

#1167

In the Matter of Arbitration Between the: : Grievance Number: DPS-2017-00470-07
 :
 :
OHIO DEPARTMENT OF PUBLIC :
SAFETY, DIVISION OF THE OHIO :
STATE HIGHWAY PATROL, :
 Employer : Grievant: Robert M. Latham
 :
 and the :
 :
OHIO CIVIL SERVICE EMPLOYEES :
ASSOCIATION, AFSCME, LOCAL 11, :
AFL-CIO, :
 Union : Date of Hearing: December 19, 2017
 :
 : Howard D. Silver, Esquire
 : Arbitrator

DECISION AND AWARD OF THE ARBITRATOR

APPEARANCES

For: Ohio Department of Public Safety, Division of the Ohio State Highway Patrol, Employer

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OCSEA - OFFICE OF GENERAL COUNSEL

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 GENERAL COUNSEL
 OHIO STATE DEPARTMENT OF PUBLIC SAFETY

PROCEDURAL BACKGROUND

This matter came on for an arbitration hearing at 9:00 a.m. on December 19, 2017 within the offices of the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO in room 195 at 390 Worthington Road, Westerville, Ohio 43082. At the hearing both parties were afforded a fair and full opportunity to submit evidence and arguments in support of their positions. The hearing concluded at 12:50 p.m. on December 19, 2017 and the evidentiary portion of this proceeding was closed at that time.

Post-hearing briefs were filed by the parties with the arbitrator on February 5, 2018 and these briefs were exchanged between the parties by the arbitrator on February 6, 2018.

This matter proceeds under the authority of a collective bargaining agreement in effect between the parties from July 1, 2015 through February 28, 2018, Joint Exhibit 1.

No challenge to the arbitrability of the grievance at issue in this proceeding has been raised. The arbitrator finds the grievance addressed by this proceeding to be arbitrable under the language of the parties' collective bargaining agreement and properly before the arbitrator for review and resolution.

AGREED ISSUE STATEMENT

Was the Grievant terminated for just cause?

If not, what shall the remedy be?

JOINT EXHIBITS

The parties agree that the following exhibits are authentic and properly admitted to the hearing record.

1. 2015–2018 Collective Bargaining Agreement between the State of Ohio and the Ohio Civil Service Employees Association, Local 11
2. Electronic Grievance – DPS-2017-00470-07
3. Discipline Trail
 - (a) Statement of Charges
 - (b) Pre-discipline Notice
 - (c) Pre-discipline Meeting Officer Letter
 - (d) Discipline Letter
 - (e) Department Record

STATEMENT OF THE CASE

The parties to this arbitration proceeding, the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement in effect from July 1, 2015 through February 28, 2018, Joint Exhibit 1.

The language of the parties' collective bargaining agreement within Article 5, Management Rights, empowers the Employer to "... suspend, discharge, and discipline employees." This exclusive management right is limited only "by the express and specific written provision of the Agreement" through which the Employer agrees to abridge, delete, grant, or modify a management right.

Article 24, Discipline in the parties' collective bargaining agreement, in section 24.01, Standard provides: "Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action."

Article 24, section 2402, Progressive Discipline provides that: “The Employer will follow the principles of progressive discipline.” This section also provides: “Disciplinary action shall be commensurate with the offense.”

The remaining language in Article 24, section 24.02 refers to written reprimands, suspensions of varying length (1–5 days) depending on the severity of the infraction, followed by termination of employment.

The grievant in this case, Robert M. Latham, was hired on May 4, 2015 by the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol to serve in the position of Motor Vehicle Inspector. A major responsibility of a Motor Vehicle Inspector position is the conduct of school bus inspections within an inspection system that either determines school buses in compliance with school bus inspection standards or places non-compliant school buses out-of-service for failing to meet school bus inspection standards. The Ohio State Highway Patrol’s policy on school bus inspections, policy OSP-203.16-04, provides that school bus inspections are to be conducted only by employees who have successfully completed a course of instruction in motor vehicle inspections provided by the Licensing and Commercial Standards section and approved by the Superintendent of the OSHP. This policy provides that each school bus is to receive at least one annual inspection and at least one spot inspection.

The grievant, Robert M. Latham, began his motor vehicle inspection training on his date of hire by the Ohio State Highway Patrol, May 4, 2015. By the third day of Mr. Latham’s initial motor vehicle inspection training Mr. Latham was receiving instruction from OSHP Trooper Michael A. Click. During the training received by Mr. Latham from Trooper Click, Motor Vehicle Inspector Latham was instructed by Trooper Click that if a school bus were to pass inspection, decals declaring that compliance were to be affixed to the approved school bus.

Motor Vehicle Inspector Latham was also instructed by Trooper Click that if the school bus inspected did not pass inspection through failing to comply with school bus vehicle inspection standards, decals noting the school bus's approval were to be left with the school district in exchange for a promise that decals would be affixed to a school bus after the repairs needed to bring the school bus into compliance with school bus inspection standards had been completed. Motor Vehicle Inspector Latham recalled in his testimony being instructed by Trooper Click to leave decals for a school bus that needed minor repairs, and also being instructed by Trooper Click to leave school bus inspection decals for a school bus that needed major repairs. Trooper Click had communicated to Mr. Latham in early May, 2016 and thereafter that leaving decals for non-compliant school buses was a standard practice in the school bus inspection system overseen by the Ohio State Highway Patrol.

MVI Latham conducted annual school bus inspections at the Greenfield Exempted Village School District on June 30, 2016 and July 28, 2016. MVI Yockey was present during the July 28, 2016 inspections as an MVI trainee but was not present during the June 30, 2016 school bus inspections. The June 28, 2016 school bus inspections had been performed by Trooper Click and MVI Latham.

On October 16, 2016 an anonymous complaint was received by telephone by the Ohio State Highway Patrol regarding a Motor Vehicle Inspection (MVI) team assigned to the Greenfield Exempted Village School District, that MVI team being comprised of Motor Vehicle Inspectors Robert Latham and Neil Yockey, and until recently, OSHP Trooper Michael Click. The anonymous complaint described school buses that were in disrepair and unsafe for the transport of children, and reported that a school bus mechanic had been heard boasting that the inspectors of those school buses had given the mechanic school bus decals before repairs had been completed.

Motor Vehicle Inspector Latham was asked by a supervisor, OSHP Sergeant Robert G. New about MVI Latham issuing school bus inspection decals before inspection standards had been met, to which Mr. Latham had responded: "Absolutely not."

The day following the receipt of the telephoned complaint, October 17, 2016, OSHP Lieutenant Aaron Reimer and OSHP Trooper Joel Smith traveled to the Greenfield Exempted Village School District and inspected six school buses, all of which were placed out-of-service for safety violations. The issuance of school bus inspection decals was discussed with the school district's school bus mechanic who confirmed that he had been given school bus inspection decals by the MVI team for the school buses except for school bus 21 that had been sent to a dealership for repairs. The school bus mechanic confirmed that he had received school bus inspection decals for school buses with the understanding that once the repairs were carried out the decals could be affixed to the school buses.

MVI Latham subsequently confirmed leaving the school bus inspection decals with the school bus mechanic at the Greenfield Exempted Village School District prior to the school buses attaining compliance with school bus inspection standards. The grievant emphasizes, however, that he performed the inspections of the school buses appropriately and had acted in the way he had been trained by his approved OSHP trainer, MVI Trooper Michael Click.

Following an investigation into the school bus inspections at the Greenfield Exempted Village School District, on January 10, 2017 written notice from the Superintendent of the Ohio State Highway Patrol was directed to Mr. Latham notifying Mr. Latham that the termination of his employment by the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol was being recommended based upon violations of rules and regulations of the Ohio State Highway Patrol, in particular Rule 501.05(1.30)(B), Inefficiency and/or incompetency; Rule

501.05(1.6)(D), Actions that could harm the general public; and Rule 501.05(1.6)(D), Dishonesty.

The January 10, 2017 notice directed to Mr. Latham, Joint Exhibit 3(b), charges:

To wit: it was found that Motor Vehicle Inspector Latham failed to conduct adequate school bus inspections and issued decals for buses that failed to pass the said inspections. Furthermore, he was untruthful when asked about the issuance of decals.

The January 10, 2017 notice scheduled a pre-disciplinary meeting to occur on January 17, 2017 at which Mr. Latham and his Union representative would have the opportunity to respond to the charges.

