch. 9 at 391 et seq. (Second Ed., BNA, 2008).* Significantly, the Brand & Biren treatise notes the general rule that "when the employer alleges that the misconduct is relevant to and harms its business, it must usually show

that the harm is either inevitable or actual.” *Id.* at 395. With these general observations as background, I turn to the specifics of this case.

As a preliminary matter, I consider whether Grievant’s conduct occurred on or off duty. The Union contends that Mr. Paddock was not on duty because his use of personal leave had been pre-approved by Stilnovich, his supervisor, and in fact was promptly entered into the Agency’s HR system as approved personal leave immediately upon Grievant’s return to the office. The Department counters that the approval of Grievant’s leave occurred after the fact and was obviously designed to create an “off duty conduct” defense. While I understand the Department’s suspicions, I cannot find that it has carried its burden of proof on this question. While Grievant and Mr. Stilnovich were assisting a fellow employee, it is questionable whether that effort would properly be characterized as “work time,” even after it extended into the normal workday. I accept the proposition that a careful State employee would treat that time as “personal” if for no other reason than to avoid the possibility of being accused of time theft. Moreover, the evidence established that Mr. Paddock did not know how to access the timekeeping system from home so as to request leave in advance.<sup>10</sup> Therefore, the inference the Department asks me to draw from the “belated” request for leave simply is not supported by the evidence. Consequently, I will analyze this incident according to the rules governing discipline for off duty conduct.

The Department contends that it had to intervene decisively under these circumstances to prevent a “ripple effect” that otherwise *would have* poisoned the relationship between L&I and WSP. Tr. at 111. In addition, Assistant Director Silverstein noted in his testimony that “complaints were filed in writing and in person by phone with senior officials in the agency.” Tr.

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<sup>10</sup> Similarly, Ms. Shaw, the Department’s investigator from the HR group, testified that she did not know if it was even possible to do so.

at 110. As I understand his testimony, however, he is referring to email communications from Troopers Bjorkman and Eng to Statewide Compliance Manager Michael Seale, which I understand were provided to L&I at Mr. Seale's request, and to the telephone conversation between the Troopers' Sergeant and Mr. Stilnovich. While there is no doubt that Mr. Seale, who is now apparently retired, was a "senior official" in L&I, the more important consideration in determining the actual impact on the Agency's program is the extent to which, if at all, *senior officials in WSP* were aware of the issue and had expressed their concerns. Mr. Silverstein, however, confirmed in his testimony that he was unaware of any communications from WSP Chief Batiste on the issue, and in fact the record does not establish that any WSP official higher than the Troopers' Sergeant communicated with L&I. With respect to the Sergeant's communications with Mr. Stilnovich, the record supports the conclusion that the Sergeant was satisfied by Mr. Stilnovich's explanation that the Department did not have a policy of monitoring gatherings of officers with respect to workplace safety standards.

This record, in other words, does not support a conclusion that there was an *actual* disruption in the relationship between the Department and WSP, at least not at senior levels. I take it that is why Mr. Silverstein focused in his testimony on what *could have happened* had the Department not moved swiftly to discipline Mr. Paddock. That argument, it seems to me, addresses the second prong of the off duty conduct standard outlined in the Brand & Biren text, i.e. whether harm to the Employer is "inevitable" as a result of the employee's alleged misconduct. In one sense, of course, it was not "inevitable" that this incident would disrupt the relationship between the two State agencies. Mr. Silverstein's whole point, in fact, was that by acting swiftly, L&I prevented what *otherwise* could have been a serious breach in an important relationship between two State agencies, and thus the discipline of Mr. Paddock should be held

to be within the contractual parameters of “detrimental to the employee’s work performance *or to the program of the agency.*” Article 28.2 (emphasis supplied).

I agree with this reading of the contract. That is, if it is virtually inevitable that an employee’s off duty misconduct will have a substantially negative impact on the agency’s program and functions (as I find is the case here), it would be nonsensical to hold that the Department must wait until that harm *actually* occurs before disciplining the employee—at least if it is reasonable to find that a “preemptive” disciplinary action could eliminate, or even substantially ameliorate, the expected harm to the agency. I find that this is such a circumstance, precisely for the reasons outlined by Mr. Silverstein in his testimony. Had the Department not immediately moved to demonstrate its responsiveness to the concerns of the Troopers and their Sergeant, it is highly likely the matter would have moved up the chain of command in the WSP and negatively impacted the relationship between the agencies. Therefore, I find that Mr. Paddock’s alleged off duty misconduct was a legitimate concern of the Department and one that could properly be the subject of discipline.

