

**ARBITRATION DECISION NO.:**

081

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Ohio Department of Transportation

**DATE OF ARBITRATION:**

September 4, 1987

**DATE OF DECISION**

December 28, 1987

**GRIEVANT:**

William Reeder

**OCB GRIEVANCE NO.:**

G-87-0544

**ARBITRATOR:**

Harry Graham

**FOR THE UNION:**

Linda Fiely

**FOR THE EMPLOYER:**

Rebecca Ferguson

**KEY WORDS:**

Political Nature of distributed leaflets

Denial of Document

Standard for Modifying Discipline

**ARTICLES:**

Article 25 – Grievance Procedure

§25.08 – Relevant Witnesses and Information

**FACTS:**

Grievant was an Equipment Operator 1 for ODOT. Grievant distributed pamphlets in the garage break room concerning AIDS. The pamphlets had been reprinted by PACs. Distribution of political materials by state employees on State time is prohibited by ODOT Directives. Grievant received notice of pre-suspension and/or removal. Prior to that notice, Grievant gave two co-workers a Pro Life sample ballot. A predisciplinary hearing was held for these two incidents. Before the results were announced for that hearing, Grievant was observed wearing a political campaign sticker on his hard hat while working. A hearing was held on this matter and the literature

incident was merged with the hard hat incident. Grievant was removed from State Service and immediately filed a grievance.

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**EMPLOYER'S POSITION:**

The State complied with the provisions of 25.08 by providing written charges, the list of witnesses, and an opportunity to call witnesses. There are numerous steps in the chain of command. Although the severity of discipline may vary through the chain, Arbitrators have held that it is not significant. The Union should not be allowed a "fishing expedition" through internal working documents.

**UNION'S POSITION:**

Section 25.08 requires the State to provide relevant documents that are readily available and shall not unreasonably deny such requests. The Union contends that the predisciplinary recommendation was relevant and readily available, and therefore the denial by the agency was unreasonable. Denial of relevant materials relied on by the impartial administrator frustrates the language of 25.08. Arbitrator Rivera ordered the release of a predisciplinary report in grievance no. G-87-0205.

The relevance of the report is a question for the arbitrator, but the report has not been provided. The report was definitely readily available as it was in the State's custody. The State violated the agreement by refusing to furnish the report. There will be no reopening of a hearing on the merits. The refusal did not significantly compromise the grievant's ability to receive a full and fair hearing. The merits are discussed in the substantive section.

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**ARBITRATOR'S OPINION:**

The Directive prohibited partisan materials in the workplace. There is no question that the "Robertson 88" sticker was partisan. Two persons testified that they first noticed the stickers in January 1987 and reported it immediately. The two employees reported the hard hat violation in a timely fashion. Although the "Pro-Life Ballot" lists candidates from both parties, it is distributed by a PAC that is partisan. Pictures of Reagan and Rhodes are on the ballot. It is clearly a Republican pamphlet. The AIDS and anti-abortion materials were distributed by the Ohio Right to Life PAC, a registered political organization. Grievant clearly engaged in prohibited activity. But the directives were posted without any discussion or guidance as to the distinction between prohibited and permitted activity. Two other employees were given 5-day suspensions for slightly less serious violations. Action should be less than removal. Any further activity of this nature will be grounds for removal.

**AWARD:**

Twenty (20) day suspension, back pay.

**TEXT OF THE OPINION:**

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In the Matter of Arbitration \*  
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 Between \* Grievance No. 87-0544  
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 OCSEA/AFSCME Local 11 \*  
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 and \*  
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 The State of Ohio, Department \*  
 of Transportation \*

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Appearances: For OCSEA/AFSCME Local 11:

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For State of Ohio:

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Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on September 4, 1987. At that hearing both parties were provided complete opportunity to present evidence and testimony. At the close of the oral hearing the parties determined upon a schedule for the filing of post-hearing briefs. Both parties also indicated their desire to file rebuttal briefs. Subsequently the State waived filing its rebuttal brief. The record was closed by the Arbitrator on December 3, 1987.

Issues: At the hearing the parties were able to agree upon

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the issues in dispute between them. Those issues are:

1. Was the Agency required by the Agreement to provide the pre-disciplinary recommendations in this case in accordance with Article 25.08? If so, was the Grievant's ability to secure a complete hearing significantly compromised by the Agency's refusal to provide the recommendations?