A pre-disciplinary hearing was held on January 17, 2017 and the pre-disciplinary hearing officer, Captain Robin R. Schmutz, found that just cause existed for the discipline proposed to be imposed upon Mr. Latham. See Joint Exhibit 3(C).

On January 18, 2017 a written notice of termination of employment was directed to Robert M. Latham by the Director of the Ohio Department of Public Safety, John Born, with the termination of Mr. Latham's employment to be effective upon Mr. Latham's receipt of this notice, for violation of DPS Work Rule 501.05(1.30)(B), Inefficiency and/or incompetency; DPS Work Rule 501.05(1.6)(D), Actions that could harm the general public; and DPS Work Rule 501.05(1.6)(D), Dishonesty. This notice of termination of employment charged that Mr. Latham "... failed to conduct adequate school bus inspections and issued decals for buses that failed to pass the inspection." This notice also charged that Mr. Latham had been "... untruthful when asked about the issuance of decals." See Joint Exhibit 3(d).

At the time of Mr. Latham's discharge from employment by the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol effective January 19, 2017, Mr. Latham had had one active disciplinary action attached to his employment record, a written reprimand issued

January 5, 2016 for his involvement in a preventable crash on private property while operating SP1798, a violation of DPS Work Rule 501.05 (1.12), State Vehicle Crash. See Department Record for Robert M. Latham, Joint Exhibit 3(e).

On February 6, 2017 a grievance was filed by the Union with the Employer on behalf of Mr. Latham claiming that the Employer's termination of Mr. Latham's employment had violated the parties' collective bargaining agreement by failing to provide a copy of the discharge notice to the Union, by failing to follow principles of progressive discipline in imposing discipline upon Mr. Latham, by imposing more severe discipline upon Mr. Latham than was imposed upon other similarly situated employees, and for imposing a level of discipline upon the grievant for which the Employer did not possess just cause.

The grievance filed in response to the discharge of Mr. Latham remained unresolved under the parties' contractual grievance procedure and this unresolved grievance, at the direction of the Union, was moved to final and binding arbitration.

An arbitration hearing was convened and completed on December 19, 2017. Post-hearing briefs were received from the parties on February 5, 2018. Under the language of the parties' collective bargaining agreement this matter is found to be properly before the arbitrator for review and resolution.

SUMMARY OF TESTIMONY

Robert Hayslip

Robert Hayslip is a Lieutenant within the Ohio State Highway Patrol assigned to the Batavia Patrol Post. Lieutenant Hayslip has been employed by the OSHP since October 31, 2001 and has been a member of the OSHP's investigations unit since 2016. As a member of the

investigations unit Lieutenant Hayslip has investigated complaints and other investigatory subjects.

Lieutenant Hayslip's career with the OSHP includes service as a Trooper assigned to the Georgetown Patrol Post from April, 2002 through May, 2009. From May, 2009 through February 9, 2014 Mr. Hayslip served as a Sergeant, and Mr. Hayslip was promoted to the rank of Lieutenant in April, 2017.

Lieutenant Hayslip identified Employer's Exhibit 1 as investigatory materials that considered school bus inspections performed by Motor Vehicle Inspectors Robert M. Latham and Neil Yockey at the Greenfield Exempted Village School District. Lieutenant Hayslip testified that school buses that had been inspected by MVI Latham and MVI Yockey at the Greenfield Exempted Village School District were observed to be in disrepair, and questions had arisen as to why decals that were to be distributed only after all repairs had been completed upon an inspected school bus had been in the possession of the school district prior to the repairs required to bring these school buses into compliance with school bus inspection standards.

Lieutenant Hayslip explained that the investigation of the inspections of the school buses at the Greenfield Exempted Village School District was triggered by an anonymous telephone call received on October 16, 2016 registering a complaint about six school buses at the Greenfield Exempted Village School District that had been provided with decals reflecting compliance with vehicular inspection standards. Lieutenant Hayslip explained that those six school buses were inspected following the receipt of the October 16, 2016 anonymous complaint and all six school buses were placed out-of-service for their failure to have attained compliance with school bus inspection standards.

Lieutenant Hayslip testified that Motor Vehicle Inspector Robert M. Latham was asked

about the school bus decals in the possession of the Greenfield Exempted Village School District and MVI Latham had initially denied providing the school bus decals for these school buses to the school district but subsequently admitted that he had done so.

Lieutenant Hayslip testified that those interviewed as part of the investigation of the school buses inspected at the Greenfield Exempted Village School District included OSHP Sergeant Robert G. New; Motor Vehicle Inspector Neil Yockey; Motor Vehicle Inspector Robert M. Latham; Charles Dettwiller, a bus mechanic employed at the Greenfield Exempted Village School District; OSHP Lieutenant Douglas A. Debord, the Post Commander at the Portsmouth, Ohio Patrol Post who had served previously as the head of the Licensing and Commercial Standards section responsible for the school bus inspection program; OSHP Trooper Michael Click; and Sue Buchhammer, the Director of Transportation Services for the Greenfield Exempted Village School District, a position filled by Ms. Buchhammer for the past fourteen years.

Lieutenant Hayslip testified that Sergeant New had asked MVI Latham whether MVI Latham had distributed school bus inspection decals for school buses that had not been determined to be in compliance with school bus inspection standards. MVI Latham had responded to this inquiry: "Absolutely not." Lieutenant Hayslip testified, however, that when he interviewed the school bus mechanic at the Greenfield Exempted School District, Mr. Dettwiller, Lieutenant Hayslip had been informed by Mr. Dettwiller that school bus inspection decals had been provided for school buses that had yet to be found in compliance with school bus inspection standards. The school bus mechanic told Lieutenant Hayslip that once the repairs on those school buses had been completed the school bus inspection decals had been affixed to those buses. Lieutenant Hayslip testified that decals reflecting compliance with school bus inspection standards are to be distributed only after an inspection of a school bus has been determined to be in compliance with school bus

inspection standards.

Lieutenant Hayslip testified that he interviewed MVI Neil Yockey who had been on the MVI team that had conducted the school bus inspections on July 28, 2016 at the Greenfield Exempted Village School District. Mr. Yockey recalled during his interview that he had not heard that part of a telephone conversation spoken by Sergeant New during a telephone call between Sergeant New and MVI Latham during which Mr. Latham had denied to Sergeant New providing the school bus decals to the Greenfield Exempted Village School District's school bus mechanic. MVI Yockey told Lieutenant Hayslip that after the telephone conversation between MVI Latham and Sergeant New had concluded MVI Latham had said to MVI Yockey that MVI Latham's denial about distributing the school bus decals communicated to Sergeant New had been a mistake on the part of MVI Latham. Mr. Latham had said to Mr. Yockey that he, Mr. Latham, had been aware that he should not have answered Sergeant New's question in the way that he had.

Lieutenant Hayslip testified that when he interviewed MVI Latham Mr. Latham confirmed that he had provided the school bus inspection decals to the Greenfield Exempted Village School District's school bus mechanic but explained that MVI Latham had been instructed to follow this course of conduct by an MVI trainer of MVI Latham, Trooper Michael Click. Lieutenant Hayslip recalled MVI Latham confirming that he, Mr. Latham, had been aware that distributing the school bus inspection decals prior to observing a school bus attaining compliance with school bus inspection standards was wrong.

Lieutenant Hayslip testified that when he interviewed Trooper Michael Click, Trooper Click admitted that he had given out school bus inspection decals for school buses that required only minor repairs to attain compliance with school bus inspection standards.

Lieutenant Hayslip testified that when he interviewed Lieutenant Debord, Lieutenant

Debord had explained that he, Lieutenant Debord, had been an instructor in the classroom wherein MVI Latham had received formal training on the correct way to provide school bus inspection decals within the school bus inspection program, the subject of the training.

Mr. Latham had stated to Lieutenant Hayslip that Mr. Latham had done what he had been trained to do, and when asked why he had not simply gone back and re-inspected the school buses before providing the school bus inspection decals, Mr. Latham pointed out that there were a great number of school buses to be inspected.

Lieutenant Hayslip explained that Lieutenant Aaron Reimer and Trooper Joel Smith traveled to the Greenfield Exempted Village School District on October 17, 2016, the day following the receipt of the anonymous complaint received on October 16, 2016. Lieutenant Reimer and Trooper Smith ultimately inspected twenty-eight school buses at the Greenfield Exempted Village School District and based on these inspections twenty-four of the twenty-eight school buses were placed out-of-service. Lieutenant Hayslip testified that Lieutenant Reimer and Trooper Smith found evidence of unsafe school bus conditions involving handrails, rust on the frame, rust on the floor, exhaust leaks, and an emergency door that was not operable.