Important questions remain, however—specifically, whether Mr. Paddock in fact engaged in misconduct, and if so, whether the discipline imposed comports with principles of just cause. As to the former question, I find that Grievant’s conduct was highly inappropriate and justified a disciplinary response from the Department. Even taking the testimony of Mr. Paddock and Mr. Stilnovich at face value—and discounting the more inflammatory aspects of the Troopers’ testimony (such as the allegation that he used profanity)—I find that Grievant’s conduct was rude and insensitive at best, needlessly provoking a confrontation with Troopers Bjorkman and Eng. When asked if there was a problem or if the Troopers could help him, Mr. Paddock replied “No, there is no problem. I’m just taking pictures.” Tr. at 125. When Bjorkman

asked why he was taking pictures of the officers, instead of responding with the reasonable and innocent explanation he provided at the hearing in this matter (Mr. Stilnovich asked him to so he could send the photos to his kids), he chose instead to react defensively: “And I was like, is it against the law? And she said, No. . . . and I was like, Well, then there is no problem.” Tr. at 22. Given that Mr. Paddock conceded that he was aware that four officers had recently been gunned down *in a coffee shop*, I find that form of response to a reasonable inquiry from a law enforcement officer to have been “provocative,” just as Mr. Silverstein described it.

Looking at the matter with hindsight, of course, it is clear that the Troopers misconstrued the situation. To the extent Grievant was “crouching” behind the display, it is very unlikely that it was because he was attempting to “hide.” Rather, looking at the photographs, it is reasonable to assume that Mr. Paddock, who is substantially taller than Mr. Stilnovich, needed to crouch slightly in order to frame Stilnovich and the officers in the same camera shot. Exh. E-2A (third to last page). Nevertheless, it was unnecessary—and rude—for Grievant to respond to a reasonable question from Trooper Bjorkman in a smart aleck fashion when a simple explanation very likely would have defused the situation.<sup>11</sup> And Mr. Paddock then compounded that error in at least two ways. First, according to Mr. Stilnovich, Grievant immediately *took another picture*. Tr. at 133. And from the record, it is clear that this second picture is not, strictly speaking, a photo of Mr. Stilnovich with the officers in the background. Mr. Stilnovich is, in fact, almost entirely out of

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<sup>11</sup> With respect to that “innocent” explanation, however, I do note that there are some discrepancies between Grievant’s testimony and the testimony of Mr. Stilnovich about why the picture was taken. Grievant said that Stilnovich asked him to take the picture with the officers in the background so he could send it to one of his kids who was interested in becoming a law enforcement officer. Tr. at 28. Stilnovich, on the other hand, testified that he had no thought of sending the photo to anyone until *after* the incident in question. Tr. at 147. As noted, I also question why Grievant took the second photo in which the Troopers appear, but Stilnovich does not. Taken together, these discrepancies lead me to wonder whether Grievant and Stilnovich believed that gatherings of officers might constitute an unsafe workplace condition that ought to interest the Department (“something we did on our own”) and that they constructed the alternate explanations after the fact when it became clear that WSP would not look kindly on that approach and that their actions could have ignited an inter-agency brouhaha. On the other hand, the evidence is insufficient for me to make such a finding, and I do not do so.

the frame (only his right arm appears, whereas six Troopers appear). Exh. E-2A (second to last page). I must conclude that Mr. Paddock took the picture as a defiant expression of his belief that he had a right to take photographs of law enforcement officers without being asked questions about it, despite his knowledge of the recent murders of four law enforcement officers in a coffee shop.<sup>12</sup>

Second, I recognize that the situation got “a little heated,” as Trooper Eng described it, and I also recognize that the Troopers may have overreacted somewhat. Nevertheless, I find that Mr. Paddock inexcusably crossed the line when he made his “that’s why bad things happen to you guys” comment. Even if Trooper Bjorkman tried to take his photo and even if she stated that she might take a picture of his license plate,<sup>13</sup> that would not justify Mr. Paddock’s highly offensive and insensitive response—which impliedly “explained,” even if he did not intend to excuse, lethal violence directed against law enforcement officers. The offensiveness of his comment in that context is amply demonstrated by Trooper Eng’s immediate response.<sup>14</sup>

In sum, I find that Mr. Paddock engaged in misconduct that had a high degree of probability of harming relations between L&I and WSP. Although he did not identify himself as an employee of L&I and was not wearing any clothing from which the identity of his employer

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<sup>12</sup> Even Mr. Stilnovich conceded that taking the photos was inappropriate: “Well, it’s pretty stupid to do, taking photographs with the atmosphere around the Lakewood shooting and everything. And at that point in time I totally agreed, you know. You’re right. It was a stupid thing to do, I guess. And I’m the one that asked him to do it.” Tr. at 136. This recognition by Mr. Stilnovich as to how their actions might have been perceived by the Troopers—even though after the fact—contrasts sharply with Mr. Paddock’s inability to recognize, even as late as the hearing in this matter, that he did anything wrong: “I still do not believe my—I did anything wrong or inappropriate. I wasn’t rude, no.” Tr. at 128.