2. Was the discharge of William Reeder for just cause under the Collective Bargaining

Agreement? If not, what shall the remedy be?

Facts: There is general agreement between the parties over the facts that give rise to this controversy. The Grievant, William Reeder, was employed by the Ohio Department of Transportation since June 7, 1982. He was classified as Equipment Operator 1. His work site was the Lima, OH. garage in Allen County. His duties consisted of operating equipment, most often dump trucks. He spent a great deal of his time working on bridges.

On October 26, 1986 there occurred an incident involving the Grievant in the break room at the Lima garage. Reeder's supervisor, David Hedrick, entered the break room and noticed several copies of various pamphlets or newsletters on the table. These were "Ohio's Celeste Creates State Gay Council" which was a reprint of material from a publication entitled

The Advocate. The reprint was done by Ohio Citizens for Decency and Health PAC. (PAC is an acronym for Political Action Committee). There was also on the table in the break room a reprint of "A Gay Man's Guide to Aids and Sexual Health." This booklet was originally distributed by the Ohio \*\*2\*\*

Department of Health. It was reproduced by the Ohio Citizens for Decency and Health PAC. A third flyer, "Aids, Reducing Your Risk", reprinted by the same group was also on the table in the break room. Mr. Hedrick inquired as to who had placed those materials on the table and the Grievant indicated he was responsible. Reeder asked if there was a problem with the materials and Hedrick responded he did not know. He apparently had some question concerning whether or not distribution of those materials was prohibited under Directive A-301, 24 and Directive A-213. Those Directives deal with prohibition of political activities while in State service. Nothing further was heard by Reeder about this incident until December 1, 1986. On that date he received a notice of pre- suspension and/or removal.

On November 3, 1986 two of Reeder's co-workers, Steve Whittaker and Walter Gehr, were walking to their vehicles at the close of the day. Reeder gave Whittaker a copy of a ProLife Ballot issued by Ohio Right to Life PAC. That ballot identified candidates for elective office who were opposed to abortion. Candidates identified on the ballot were affiliated with the Republican and Democratic parties. Whittaker handed a copy of the Right to Life Ballot to Gehr as they went towards their cars which were parked in the parking lot of the State garage. A dispute concerning these materials exists. Whittaker and Gehr recall that receipt of this

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material was unsolicited by them. Reeder testified that Whittaker had requested the Right to Life ballot.

On December 8, 1986 a pre-disciplinary hearing involving these incidents was held. After that hearing concluded but before a result had been announced there occurred another incident involving the Grievant. On January 5, 1987 Reeder was working on a bridge crew. As a crew member he was wearing his State provided hard hat. As part of their duties Hedrick and Berkeley Hill, a Project Engineer 4, with 22 years of State service visited the site where Reeder was

working. They saw him with his hard hat. Placed at the back of the hard hat was a sticker that said "Robertson 88." That Reeder was wearing a State provided hard hat that carried the "Robertson 88" sticker was reported to higher levels of supervision and discipline was commenced. On January 20, 1987 a hearing concerning the hard hat was held. At that hearing the record concerning the prior incidents involving the distribution of literature concerning aids and anti-abortion was merged with the hard hat incident.

On January 21, 1987 the Grievant was removed (discharged) from State service. His discharge was based upon his alleged violation of Directive A-301-24, Directive A-30134 and violation of Directive A-213 which generally deal with a prohibition of political activity by State employees.

Mr. Reeder promptly filed a grievance protesting his

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discharge. It was processed through the machinery of the parties. The parties agree that this dispute is properly before the Arbitrator for resolution on its merits. The opinion will be divided into two parts. Attention will first be directed towards the procedural issue. The just cause issue will be considered separately

Position of the Employer: The Agreement at Article 25. Section 25.08 indicates that: The Union may request specific documents, books, papers or witnesses reasonably available from the Employer and relevant to the grievance under consideration. Such request shall not be unreasonably denied. The State indicates that it complied with this provision of the Agreement. Reeder was informed in writing of the charges against him. He was aware of the State's concern that he was improperly distributing political materials. He was informed of the witnesses who would testify against him at the hearings in December, 1986 and January, 1987. He received copies of their statements. He was specifically permitted to call witnesses on his behalf as well as present any evidence he desired. At all times he was provided with union representation. There can be no argument concerning the due process provided to the Grievant. The State points out that multiple people in the chain of command are involved in the decision to discipline. After review at a number of levels the request for discipline may reach the District Deputy Director. That person determines if