Lieutenant Hayslip testified that MVI Latham had inspected the school buses on July 28, 2016 and had previously inspected these school buses on June 30, 2016.

Mr. Yockey had begun his employment as a Motor Vehicle Inspector with the Ohio State Highway Patrol in July 2016 and told Lieutenant Hayslip during Mr. Yockey's interview that Mr. Yockey had observed four bus inspection decals being given out by MVI Latham.

Mr. Yockey told Lieutenant Hayslip during Mr. Yockey's interview that MVI Latham had taken about one-half the time used by other Motor Vehicle Inspectors in performing school bus inspections.

Lieutenant Hayslip identified Employer's Exhibit 2 as Ohio Department of Public Safety Work Rule 501.05, Employee Standards of Conduct. Page 10 of Employer's Exhibit 2 presents the Ohio Department of Public Safety discipline grid that includes section 1.6, Failure of Good Behavior, (C), Actions that could harm or potentially harm the employee, fellow employee(s), or a member(s) of the general public; and (D), Any act of dishonesty. The disciplinary grid provides for a range of discipline for a first violation of Rule 501.05, section 1.6 (C) and/or (D) – from a written reprimand to removal.

Lieutenant Hayslip pointed out that at page four of the ODPS discipline grid appearing at Employer's Exhibit 2, page 14 there is presented DPS Rule 501.05 section 1.30(B) that refers to inefficiency and/or incompetency (e.g. poor and/or low work quality) for which a first offense is to result in discipline ranging from a written reprimand to a one day suspension.

Lieutenant Hayslip identified Employer's Exhibit 3 as an electronic record indicating Mr. Latham had received ODPS Work Rule 501.05 on December 1, 2015.

Under questioning by the Union's representative, Lieutenant Hayslip recalled interviewing Mr. Latham in late 2016.

Although Lieutenant Hayslip could not say whether Mr. Latham had received his MVI training exclusively from Trooper Click, Lieutenant Hayslip testified that Mr. Latham had initially been trained by Trooper Click and indicated that the initial training provided by the Licensing and Commercial Standards section for motor vehicle inspection included thirty-two hours of formal classroom instruction.

Lieutenant Hayslip was asked whether other Motor Vehicle Inspectors employed by the Ohio State Highway Patrol had distributed school bus inspection decals prior to a school bus inspection being passed. Lieutenant Hayslip recalled being told by Lieutenant Debord that this

practice had occurred in other school districts and that Trooper Click had engaged in this practice when buses were determined to require only minor repairs. Lieutenant Hayslip confirmed that in late 2016 Trooper Click retired from his employment with the Ohio State Highway Patrol.

Under redirect questioning by the Employer's representative, Lieutenant Hayslip identified, at Employer's Exhibit 1, page 44, a certificate of completion issued to Robert M. Latham dated October 16, 2015 for the OSHP school bus certification course. Lieutenant Hayslip testified that the October 16, 2015 date would have been the day upon which Mr. Latham had completed his formal school bus certification course training.

Neil Yockey

Neil Yockey has been employed by the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol for ten and one-half years. For nine of those years Mr. Yockey was employed as an OSHP Dispatcher. Today Mr. Yockey is employed in a Motor Vehicle Inspector position, spending most of his work time inspecting school buses.

Mr. Yockey testified that he was trained as a Motor Vehicle Inspector by MVI Latham, having spent three months under the oversight and training of MVI Latham. Mr. Yockey was then trained by Douglas Bailey.

Mr. Yockey recalled that he had received week-long training for his MVI position in July 2016, and in July 2016, the fourth day upon which Mr. Yockey had been serving within an MVI position, he had been at the Greenfield Exempted Village School District accompanied by MVI Latham, where he observed Mr. Latham inspecting school buses there, spending ten to fifteen minutes on each bus inspected. Mr. Yockey testified that today a school bus inspection takes about thirty minutes per bus.

Mr. Yockey testified that he observed MVI Latham provide school bus inspection decals

to the school bus mechanic at the Greenfield Exempted Village School District prior to the inspected buses passing school bus inspection standards. Mr. Yockey knew this procedure to be wrong as he had been aware that if a school bus did not pass inspection it was not to receive decals until it had been re-inspected and determined in compliance with school bus inspection standards. Mr. Yockey recalled that MVI Latham had made no attempt to re-inspect the buses at issue.

Mr. Yockey testified that he had been present when MVI Latham had received a telephone call from Sergeant New. Mr. Yockey recalled that while he did hear that part of the telephone conversation from Sergeant New, Mr. Yockey had heard that part of the telephone conversation from Mr. Latham. Mr. Yockey recalled that this telephone conversation occurred in mid-October 2016 and Mr. Yockey had overheard Mr. Latham tell Sergeant New that Mr. Latham had not provided school bus decals in the absence of a passed inspection. Mr. Yockey recalled that when the telephone conversation between Mr. Latham and Sergeant New had concluded, Mr. Latham had said to Mr. Yockey that he, Mr. Latham, should not have answered in the way he had to Sergeant New because Mr. Latham's answer had not been truthful.

Under questioning by the Union's representative, Mr. Yockey recalled receiving week-long training that included instruction on the issuance of motor vehicle inspection decals.

Mr. Yockey testified that he had been trained by MVI Latham and had observed MVI Latham distribute school bus inspection decals prior to a school bus attaining compliance with school bus inspection standards. Mr. Yockey did not report observing this practice.

Mr. Yockey testified that he had been hired as a Motor Vehicle Inspector in July 2016 and his week-long formal training had occurred in December 2017.

Under redirect questioning by the Employer's representative, Mr. Yockey stated that he had received a total of four months of on-the-job training and then became responsible for

conducting Motor Vehicle Inspector duties by himself. Mr. Yockey's first field trainer had been MVI Latham and then a second trainer had worked with Mr. Yockey.

Mr. Yockey recalled that when he was being trained by MVI Latham, Mr. Latham had stated that: "This is the way I was trained," referring to training received from Trooper Michael Click.

Douglas A. Debord

Douglas A. Debord has worked for the Ohio State Highway Patrol for seventeen and one-half years. At present Mr. Dubord serves as the Post Commander at the Portsmouth, Ohio Patrol Post, serving in this capacity with the rank of Lieutenant.

Prior to Lieutenant Debord's present assignment Lieutenant Debord served as the administrative head of OSHP's Licensing and Commercial Standards section, a section that had included in its jurisdiction OSHP's school bus inspection program.

Lieutenant Debord testified that he participated in the training of Motor Vehicle Inspector Robert Latham.

Lieutenant Debord identified Employer's Exhibit 4 as policy OSP-203.16-04, School Bus Inspections, approved March 12, 2012. On the first page of this policy, under Purpose, the following appears: "To establish the system of marking of school buses either in compliance of inspection standards or placed out-of-service for failure to meet established standards."

Lieutenant Debord noted that within Employer's Exhibit 4, at page 2, under paragraph (C), Inspection Decal Validation and Placement, the following appears:

1. All school buses shall be inspected pursuant to the current Ohio School Bus Inspection Manual and shall meet all applicable federal and state standards prior to receiving an inspection decal.

2. All items must be in proper working order before the school bus is issued an inspection decal. (annual inspection)
3. All corrections must be made and the bus re-inspected prior to an inspection decal being issued. (annual inspection)
4. The inspector shall validate the decals with the MVI punch by punching out the month when the school bus is inspected. (annual) Place one decal on each side of the bus at the owner name rail.

Lieutenant Debord identified Employer's Exhibit 5 as the Ohio State Highway Patrol's School Bus Inspection Training Manual issued in 2015, used as a guide in the provision of four days of classroom instruction provided to Motor Vehicle Inspectors. This manual describes how a Motor Vehicle Inspector is to conduct a proper school bus inspection. Lieutenant Debord noted that this manual had been used in October 2015 when MVI Robert Latham received training during the four-day instructional program. Lieutenant Debord noted that at page eight of this manual there appears: "All items must be in proper working order before the school bus is issued an inspection decal during the annual inspections." Lieutenant Debord noted that at page nine of this School Bus Inspection Training manual there is presented: "All corrections must be made and the bus re-inspected prior to an inspection decal being issued during annual inspections."