<sup>13</sup> The testimony of Grievant and Mr. Stilnovich on these points is specifically contradicted by the testimony of the Troopers. I do not find it necessary to resolve the conflict, however. Instead, for these purposes, I will assume that Trooper Bjorkman did these things because even if the events happened as Grievant described them in his testimony, it would not excuse Mr. Paddock’s response. I should note that for the purposes of this analysis, I am also assuming that Grievant did not use profanity and that he did not explicitly mention the “shooting” of officers as having resulted from “antagonizing” citizens by asking questions of them.

<sup>14</sup> To be clear, I do not condone Trooper Eng’s behavior, and it is clear to me that WSP does not do so either, i.e. Trooper Eng testified that he was counseled by his Sergeant.

would have been apparent, his companion Mr. Stilnovich *did* identify his employer. The important point for the analysis is not *how* WSP learned that he was an employee of L&I, but that they did so.<sup>15</sup> Under those circumstances, the Department had the contractual right to move quickly to contain the damage by disciplining Grievant to demonstrate to WSP that it intended to preserve their cooperative relationship. The final question, then, is whether the level of discipline imposed by the Department was appropriate when judged according to accepted standards of just cause in the unionized workplace.

I agree that a 10% reduction in pay for six months was an unduly harsh penalty. As I calculate the effect, that penalty would constitute the equivalent of a suspension of seven or eight workdays. The Department reduced the penalty during the grievance process to a 5% reduction for three months, but even so, that equates to a suspension of approximately three and one-half days. That also strikes me as harsh for an employee without prior discipline on his record, especially given the lack of evidence of any *actual* detrimental effect on the WSP/L&I relationship. On the other hand, I believe it is reasonable to assume that the level of discipline imposed by the agency is an important factor that could impact the extent to which WSP might perceive that the Department had taken its concerns seriously, and I agree that any penalty less than what is in effect a suspension would be unlikely to do so. On the other hand, I am often inclined to reduce a disciplinary penalty when a Grievant has demonstrated an awareness of his own contribution to the unfortunate events that led to the discipline. Here, however, the fact that Grievant continued at the hearing to insist that he is totally blameless for this unnecessary

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<sup>15</sup> It may well be that had Mr. Stilnovich not been present, or had he not identified Mr. Paddock as an employee of L&I, the contractual nexus that justifies discipline for off duty conduct would be absent here. But the fact is that WSP *did* learn that Grievant was an employee of another State agency—one that works closely with WSP—and once that was the case, the interests of the Department were potentially implicated even though Grievant was off duty at the time of the incident.

confrontation with the Troopers is a factor that calls for a level of discipline sufficient to get his attention and to effectively convey the message that his behavior was unacceptable.

The precise penalty consistent with just cause in any particular case is more a matter of art than science, of course, and reasonable minds can and do reach different conclusions within the range of penalties that could be said to be appropriate for any given offense. But once misconduct has been established, an Arbitrator should only interfere with the Employer's choice of penalty when it can be said with assurance that the Employer has acted in an arbitrary or discriminatory manner. It is insufficient that the Arbitrator might have selected a penalty closer to the "lenient" end of the appropriate range. In sum, although it may well be that I would have chosen a somewhat less severe penalty, in light of the record before me, I cannot justify interfering with the Department's exercise of its discretion in that regard.

The grievance must be denied.

## AWARD

Having carefully considered the evidence and argument in its entirety, I hereby render the following AWARD:

1. The Department did not violate Articles 27 or 28 of the Collective Bargaining Agreement in disciplining Grievant Randy Paddock; therefore,
2. The grievance must be denied; and
3. Consistent with the terms of their Agreement, the parties shall bear the fees and expenses of the Arbitrator in equal proportion.

Dated this 26<sup>th</sup> day of September, 2011



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Michael E. Cavanaugh, J.D.  
Arbitrator