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the alleged infraction is of sufficient severity to warrant a pre-disciplinary meeting. If such a meeting is convened, an impartial administrator is assigned to hear the case and recommend action. The impartial administrator then prepares an account of the meeting and a recommendation for action and forwards it to the District Deputy Director. That account was not provided to the Union in this instance. The District Deputy Director reviews the report and forwards a recommendation to the Department Director. Prior to reaching him the report and supporting evidence is reviewed by Central Office Personnel for procedural propriety and any possible discrimination or criminal involvement. The materials are then forwarded to the Director who makes the final decision on discipline. At any step along the way penalties may be increased or decreased. All such recommendations are included in the material which reaches the Director. The Director may agree with one or none of the recommended disciplinary actions proposed. Under Directive A-302

only Director may suspend, remove or reduce employees. The internal review process of the Department provides a perspective for the Director that should not be chilled by providing to the Union access to all internal working papers and memos produced by the State in the process of disciplinary review. Even if there occurs a variation in the severity of discipline that may be recommended in the review

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process and that ultimately determined upon by the Director that is immaterial. The Grievant may secure, as has Reeder, neutral review.

In Grievance No. G86-0224 Arbitrator Pincus indicated that the State had a multi-tiered decision making process and variation in the amount of discipline recommended at one stage or another of the review process was not of great significance. While that case involved the Department of Rehabilitation and Corrections, Arbitrator Pincus' observation is apt in this situation as well. Review of the penalty occurs under the Agreement. The internal working documents of the State are not relevant or material to that review. In the instant situation, Reeder was never denied due process and the State conducted its internal review properly. The State urges that the Union not be permitted to secure access to its internal working documents.

In Chesapeake and Potomac Telephone Co. (21 LA 367) Arbitrator Harry Dworkin noted that a party should be protected against a "fishing expedition." Arbitrator Dworkin's reasoning in Chesapeake and Potomac Telephone Co. is appropriate to this case as well in the State's view. Production of the predisciplinary report amounts to a fishing expedition which should be denied according to the State. The Grievant received a full and fair hearing. He has secured arbitral review. Nothing more should be expected or is

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required by the Agreement the State asserts.

Position of the Union: The Union indicates that on August 25, 1987 it wrote to the Employer asking for "all documents used or generated by the acts leading to the discipline or the disciplinary procedure itself." More specifically, the Union sought any report, findings or recommendations that may have resulted from the predisciplinary proceedings on December 8, 1986 and January 20, 1987. The Employer indicated it was its internal policy not to release all documents. The Agreement at Section 25.08 is absolute according to the Union. It may make a specific request for specific documents and other materials and that request "shall not be unreasonably denied." It was denied in this instance in violation of the Agreement the Union insists.

The predisciplinary recommendation is relevant to the arbitration proceeding. It permits both parties to understand the nature of the evidence relied upon by the Agency in imposing discipline. In fact, the parties at Section 25.01 (F) of the Agreement have committed themselves to resolving their disputes at the "earliest possible time and the lowest level of the grievance procedure." This cannot occur if the State withholds information upon which it has based its decision.

The Director of the Ohio Department of Transportation relied upon the findings of those who preceded him in the

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disciplinary procedure. The order of removal to the Grievant indicates that "after reviewing the recommendation of the impartial administrator" removal was decided upon. The impartial administrator must have reached certain conclusions and made recommendations based upon them. To deny that material to the Union frustrates the clear language of the Agreement calling for "relevant" materials to be made available. The conclusions of ODOT officials who preceded Department Director Smith are certainly relevant to the decision to remove Reeder the Union insists. In a somewhat similar situation Arbitrator Rivera (Grievance No. G87-0205) determined that to be the case and directed the predisciplinary report be made available to the Union. The dispute before Arbitrator Rivera involved the Department of Transportation. The facts parallel those in this dispute. No reason exists for this neutral to conclude any differently than Arbitrator Rivera according to the Union.