Lieutenant Debord testified that if the inspection of a school bus results in a finding that the school bus is not in compliance with school bus inspection standards, a sticker to this effect is to be affixed to the non-compliant school bus.

Lieutenant Debord identified Employer's Exhibit 6 as a School Bus Inspection Report form used by the Ohio Department of Public Safety, Ohio State Highway Patrol. Lieutenant Debord explained that Motor Vehicle Inspectors are trained on how to fill out this school bus inspection report.

Lieutenant Debord testified that there had been Motor Vehicle Inspectors employed by the

Ohio State Highway Patrol who in the past had provided inspection decals indicating a school bus's compliance with school bus inspection standards for school buses that still required repairs to attain compliance with school bus inspection standards. Lieutenant Debord testified that such a practice was not approved and has never been appropriate. Lieutenant Debord testified that notice to this effect was provided to Motor Vehicle Inspectors and this prohibition had been included in Motor Vehicle Inspector training. Lieutenant Debord testified that he had been in the classroom when MVI Latham was being trained as a Motor Vehicle Inspector and this prohibition was expressed.

Under questioning by the Union's representative, Lieutenant Debord testified that Mr. Latham received MVI training in October 2015, and the charged violations involving the school buses at the Greenfield Exempted Village School District had occurred in October 2016.

Aaron Reimer

Aaron Reimer is a Lieutenant employed by the Ohio State Highway Patrol. Lieutenant Reimer has twenty years of experience with the OSHP and is the current Motor Vehicle Inspections Commissioner, overseeing the OSHP's Licensing and Commercial Standards section, the section responsible for the OSHP's motor vehicle inspection program.

Lieutenant Reimer recalled that an anonymous complaint was received about the school bus inspections at the Greenfield Exempt Village School District on October 16, 2016. On October 17, 2016, the day following the receipt of the anonymous complaint, Lieutenant Reimer and Trooper Joel Smith traveled to the Greenfield Exempted Village School District to examine school buses there. Lieutenant Reimer and Trooper Smith inspected six school buses on October 17, 2016 at the Greenfield Exempted Village School District and found all six school buses to be out of compliance with school bus inspection standards. All six buses were ordered to be placed out-of-

service.

Lieutenant Reimer recalled that he returned to the Greenfield Exempted Village School District on October 20, 2016 where he inspected eighteen school buses, all of which were determined to be out of compliance with school bus inspection standards and were ordered to be placed out-of-service.

Lieutenant Reimer identified Employer's Exhibit 7 as the vehicle inspection reports for the Greenfield Exempted Village School District buses that had been conducted on June 30, 2016 and July 28, 2016 by Motor Vehicle Inspector Robert M. Latham, inspector number 8034.

Lieutenant Reimer identified Employer's Exhibit 8 as vehicle inspection reports dated October 20, 2016 performed by Trooper Joel Smith, inspector number 1037, at the Greenfield Exempted Village School District. Lieutenant Reimer then compared and contrasted the vehicle inspection findings of MVI Latham on June 30, 2016 and July 28, 2016 with the inspection findings of Trooper Smith on October 20, 2016. Lieutenant Reimer noted that MVI Latham on June 30, 2016 found five school buses with no violation of school bus inspection standards while Trooper Smith found more than sufficient grounds upon which to place all five of these school buses out-of-service on October 20, 2016.

Lieutenant Reimer identified Employer's Exhibit 9 as the 2016 Ohio School Bus Inspection Manual prepared by the Ohio State Highway Patrol's Licensing and Commercial Standards section. This manual was issued on January 20, 2016 and was used during the training of MVI Latham during the formal four-day training program.

Lieutenant Reimer pointed out that three school buses – buses 9, 10, and 11 – had had substantial repairs required of them to attain compliance with school bus inspection standards, and with a single school bus mechanic available to make these repairs, it is simply beyond belief that

all of the needed repairs required by these three buses were successfully completed in one day. Lieutenant Reimer testified that the repairs needed by these buses would have required more than one day under the circumstances presented.

Lieutenant Reimer noted that one of the school buses reviewed had had an emergency door that was rusted shut and could not be opened. Lieutenant Reimer described the heightened danger posed by such an inoperable emergency door to children riding on that bus.

Lieutenant Reimer described a separate bus with its battery installed backwards, producing sparking from the battery's terminals.

Under questioning by the Union's representative, Lieutenant Reimer testified that it is now allowable in the case of a school bus that is inspected and found to require no more than minor repairs, to attach school bus inspection decals to the school buses with the understanding that the repairs will be completed within fifteen days.

Lieutenant Reimer confirmed that some of the reasons for the repairs observed to be needed on the school buses inspected by Lieutenant Reimer and Trooper Smith could have arisen after the July 28, 2016 inspections by MVI Latham.

Richard S. Fambro

Richard S. Fambro has been employed by the Ohio State Highway Patrol for twenty-eight years and today serves with the rank of Major. Major Fambro is responsible for the OSHP's Department of Human Resources, including the Office of Personnel, the Training Academy, testing and evaluation, administrative investigations, recommendations as to disciplinary action, and labor relations.

Major Fambro testified that a recommendation of removal was made in the case of Robert M. Latham because Mr. Latham had been dishonest in his interaction with Sergeant New. Major

Fambro pointed out that the Ohio State Highway Patrol must be able to rely on the honesty of its employees. Major Fambro testified that Mr. Latham was also removed because he failed to follow school bus inspection procedures and his failures in this regard endangered the safety of children and indicated a neglect of duty and a failure of good behavior on the part of Mr. Latham.

Major Fambro testified that Trooper Michael Click had retired from the OSHP before disciplinary action could be imposed upon Trooper Click. Major Fambro testified that Trooper Click had retired and no disciplinary action had been imposed or was pending upon Trooper Click at the time of Trooper Click's retirement in December 2016.

Under questioning by the representative of the Union, Major Fambro confirmed that Mr. Latham had claimed that a lack of satisfactory training was the reason for any non-compliance by MVI Latham with inspection and certification procedures.

Robert M. Latham

Robert M. Latham, in his direct testimony at the hearing in this proceeding, explained that he had been employed as a Motor Vehicle Inspector for fourteen months by the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol. Mr. Latham recalled that his first day of training had been his date of hire, May 4, 2015 and Mr. Latham had spent that day in Sergeant New's office filling out a variety of paperwork and receiving a variety of information.

Mr. Latham recalled that his second day of employment as an MVI had been spent receiving training from the Ohio Department of Transportation, and on his third day of employment he had met with Trooper Michael A. Click in Batavia, Ohio to observe school bus inspection procedures.

Mr. Latham recalled that on the first day of training received from Trooper Click found MVI Latham holding a notebook while observing Trooper Click inspect school buses. Mr. Latham

testified that on the second day of training received from Trooper Click MVI Latham began inspecting school buses himself.

Mr. Latham recalled that he had been trained by Trooper Click that the policy in effect for school bus inspections was that in the event an inspected school bus required major repairs, a sticker was to be left, and if a school bus required minor repairs a sticker was to be left, with the understanding that the repairs would be completed and only then would the stickers be affixed to the buses. Mr. Latham recalled that there were a couple of school districts where school bus inspection decals were never left in anticipation of needed repairs.

Mr. Latham testified that he properly and appropriately inspected all school buses to which he had been assigned and performed his duties in the manner in which he had been trained. Mr. Latham recalled that the Greenfield Exempted Village School District school buses had been old, worn out, and used on rural routes, giving the appearance of having been abused early and often.

As to Mr. Latham's conversation with Sergeant New in mid-October 2016, Mr. Latham recalled being asked by Sergeant New whether Mr. Latham had put a school bus sticker on a bus that had not passed a school bus inspection. Mr. Latham recalled that he had left school bus decals indicating passing school bus inspections, and testified that he had left decals for buses that had yet to pass a school bus inspection.

Under questioning by the Employer's representative, Mr. Latham testified that Trooper Click had handed out school bus inspection decals for those buses that required major repairs and had passed out decals for those buses that required minor repairs. Mr. Latham testified that he was trained to do this by Trooper Click and he had given out school bus inspection decals in the manner in which he had been trained to do so.

POSITIONS OF THE PARTIES

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

The Employer, the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol, emphasizes that employees are expected to perform their assigned duties with the highest degree of public trust. The Employer points out that employees are expected to comply with all policies and procedures related to their job responsibilities.

Referring to the job responsibilities assigned to the grievant, the Employer points out that those responsibilities involved insuring that school buses were safe to operate within a system that required school buses to first pass an inspection overseen by the Ohio State Highway Patrol before the school bus was approved to transport students. The Employer points out that the ultimate purpose of the grievant's position was to insure the safety of the state of Ohio's most precious resource – Ohio's school children.

The Employer points out that as a Motor Vehicle Inspector Mr. Latham had been assigned to the Licensing and Commercial Standards section of the Wilmington District, responsible for the annual inspection of school buses to insure conformity with safe school bus standards and to insure compliance with safety regulations and highway safety practices. The Employer describes Motor Vehicle Inspectors as working on the Ohio State Highway Patrol's front line in ensuring school bus safety.

The Employer refers to the anonymous complaint received on October 16, 2016 about school buses operated by the Greenfield Exempted Village School District, school buses inspected by MVI Latham on June 30, 2016 and July 28, 2016, school buses that were re-inspected by OSHP Lieutenant Aaron Reimer and OSHP Trooper Joel Smith on October 17, 2016 and October 20,

2016. When the Greenfield Exempted Village School District's school buses were re-inspected by Lieutenant Reimer and Trooper Smith, all of the re-inspected school buses were found to present violations of school bus inspection standards, many of which were determined to be serious violations.

The Employer points out that an investigation conducted by the OSHP discovered that the grievant had failed to conduct adequate school bus inspections and had issued school bus inspection decals to school buses that had failed to pass inspection. The OSHP's investigation also determined that MVI Latham had been untruthful when asked about his distribution of school bus inspection decals.

The grievant was found to have violated Department of Public Safety Work Rules 501.05-1.30B, Inefficiency and/or incompetency; 501.05-1.6C, Actions that could harm the general public; and 501.05-1.6D, Dishonesty. The grievant's employment was terminated effective January 19, 2017, following one year and eight months of state of Ohio public employment.

The Employer refers to the argument put forward by the Union and the grievant that the grievant performed his official duties in the manner in which he had been trained, in particular in accordance with the training he received from Trooper Michael A. Click who had served as an MVI Trooper for sixteen years. Trooper Click had been assigned to the field instruction of MVI Latham in the performance of school bus inspections, and during the time period surrounding Mr. Latham's hire as an MVI, beginning in May 2015 Trooper Click and MVI Latham often worked together performing school bus inspections.

The grievant has testified in this proceeding that Trooper Click trained MVI Latham by explaining that if a school bus had been "under repair," MVI Latham could leave the school bus inspection decals for that bus with the school bus mechanic to affix to the bus after the needed

repairs had been completed. The Employer points out that in his testimony at the hearing, Mr. Latham admitted to “mixed feelings” about issuing school bus inspection decals prior to a school bus passing a school bus inspection but had done so in the belief he was following the training provided to him by the Employer.

The Employer contends that the hearing record contains a preponderance of evidence showing the grievant was trained in the proper procedures for OSHP approved school bus inspections. The Employer points to school bus inspection training conducted in October 2015 at a time when Lieutenant Douglas A. Debord was serving as the MVI Commissioner over the Licensing and Commercial Standards section. Lieutenant Debord testified in this proceeding that he had served as a primary classroom instructor and had been the author of the training provided to MVI Latham during the week-long training on school bus inspections. The training of MVI Latham, emphasizes the Employer, outlined in detail the procedures necessary for an appropriate and complete school bus inspection.

The Employer points out that the school bus inspection training provided to MVI Latham in October 2015 covered all areas of a school bus, including the exterior of the bus, the interior of the bus, the bus’s engine compartment, the undercarriage of the bus, and school bus inspection rules. This training also included comprehensive hands-on instruction on the performance of school bus inspections. Lieutenant Debord testified that the subject of issuing school bus inspection decals to buses that had not yet passed a school bus inspection was discussed during the training and it had been the specific order by Lieutenant Debord that the issuance of school bus inspection decals to school buses that had not yet passed a school bus inspection was a practice that was to cease immediately. Lieutenant Debord recalled in his testimony that this specific prohibition was communicated to all who participated in the week-long training that occurred in

October 2015 on school bus inspections. The Employer points out that the grievant nevertheless continued to issue school bus inspection decals to buses that had yet to pass school bus inspection standards.

The Employer points out that the grievant, as a Motor Vehicle Inspector, was responsible for inspecting school buses to insure compliance with school bus inspection standards required by law.

The Employer recalls the testimony of MVI Yockey in which Mr. Yockey described school bus inspections performed by MVI Latham observed by MVI Yockey on July 28, 2016 at the Greenfield Exempted Village School District. Mr. Yockey recalled MVI Latham spending ten to fifteen minutes per school bus performing a school bus inspection. Mr. Yockey expressed the opinion that a thorough school bus inspection requires at least thirty minutes to complete.

Lieutenant Reimer testified in this proceeding that the grievant had observed many violations during his inspections of the school buses at the Greenfield Exempted Village School District that should have resulted in buses being ordered out-of-service but did not. Lieutenant Reimer pointed out that MVI Latham failed to place any school buses out-of-service and noted that the violations identified on the school bus inspection forms have been repaired. Lieutenant Reimer expressed the opinion that since only a single school bus mechanic had been available to make the repairs, that school bus mechanic would not have been able to make all of the repairs that were noted as needed the same day as the inspections, prior to the transport of students. The Employer points out that the arguments made on behalf of the grievant require the arbitrator to find that not only did the grievant inspect the school buses to find violations, but the school bus mechanic corrected all of the violations on the same day. Considering that a number of the school buses required major repairs, the Employer expresses skepticism about a single school bus

mechanic in one day repairing rust holes, fixing leaking fuel and brake lines, replacing floor supports, and performing dozens of other major repairs. The Employer points out that the grievant marked these violations as corrected but there were numerous instances where these same violations were observed when Lieutenant Reimer and Trooper Smith re-inspected the school buses during the latter half of October 2016.

The Employer points out that Lieutenant Reimer's testimony revealed various violations that should have been identified by MVI Latham that had been identified during the re-inspection of these buses. The Employer notes that the grievant's school bus inspections were conducted on June 30, 2016 and July 28, 2016, and the re-inspection team's examinations were conducted on October 20, 2016 and October 24, 2016. Lieutenant Reimer testified that it was highly unlikely that rust issues would have presented themselves in such a short period of time during summer months.

The Employer enumerates the more serious violations discovered by the re-inspection team among the re-inspected school buses - such defects as a rust hole in the bottom of an emergency door, a leaking front brake master cylinder, a leaking transmission line, a rusted out muffler, rust holes in the interior of school buses in wheel wells, an inoperative emergency door on school bus 15, and rusted out floor supports.

The Employer points out that MVI Yockey had explained in his testimony at the hearing that the proper way to issue a school bus inspection decal was to physically affix the decal to the bus at an appropriate location, not by handing the decal to a school bus mechanic upon a promise that the school bus would be brought into compliance with school bus inspection standards. The Employer points out that while the grievant testified he was trained by Trooper Click who issued school bus inspection decals to buses with minor violations, it remains true that the grievant

received training on performing school bus inspections, including the issuance of school bus inspection decals, by Lieutenant Debord and others on October 16, 2015.

It is the Employer's position that the grievant ignored the training provided by the Employer and ignored Lieutenant Debord's direct order to cease issuing school bus inspection decals to school buses that had yet to pass a school bus inspection. The Employer claims that the grievant continued to issue school bus inspection decals for school buses that had not passed school bus inspection standards.

The Employer contends that the actions of the grievant violated DPS Work Rule 501.05-1.6C because they are actions which could have led to harm to the general public. The Employer points out that the grievant in his testimony at the hearing in this proceeding had described the Greenfield Exempted Village School District school buses as old and worn, school buses that had appeared to have been abused early on. Based upon these circumstances the Employer argues that a conscientious MVI would have spent additional time inspecting the school buses to insure their safe operation; instead the grievant hurried through his school bus inspections and issued school bus inspection decals for buses that presented violations of school bus inspection standards before observing that the violations had been corrected.

The Employer reminds the arbitrator that at least one of the buses had an emergency door that was inoperable because of rust. The Employer recalls the testimony of Lieutenant Reimer that described the heightened danger threatened by such an inoperable emergency school bus door to the children riding on that school bus. In the case of a fire, for example, the inability to exit the school bus through the emergency exit door could prove catastrophic.