Discussion: The Agreement of the parties is clear concerning production of materials within the custody of the Employer. Cited above, it indicates that specific documents, books, papers or witnesses reasonably available and relevant to the grievance may be requested. That request shall not be unreasonably denied. Certainly the report of the impartial administrator is relevant to the imposition of discipline by the State. That report must have been involved in the \*\*9\*\*

decision to take some sort of action against the Grievant. It is arguable whether or not the materials sought by the Union in this situation are relevant to the arbitration process. The parties must be aware that there is a distinction to be made between the grievance process and arbitration. It is the Arbitrator who determines relevancy of the evidence before him. Due to the position of the State to this point we have no way of knowing what the impartial administrator concluded with respect to the imposition of discipline. That is due to the fact that the predisciplinary report was not furnished to the Union. Nor was it provided to the Arbitrator. In the last analysis it is the Arbitrator, not the Union or the Employer, who must determine relevance at the final stage of review. Arbitrator Pincus, cited by the State to support its position, acknowledged as much when he indicated that he had "considered" the recommendation "W" be suspended for five days in the case before him. Obviously for him to have considered the suspension the report recommending it must have been provided to him.

The material requested by the Union was certainly reasonably available" from the State. It was, after all, within the State's custody. The State generated the document. As this was the case, the Agreement requires that it be made available to the Union.

The language of the Agreement does not concern itself

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with materiality or confidentiality, concepts employed by the parties in advancing their positions. The Agreement merely indicates that the Union may request specific documents books or papers reasonably available from the Employer and relevant to the grievance. The report in question was specifically requested and was reasonably available. Since it deals with discipline administered to the Grievant it is certainly relevant. As all tests set forth in the Agreement are met in this case but

the report of the impartial administrator was not made available to the Union the conclusion is inescapable that the Employer has violated the Agreement.

It should be pointed out that Arbitrator Dworkin in Chesapeake and Potomac Telephone denied in part but granted in part the Union's request for materials within the custody of the Employer. He found that discovery should be guided by the principle of "sound discretion." In this case little room for discretion is provided by the Agreement. The parties agreed that certain materials were to be provided if they were "reasonably available." The report of the impartial administrator was reasonably available to the State and the Agreement requires that it be furnished to the Union.

Arbitrator Rivera was correct when she noted that a "broad construction" (Case No. G87-0205, Oct. 8, 1987) of discovery is to be employed in order to promote fairness. Certainly the report of the impartial administrator is

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.. relevant to the grievance" which is the test specified by the Agreement for discovery purposes. In order to achieve the fairness in the grievance procedure noted by Arbitrator Rivera, it must be provided to the Union. Both the explicit terms of the Agreement and the broad construction of discovery necessary to secure fairness require that occur.

The Union requests that if it is found the State violated the Agreement by failing to produce the report of the impartial administrator that the hearing on the merits be reopened. That request is denied. Reference is had to the issue before the Arbitrator. That issue is initially concerned with the requirement that the State provide certain information to the Union. It continues to raise the question of whether or not the "Grievant's ability to secure a complete hearing was significantly compromised by the Agency's refusal to provide the recommendations" in question. The record does not indicate that Reeder received anything but a full and fair hearing in the various stages of the Grievance procedure. Thus, he at all times received Union representation as specified in the Agreement. He was permitted to speak on his own behalf and ask questions. Nothing on the record serves to indicate there was an element of a star chamber proceeding in the decision to discharge the Grievant. While the State failed to produce for the Union part of its internal work papers as specified by the

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Agreement, that defect does not require an affirmative answer to the question of whether or not Reeder received a fair hearing. That question is before the Arbitrator as well as the question concerning the obligation of the State to provide recommendations made at lower levels of the disciplinary procedure. While the State, as indicated above has such an obligation, its failure to meet it did not significantly compromise" the Grievant's ability to secure a complete hearing." The history of this dispute indicates to the Arbitrator that Reeder received a complete hearing. While a discharge is often termed the capital offense of industrial society, we have not surrounded that action with the panoply of procedural requirements that precede imposition of the death penalty.



The evidence in this case indicates that Reeder's rights were not compromised. He received a hearing that in every sense of the word was "complete." Accordingly, attention must be devoted to consideration of the discharge on its merits.

Position of the Employer: By introducing material from various Political Action Committee's into the work place and wearing a hard hat promoting the candidacy of Pat Robertson for President in 1988 the State asserts that the Grievant was engaged in prohibited political activity. Specifically it points to Directives, Number A-213 of March 1, 1985 and A301 of May 28, 1986 as providing support for its action.

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Directive A-213 is concerned specifically with political activity. After itemizing a number of political activities prohibited to employees in the classified service, it indicates that employees who engage in such activities are subject to removal. Included in the list of prohibited activities are "Participation in a Political Action committee which supports partisan activity." (No. 11). Item 24 of Directive A-301 indicates that for the first occurrence of political activity prohibited by ORC 124.57 in a 24 month period an employee is subject to suspension or removal. Guidelines interpreting Ohio law (Jt. Ex. 18) were posted in the Grievant's work area. Reeder distributed materials concerning AIDS and abortion in the work area. Those materials were produced by Political Action Committee's and such distribution must be considered to be prohibited political activity according to the State.

In the course of the investigation leading to this proceeding the Grievant admitted to bringing the AIDS and anti-abortion literature into the work area. He acknowledged giving a sample pro-life ballot to his co-workers, Whittaker and Gehr. He admitted placing the "Robertson 88" sticker on his State provided hard hat and wearing that hat in public while on duty.

On other occasions State employees at the Lima ODOT garage have received discipline for distributing literature      \*\*14\*\*

of a political nature. Thus, Russ Reynolds received a five day suspension for distributing the same material as Reeder. (Jt. Ex. 9 dealing with Aids). Jeff Brenneman also received a five day suspension for improper political activity. He had copies of the anti-abortion and aids literature in his tool box. He also had in his possession the sample ballot issued by the Ohio Right to Life PAC (Jt.-Ex. 11). He did not distribute this material. As Brenneman received a five day suspension and did not even distribute the material in his possession Reeder's discharge is appropriate considering his active placement of the material in the break area. He pressed the aids and anti-abortion material on his coworkers, Gehr and Whittaker. He wore the Robertson sticker on his state provided and owned hard hat while on state property, on state time. The State notes that Brenneman and Reynolds did not distribute the materials. They did not proselytize as Reeder did. His activity is substantially more serious than that of Brenneman and Reynolds. He knew of the concern the State had over political activity from the active campaign it engaged in to set forth the boundaries of permissible and impermissible activity.

Item 24 of Directive A-301 calls for Suspension or Removal of employees who engage in

prohibited political activity. Reeder distributed literature, the pro-life ballot, and then carried the Robertson sticker on his hard hat. He

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committed three serious infractions in a 24 month period. The discharge is justified under these circumstances the State contends. After being placed on notice that the distribution of the aids and anti-abortion literature was considered impermissible Reeder continued his activity by placing the Robertson sticker on his hard hat. This is evidence of his continued intent to advance the causes in which he believes regardless of the prohibition against such activity by the State.

Reeder cannot claim ignorance that he was engaged in political activity. His testimony at the arbitration hearing itself indicated good understanding of the concepts behind a political action committee. He also understood that his wearing the Robertson sticker was part of a larger effort to persuade Robertson to become an active candidate for the Republican Presidential nomination. He was certainly aware that he was engaged in partisan activity. Ignorance cannot be a defense in this instance the State insists.

All literature distributed by Reeder indicated it was reproduced by a PAC. The ballot was the product of a PAC. Such literature must be considered to be partisan in the State's opinion.

Management was not intent on "getting" Mr. Reeder. It administered progressive discipline during the course of his employment with the State. As Reeder engaged in serious

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misconduct, the discharge should be upheld urges the State.

Position of the Union: As the Union reads the record in this dispute the Grievant was not aware he was in violation of any rules concerning prohibited political activity. If he thought about the issue at all he believed he was operating within the strictures set forth in the Directives concerning political activity.

At no time did Reeder dispute that he had placed the literature concerning aids, anti-abortion and establishment of the Gay Council on a table in the break area. They were there for several days before anyone questioned them. The supervisor, David Hedrick, discovered them. As they had been in full view for several days obviously no other employee complained. Reeder thought distribution of the materials fell within the activity permitted by Directive A-213.