The Employer argues that the grievant's disregard of proper school bus inspection procedures endangered the safety of school children, presents a violation of DPS Work Rule

501.05-1.6C, and provides just cause for the discipline imposed upon the grievant.

As to DPS Work Rule 501.05-1.6D, Dishonesty, the Employer claims the grievant violated this work rule on multiple occasions when he indicated on his inspection forms that repairs had been made when in fact they had not. The Employer claims that the grievant violated the rule again when he gave the school bus mechanic inspection decals for school buses that had not yet passed a school bus inspection, and continued to do so after being ordered to cease such a practice by Lieutenant Debord.

The Employer claims that the grievant also exhibited dishonesty in his response to questions from a supervisor, Sergeant New, concerning issuing the school bus inspection stickers to buses that had yet to pass inspection, telling the school bus mechanic to put the stickers on the bus after it had been repaired. The grievant had replied to Sergeant New's inquiry: "Absolutely not."

The Employer notes that the OSHP investigation included an interview of the Greenfield Exempted Village School District's school bus mechanic who had confirmed that he had received four school bus inspection decals from MVI Latham for school buses that had failed their inspections. The following morning, Sergeant New met with MVI Latham and again asked if MVI Latham had given out school bus inspection decals, and once again MVI Latham had responded: "Absolutely not." Later during that conversation MVI Latham admitted giving out a decal for one bus and later still, during an interview, MVI Latham explained that he had misunderstood the question from Sergeant New, having thought that Sergeant New was inquiring about whether MVI Latham had affixed the stickers to buses.

Mr. Latham's explanation of his response to Sergeant New's questions, however, argues the Employer, is undermined by the testimony of MVI Yockey who was in the company of MVI

Latham during a telephone conversation between MVI Latham and Sergeant New. At the conclusion of that telephone conversation MVI Latham had told MVI Yockey that he, MVI Latham, should not have told Sergeant New that MVI Latham had not given out school bus inspection decals. MVI Yockey concluded, based on this communication, that MVI Latham was admitting to MVI Yockey that MVI Latham had not told Sergeant New the truth.

The Employer claims that the grievant has never accepted responsibility for his actions but instead lays the blame for any variance with appropriate practices and procedures upon the training provided by Trooper Michael Click. The Employer contends that the grievant's inability to admit his wrongdoing and negligence in this case reinforces why the grievant cannot be allowed to regain employment as a Motor Vehicle Inspector. The refusal of the grievant to concede any wrongdoing, argues the Employer, shows the grievant to be incapable of changing his behavior. The Employer emphasizes that the grievant received training on the proper way to perform school bus inspections but continued to engage in practices that he knew were in violation of direct orders from Lieutenant Debord concerning the issuance of school bus inspection decals. The Employer points out that during his testimony the grievant admitted to harboring "mixed feelings" about the manner in which he had been issuing school bus inspection decals to school buses that had yet to pass school bus inspection standards but continued to do so.

The Employer argues that it is clear from a preponderance of the evidence in the hearing record that the grievant has shown himself to have been untruthful with Sergeant New when questioned about the issuance of school bus inspection decals, and the grievant flagrantly disregarded proper procedures in the issuance of school bus inspection decals. The Employer contends that based on this failure to conduct proper school bus inspections, the consequence of which is to endanger the safety of Ohio school children, means that the conduct of the grievant

adversely affected the public's respect, confidence, and trust in Ohio State Highway Patrol school bus inspections.

The Employer argues that due to the egregious nature of the grievant's proven misconduct, just cause has been substantiated for the termination of the grievant's employment, and the grievant's removal, argues the Employer, should be affirmed by the arbitrator.

The Employer contends that the discipline imposed upon the grievant is neither arbitrary, capricious, nor discriminatory, and argues that the severity of the discipline imposed is commensurate with the seriousness of the misconduct proven to have been engaged in by the grievant when compared to the Ohio Department of Public Safety's discipline grid.

The Employer urges the arbitrator to deny the grievance in its entirety and thereby affirm the existence of just cause upon the facts of this case in the termination of the employment of the grievant effective January 19, 2017.

Position of the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, Union

The Union in this proceeding, the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, understands the issue in this proceeding to be whether the grievant, Mr. Latham, was removed for just cause, and if not, what the remedy shall be.

The Union notes that the grievant was hired on May 4, 2015 as a Motor Vehicle Inspector by the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol. The Union notes that the training of MVI Latham upon his hire was assigned to Michael A. Click, an OSHP Trooper with thirty-four years of service who had performed more than 50,000 school bus inspections. The Union notes that over the course of several months Trooper Click provided training and instruction to MVI Latham on the performance of school bus inspections that included

the issuance of school bus inspection decals.

The Union notes that an anonymous complaint was received on October 16, 2016 by the Ohio State Highway Patrol concerning six of the Greenfield Exempted Village School District's school buses. An investigation of the October 16, 2016 complaint was carried out, followed by Mr. Latham's discharge from his employment as a Motor Vehicle Inspector.

The Union points out that there are two types of school bus inspections assigned to Motor Vehicle Inspectors – “spot inspections” that are typically unannounced and performed by a Motor Vehicle Inspection team, and “annual inspections” that are also conducted by an MVI team but by scheduling the annual school bus inspection the school district is offered the opportunity to ready a school bus for its annual inspection. The Union points out that a school bus mechanic will be present for minor repairs during the annual inspection, and refers to Employer's Exhibit 9, Ohio School Bus Inspection Manual 2016 wherein at page ten the annual school bus inspection schedule and school bus preparation are addressed. The directions presented at page ten of Employer's Exhibit 9, the 2016 Ohio School Bus Inspection Manual, calls for the interior and exterior of the school bus, including undercarriage, to be dry and clean, all components of the school bus be in working condition, and provides that all school district administrators are responsible for having buses ready for inspection.

The Union points out that the school bus inspections conducted by MVI Latham in June 2016 and July 2016 were “annual inspections” that permitted the school bus garage to ready the school buses for inspection and make minor repairs.

The Union refers to the anonymous complaint received on October 16, 2016 and the re-inspection of Greenfield Exempted Village School District school buses that revealed violations and suggested negligence. The Union points out, however, that the re-inspections were conducted

unannounced and four months after the June/July 2016 annual inspections. The Union argues that it is to be expected that the school buses would not have been in as good a condition as when MVI Latham inspected them four months earlier.

The Union points out that the annual school bus inspections conducted by MVI Latham occurred during a non-school season. The Union argues that this points to less wear and tear as the buses were not in use.

The Union points out that upon re-inspection most of the school buses were found to have traveled about 4,000 miles since June/July 2016, and the majority of these school buses are older school buses, traveling in a rural area with mileage ranging from 100,000 miles to 200,000 miles. See Employer's Exhibit 1, pages 26-39.

The Union recalls the testimony of Lieutenant Reimer concerning violations he observed during the re-inspection of Greenfield Exempted Village School District school buses. The Union notes that Lieutenant Reimer was asked whether the violations he observed could have taken place over the four months prior to the re-inspections, and Lieutenant Reimer testified that the violations could have occurred within that four-month period.

The Union points to an investigative interview of Trooper Joel Smith, an MVI Trooper of fifteen years who had assisted Lieutenant Reimer in the re-inspection of the Greenfield Exempted Village School District school buses. When asked during this investigative interview whether he had noticed anything specific not being done to the school buses he was re-inspecting, Trooper Smith had responded: "In my opinion, it appears to be a major training issue."

The Union points out that the Greenfield Exempted Village School District school bus mechanic, Charles Dettwiller, had said in his investigative interview that MVI Latham had conducted school bus inspections in a thorough manner.

The Union refers to the testimony from Neil Yockey, the Motor Vehicle Inspector who had been trained by MVI Latham and present during school bus inspections conducted by MVI Latham on July 28, 2016. During the OSHP investigation MVI Yockey was asked whether MVI Latham had conducted a thorough school bus inspection, and MVI Yockey's response had been: "At the time I would have to say yes." MVI Yockey also stated that he did not observe any significant time difference between the amount of time taken by Trooper Click to inspect a school bus and the amount of time taken by MVI Latham to conduct a school bus inspection. The Union contends that this testimony shows that MVI Latham conducted school bus inspections as trained by Trooper Michael Click.