When Reeder passed out the pro-life ballot on November 3, 1986 he did not think he was distributing partisan materials. That ballot lists candidates from Republican and Democratic parties as worthy of support based upon their opposition to abortion. Such material must be considered as being bi-partisan rather than partisan in nature. Consequently, no discipline may be administered to the Grievant for distributing it.

Reeder's conduct must be evaluated in light of his religious beliefs. He is a born-again

distribution of literature and the wearing of the Robertson sticker reflects moral and religious conviction, rather than political orientation according to the Union. Discipline may not be administered for discussion of moral and theological issues according to the Union.

Reeder first placed the Robertson bumper sticker on his hard hat in October, 1986. He wore the hat regularly. He left the hat in the break room on occasion. Yet, it was not until January, 1987 that the Robertson sticker came to the Employer's attention and Reeder received discipline. It is unreasonable for Reeder to receive severe discipline for the Robertson sticker in January, 1987 when its display predates his distribution of literature for which discipline was administered in 1986 according to the Union. Considerations of fairness and equity dictate that the hard hat sticker be considered as being so stale as to require it be disregarded in evaluating the penalty at issue in this dispute.

In the Union's opinion Reeder has been singled out for disparate treatment. Employees Reynolds and Brenneman received five day suspensions for impermissible political activity. Discharge cannot be sustained in light of that fact in the Union's opinion.

Prior discipline, all verbal reprimands, was unjustified according to the Union. If this view is accepted, to move to discharge is simply unwarranted based upon a full

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consideration of the Grievant's employment record.

Discussion: The Inter-Office Communication of September 17, 1986 (Jt. Ex. 18) posted on the bulletin board sets forth permissible and impermissible types of political activity. It is indicated that it is permissible for employees to display political materials in their home or on their property. Employees are also permitted to display political stickers on their private automobiles. In Reeder's case, he was carrying a political sticker on his State provided and owned hard hat. He was displaying the Robertson 88 sticker while on the job. By implication such activity is prohibited by the terms of the Guidelines posted on September 18, 1986. Furthermore, it does not require a great deal of thought to realize that the Robertson in 88 sticker is partisan in nature. Wearing it on a state provided hard hat, while on the job is certainly partisan political activity, no matter how defined.

Testimony from Berkely Hill, a Bridge Engineer with 22 years of State service indicated that he first saw the hard hat with the Robertson sticker on January 5, 1987. He promptly called it to the attention of proper supervision. Furthermore, he testified that he had never in all his years of service with the State seen an employee carrying such a political sticker. As a long time employee of the State with a responsible position the Arbitrator gives Mr. Hill's testimony great weight. No history of any animosity between

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Hill and Reeder was shown. No reason was advanced by the Union as to why Hill should testify other than truthfully. The Arbitrator believes that Hill acted promptly upon seeing the Robertson sticker on Reeder's hard hat.

David Hedrick, Reeder's immediate supervisor also testified that he acted promptly upon becoming aware of the Robertson sticker. He indicated that he saw it for the first time in January, 1987. This should occasion no surprise as employees possess more than one hard hat. The Arbitrator agrees with the Union that discipline that is unduly delayed may be difficult to sustain. That does not appear to be the case in this situation. The record indicates that Hill and Hedrick acted in timely fashion upon becoming aware of the Robertson sticker on Reeder's hard hat.

Examination of Joint Exhibit 11, a sample ballot issued by the Ohio Right to Life PAC, indicates that it urges recipients to vote for certain candidates for office and against others on the basis of their position on the issue of abortion. The political affiliations of some of some of candidates recommended for office is specified. It is not possible to consider such activity to be nonpartisan in nature. This view is bolstered by the status of the Ohio Right to Life PAC. That organization is required to file, and has filed, reports with the State detailing its political contributions. The Inter-office Communication of September \*\*20\*\*

17, 1986, posted at the work site (Joint Ex. 18) indicates that:

campaigning by writing for publications, by distributing political material or by writing or making speeches on behalf of a candidate for partisan elective office, when such activities are directed toward party success (Emphasis added)

It may be argued that the "Pro-Life Ballot" is not partisan as it urges a vote on behalf of candidates from both the Democratic and Republican parties. That view is in error. The ballot was issued by a partisan organization, the Right to Life PAC. The text of the ballot identifies candidates Anthony Celebrezze and Tom Ferguson as Democrats. Vincent Campanella is identified as a Republican. A photograph of the Republican Gubernatorial Candidate James Rhodes and his running mate, Robert A. Taft II, with President Ronald Reagan is printed on the ballot with the indication Rhodes was the choice of the Right to Life PAC for Governor. Only the most innocent and naive voter could fail to associate Rhodes and Reagan as Republicans. As the product of a partisan organization urging partisan action, albeit action spanning party lines, it must be concluded that the ballot is partisan and by distributing it the Grievant was engaged in prohibited political activity. With respect to distribution of the flyers on Aids, safe sexual practices, and establishment of the Ohio State Gay Council, all were reprinted by the Ohio Citizens for Decency \*\*21\*\*

and Health PAC. As is the Ohio Right to Life PAC, it is a registered political organization. The indication on the reprint concerning Aids is that it was distributed by the Ohio Department of Health under the (Governor) Celeste Administration at taxpayer expense. The clear implication is that those various PAC's disapprove of such information being provided by government. In the context in which those materials were distributed and the identification they carried on them, they have a

clear political connotation. That connotation is one of -disapproval of the Celeste Administration policies concerning Aids and rights for homosexual people. The materials reprinted under the auspices of the various PAC's are not designed to inform the reader about aids. Rather they are more properly seen as expressing the view that aids is a disease of the homosexual community and expressing dismay that government should be concerned with the health of that community. As such, they are partisan in nature and the sort of materials falling within the reach of the prohibitions expressed in Joint Exhibit 18. The conclusion is inescapable that Reeder was engaged in the impermissible political activity when he distributed the reprints from the various PAC's, the sample ballot and carried the Robertson sticker on his hard hat.

That conclusion does not compel a finding that the action of the State must be sustained. Reeder's activity must \*\*22\*\*

be evaluated in light of the circumstances that surround it. Testimony was received indicating the Joint Exhibit 18 was posted on the bulletin board at the ODOT facility in Lima without discussion. The Employer did not thoroughly explain the distinction between permitted and prohibited expression of political opinions. Certainly carrying the Robertson sticker is an obvious violation of policy that should have been apparent to the most unsophisticated employee. Distribution of the ballot and literature present a closer call, and one that an employee acting with zeal for his cause, may well have been unable to make without substantial guidance from supervision. That guidance was not provided.

Reeder's co-worker's Reynolds and Brenneman, received five day suspensions for their activities. Review of the record indicates their infractions to be considerably less serious than that committed by Reeder. At the same time, to move to discharge Reeder while Reynolds and Brenneman were administered five day suspensions is disproportionate. Reeder is an employee with somewhat over five years of service. For most of his tenure with the State he has received good employee evaluations only for the June 7, 1984 to June 7, 1985 year are his evaluations subpar. The most recent evaluation on the record, covering the period June 7, 1985 to June 7, 1986 are in the "average" range. No-great problems are apparent with Reeder's work performance. While Reeder's \*\*23\*\*

offenses are serious, they are not of such magnitude to warrant discharge. This conclusion must be reached when they are evaluated in light of the discipline administered to his co-workers, his work record as reflected in his annual evaluations and his length of service with the State.

The record in this proceeding makes it apparent that the Grievant's enthusiasm for his political and moral beliefs dispose him to cross the line of sound judgement with respect to inflicting those beliefs upon co-workers and citizens. That situation must not be permitted to continue. Should the Grievant once again engage in activity of the type at issue in this proceeding it should not be expected that the protections afforded by the Collective Bargaining Agreement and union representation will suffice to assure his continued employment with the State. If further incidents of this nature occur the record before any subsequent neutral will certainly more than adequately support a discharge action.

Award: Based upon the preceding discussion the grievance is SUSTAINED in part and DENIED in part. The discharge of William Reeder is to be reduced to a suspension of 20 work days. (One month). He is to receive all back pay due and owing.

Signed and dated this 28<sup>th</sup> day of December, 1987 at South Russell, OH.

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Harry Graham  
Arbitrator

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