As to the issuance of school bus inspection decals by MVI Latham, the Union emphasizes that a preponderance of evidence in the hearing record shows that MVI Latham issued school bus decals in the manner in which he had been trained by Trooper Click, a thirty-four year OSHP employee. During the investigative interview of Trooper Click, Trooper Click had stated that he had left school bus inspection decals with school bus mechanics for school buses that required minor repairs. When asked how many times he had left school bus inspection decals with mechanics for minor repairs, Trooper Click had responded: "In 16 years probably less than 100."

The Union points to the investigative interview of Trooper Click in which he was asked whether he had trained MVI Latham to hand out school bus inspection decals for school buses that required minor repairs. Trooper Click answered that if he found something minor during a school bus inspection he would tell MVI Latham to: "Go ahead and give it to them..." Trooper Click also stated in his investigative interview that MVI Latham had observed Trooper Click issue school bus inspection decals to buses requiring minor repairs, and when MVI Latham had asked if it was okay to issue school bus inspection decals in this manner, Trooper Click had stated to MVI

Latham: "Yeah, we can do that." The Union contends that this investigative interview of Trooper Michael A. Click establishes that he did train MVI Latham in the manner in which school bus inspection decals were to be left for school buses that required minor repairs.

The Union points out that during the investigative interview of Greenfield Exempted Village School District bus mechanic, Charles Dettwiller by Sergeant Hayslip, Mr. Dettwiller had been asked if he had been provided with school bus inspection decals before and if so by whom. Mr. Dettwiller recalled Trooper Michael Click providing school bus inspection stickers, as did a Trooper prior to Trooper Click, Trooper Lee Burnum, now retired. In both cases Troopers Click and Burnum had provided school bus stickers for school buses that required minor repairs.

The Union points out that during a second interview of Greenfield Exempted Village School District school bus mechanic Charles Dettwiller, Mr. Dettwiller had explained that the issuance of school bus inspection decals for buses that required minor repairs was not unique to the Greenfield Exempted Village School District. Mr. Dettwiller had said that similar practices had occurred in school districts in Leesburg, Hillsboro, and Washington Courthouse, that is, school inspection decals had been issued for school buses that had required minor repairs. The Union argues that as described in the interview of Trooper Click, this practice has been going on for at least sixteen years.

The Union points out that during the hearing herein Lieutenant Reimer provided testimony to the effect that the Employer has since changed its policy on school bus inspection decals. The Union contends that the testimony of Lieutenant Reimer indicates that the Ohio State Highway Patrol now allows school bus inspection decals to be left at school district school bus garages so long as the needed repairs are minor and occur within fifteen days. The Union argues that the policy change describes a practice very similar to that which had been carried out by MVI Latham

and Trooper Click.

As to the charge of dishonesty lodged against the grievant, the Union emphasizes that this allegation is based on a single instance of one question from a supervisor, and how that question had been understood by MVI Latham when it was put to MVI Latham by Sergeant New. MVI Latham understood the question from Sergeant New to be whether MVI Latham had placed school bus inspection decals on school buses that had yet to pass a school bus inspection, and when he had answered no, this response was truthful as MVI Latham had not affixed school bus inspection decals to any bus that had yet to pass a school bus inspection. The Union argues that there is no evidence in the hearing record to contradict the truthfulness of the grievant's statement to the fact that he did not affix school bus inspection decals to school buses that still required minor repairs.

As to MVI Latham expressing to MVI Yockey that MVI Latham may have misunderstood the question put to him by Sergeant New, the Union contends that this too does not reflect dishonesty on the part of the grievant, and when subsequently questioned about allegations of dishonesty MVI Latham proceeded to clarify his answer and to state that he had not clearly understood the question when initially asked the question.

The Union argues that the evidence in the hearing record shows that at no time was MVI Latham negligent in his duties as a Motor Vehicle Inspector, and a preponderance of the evidence in the hearing record shows the grievant performed his duties in accordance with the instruction provided by Trooper Click. The Union argues that MVI Latham relied on Trooper Click's directions as a highly experienced MVI trainer.

As to allegations of inefficiency and/or incompetency based upon the observation of several violations during the re-inspection of the Greenfield Exempted Village School District's school buses, the Union reminds the arbitrator that the school buses inspected and then re-inspected

were old, high in mileage, and in poor condition. The Union emphasizes that Lieutenant Reimer had stated in his testimony that the violations observed in October 2016 could have arisen within the four-month span following the annual inspections conducted by MVI Latham in June/July 2016.

As to the issuance of school bus inspection decals by MVI Latham, the Union refers to the extensive training provided by Trooper Click to MVI Latham and a variety of reports of MVI inspection teams leaving school bus inspection decals for buses requiring minor repairs at other garages. The Union argues that MVI Latham was singled out, however, to be accountable for a practice that was commonly encountered in the school bus inspection program.

The Union points out that the Employer has argued that the actions of the grievant were so egregious as to leave the Employer little discretion in calling for the discharge of the grievant based on the seriousness of the alleged misconduct. The Union points out, however, that since that determination in January 2017, the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol, Licensing and Commercial Standards section has developed a policy that is strikingly similar to the actions carried out by the grievant. As expressed by Lieutenant Reimer in his testimony in this proceeding, the new and current practice allows for school bus inspectors to issue school inspection decals to buses requiring minor repairs and a fifteen-day period in which to complete those repairs. The Union argues that the present approved practice is glaringly similar to the practice for which MVI Latham has had his employment terminated.

Based upon the foregoing arguments and based upon a preponderance of evidence in the hearing record, the Union argues that the termination of the employment of the grievant was unwarranted and effected without just cause. Because of the absence of just cause for the discipline imposed upon the grievant, the Union asks the arbitrator to grant the grievance in its entirety and

order a remedy for the breach of the parties' collective bargaining agreement, to include reinstatement of the grievant, all mention of the discipline imposed upon the grievant in this case be expunged from the grievant's employee file maintained by the Employer, all seniority restored to the grievant from the date of removal, all leave balances restored to levels they would have been at if the discipline had not occurred, and any and all monetary losses compensated so as to make the grievant whole.

DISCUSSION

There is in this proceeding substantial accord between the parties as to what occurred prior to the January 19, 2017 discharge of the grievant. What separates the parties in this case is less a dispute about what happened and more in the nature of identifying mitigating and aggravating factors that arise from the events underlying the disciplinary action.

There is no dispute between the parties, for example, about the hire of the grievant or the training provided to the grievant following his hire on May 4, 2015. There is little dispute about the written materials used during formal classroom instruction provided by Lieutenant Debord and others to a training class comprised of recently hired MVIs that included MVI Latham that was convened in October 2015. There is also no dispute between the parties that the field training provided to MVI Latham by Trooper Michael Click, the MVI instructor assigned to provide field training to MVI Latham, included instructions directed to MVI Latham that described school bus inspection procedures that were at variance with the school bus inspection policy presented during the four-day formal training provided to MVI Latham in October 2015.

The formal, written school bus inspection policy of the ODPS, OSHP was presented by Lieutenant Debord in October 2015 to the MVIs being trained, a class of trainees that included

MVI Latham.

The formal training provided in October 2015 to MVI Latham and other new MVIs in that training class included Ohio State Highway Patrol policy OSP-203.16-04, School Bus Inspections, approved March 12, 2012. This policy, that appears in the hearing record as Employer's Exhibit 4, provides that school buses inspected pursuant to the current Ohio School Bus Inspection Manual are to meet all applicable federal and state standards prior to receiving an inspection decal; all items must be in working order before a school bus is to be issued an inspection decal (annual inspection); all corrections must be made and the bus re-inspected prior to an inspection decal being issued (annual inspection); and the inspector is to validate the decals with an MVI punch by punching out the month when the school bus is inspected (annual).

It is also the case, however, that for many years (more than sixteen) within the OSHP school bus inspection program, practices not contemplated by the school bus inspection policy were implemented in the field, quietly, practices that deviated from the written school bus inspection policy. The change to the policy in the field involved leaving school bus inspection decals for buses that had yet to pass school bus inspection standards. This modification of the OSHP's policy on school bus inspections was a practice carried out by Trooper Click and part of the training of MVI Latham by Trooper Click.

The different procedure followed by Trooper Click in issuing school bus inspection decals was not unique to Trooper Click and not exclusive to recent years. There is credible evidence in the hearing record indicating that MVI Trooper Click applied his version of the school bus inspection policy over a period of sixteen years, and a similar policy had been followed prior to Trooper Click by Trooper Burnum. What is ironic is that by the time of the arbitration hearing in this case, late December 2017, the school bus inspection policy as applied by Trooper Click and

Trooper Burnum as it related to school buses in need of minor repairs appears to have come full circle as, according to the testimony of Lieutenant Reimer, this is now the accepted and official policy of the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol in operating its school bus inspection program.

The mitigating factors supporting a reduction in the severity of the discipline imposed upon the grievant begin with the changed policy on school bus inspections now approved by the OSHP. The Union contends that the very practice in which MVI Latham had been trained by Trooper Click, the practice followed by MVI Latham based on the training from Trooper Click, is now a practice accepted and followed in the OSHP school bus inspection program. The Union asks how implementing a program in a manner that has come to be accepted by the Employer can provide the just cause needed to discharge the grievant?

The Union also points out that it is only MVI Latham who has been disciplined through termination of employment, a level of discipline not imposed on any of the other employees who had implemented the same policy for which MVI Latham has been discharged. The Union argues that this is a disparate treatment issue that should be resolved in favor of the grievant, and argues that the immediate removal of the grievant for what is a first offense relative to the school bus inspection policy is neither progressive in nature, as required by the parties' Agreement, nor does the grievant's conduct rise to the level of egregiousness claimed by the Employer.

The Union also points out that there is no proven connection between what was observed among Greenfield Exempted Village School District school buses by Lieutenant Reimer and Trooper Smith in late October 2016 and what had been observed by MVI Latham on June 30, 2016 and July 28, 2016. The Union notes that there is no evidence in the hearing record substantiating the defects observed by Lieutenant Reimer and Trooper Smith in late October 2016 were present

or observable by a school bus inspector in June 2016 and July 2016. The Union argues therefore that the poor condition of the school buses observed in October 2016 is not a circumstance that supports a finding of just cause against the grievant under the facts of this case.

The Union also points out that there is no evidence in the hearing record showing any harm resulting from the school bus inspections performed by MVI Latham.

The above-cited mitigating factors are offset by the aggravating factors cited by the Employer. First, at the time of the actions of MVI Latham that are at issue in this proceeding, there was a single, written, formal OSHP policy that expressly and specifically delineated how the school bus inspection program was to operate. This inspection program and the formal, written policy upon which it was grounded were part of the formal training provided during a four-day instructional period devoted to school bus inspections attended by MVI Latham in October 2015, an instructional program taught by Lieutenant Debord. The official, written school bus inspection policy in effect in June 2016 and July 2016 upon which MVI Latham had received training in October 2015 called for school bus inspectors to refrain from issuing school bus inspection decals unless and until a school bus had passed all aspects of the school bus inspection. The policy and the training on that policy required a re-inspection for any school bus that was not determined to be in compliance with all school bus inspection standards. This re-inspection, except in the case of immediate, minor corrections, would have required a second visit and the school bus's re-inspection by a school bus inspector to comply with the official policy and formal training provided about the OSHP's school bus inspection program.

In enumerating the aggravating factors in this proceeding, the Employer notes that MVI Latham had been fully cognizant of what the policy called for in terms of school bus inspections, what the formal training had indicated was called for in terms of school bus inspections, and had

received a direct order in the classroom from Lieutenant Debord directed to the entire training class that school bus inspection decals were not to be left for school buses that had yet to pass school bus inspection standards. The Employer points out that the grievant nonetheless continued in the manner that had been suggested to him by Trooper Click, and continued to do so even though MVI Latham had harbored “mixed feelings” about whether this was an appropriate procedure to follow.

Among the conflicting imperatives raised by the mitigating and aggravating factors delineated by the parties in this proceeding, the arbitrator remains cognizant of the fact that there is a compelling state interest in this proceeding, that being the health and safety of Ohio school-aged children. It is impossible to imagine a more compelling interest of the state of Ohio than safeguarding the well-being of school-aged children, including those children being transported by school districts’ buses. The safety of these children is entrusted to the ODPS, OSHP as a matter of law, and Motor Vehicle Inspectors are relied on to operate the school bus inspection program in the manner described in DPS, OSHP policies. Motor Vehicle Inspectors employed by the ODPS, OSHP as school bus inspectors are required to receive training as mandated by statute, and their job responsibilities are directly related to the safety of Ohio’s school-aged children being transported by school bus.

There may today be some ambiguity about whether the official policy of the Ohio State Highway Patrol as it relates to school bus inspections has changed, and if so, how it has changed. At the time of MVI Lathan’s formal classroom training in October 2015, however, it had been clearly expressed that the school bus inspections and re-inspections were to occur under the policy prior to the issuance of a school bus inspection decal. While the grievant followed the alternate practice suggested to him by Trooper Click in terms of the issuance of school bus inspection decals,

there is no question that MVI Latham understood the differences between the official and unofficial school inspection policies, and recognized the significance of what was being offered under Trooper Click's alternate policy in contrast to the requirements expressed in the written policy of the OSHP, the practices delineated in detail during formal training in October 2015.

MVI Latham, Trooper Click, Trooper Burnum, and today's administrators of the OSHP school bus inspection program may have convinced themselves that the "minor repairs" exception to the school bus inspection policy, as had been suggested by Trooper Click to MVI Latham, is a better and more efficient inspection system than is expressed in the formal, written policy of the OSHP, but whatever the advantages and disadvantages of each system there is no question that they are very different systems. The official policy requires a return to a school bus claimed to be brought into compliance with school bus inspection standards following an earlier inspection that found the school bus not in compliance with such standards. A school bus inspector who returns and observes the necessary completed repairs before providing school bus inspection decals for the bus under review provides a different level of oversight and regulation than does a school bus inspector who accepts a promise that such necessary work will be performed promptly and correctly. The official school bus inspection system called for objective criteria to be observed through personal observation during a re-inspection of a formerly non-compliant school bus; the latter system described above relies upon the actions of an interested party and assumes in each instance a best case scenario.

There is no question that unburdening an inspection system through eliminating the need for a second visit for a re-inspection reduces the work load and travel burden on school bus inspectors but such heightened efficiency is achieved through greater uncertainty about the safety actually provided by a school bus claimed to have been brought into compliance with school bus

inspection standards but not re-inspected by an MVI. Because of the compelling nature of who is being transported on these buses, efficiency is not viewed by the arbitrator as a factor equal in weight to the safety of the transported students.

The arbitrator is tasked with determining whether there has been proven in the hearing record just cause for the discipline imposed upon the grievant - the termination of the grievant's employment. If the object of the grievant's job responsibilities had been for something less compelling than the safety of school-aged children being transported on school buses the arbitrator may have been swayed by the disparate treatment reflected in this case, the lack of progressive discipline presented in this case, and the ambiguity as to which policy is to be followed in the school bus inspection program. These mitigating factors are real and substantial but they do not, in the opinion of the arbitrator, rise to the level of the state's compelling interest in safeguarding and ensuring the safety of school-aged children being transported in the state of Ohio.

A diminution in the safety offered through the appropriate application of the school bus inspection program occurred as a result of the actions of the grievant, making the riders of school buses inspected by the grievant in June 2016 and July 2016 less safe than would have been the case had the school bus inspection policy then in effect been implemented. The lessening of the level of safety that would otherwise have been offered to students under the school bus inspection program due to the actions of the grievant at variance with the formal, written school bus inspection system, even in the face of the mitigating factors substantiated in this case, provides the just cause needed by the Employer to substantiate the very severe discipline issued in this case, the discharge of the grievant.

For the reasons set out above, the arbitrator finds the Employer did have just cause to discharge the grievant, and the arbitrator therefore declines to grant the grievance.

AWARD

1. The grievance at issue in this arbitration proceeding is found to be arbitrable by the arbitrator under the language of the parties' collective bargaining agreement, Joint Exhibit 1.
2. The Grievant's employment was terminated for just cause.
3. The grievance is denied.

Howard D. Silver

Howard D. Silver, Esquire
Arbitrator
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Columbus, Ohio
March 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between the Ohio Department of Public Safety, Division of the Ohio State Highway Patrol, Employer, and the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, the Union, Grievant Robert M. Latham, Grievance Number DPS-2017-00470-07, was electronically served upon the following this 5th day of March, 2018:

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Columbus, Ohio
March 5, 2018

