ARBITRATION DECISION NO.:
361

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
State Highway Patrol,
Department of Highway Safety

DATE OF ARBITRATION:
June 3, 1991

DATE OF DECISION:
July 11, 1991

GRIEVANT:
William C. Ollom

OCB GRIEVANCE NO.:
15-03-(91-01-15)-0001-01-07

ARBITRATOR:
Hyman Cohen

FOR THE UNION:
Patrick Mayer

FOR THE EMPLOYER:
Anne Arena

KEY WORDS:
Removal
Dishonesty, Falsifying
State Driving Permit
Mitigating Circumstances,
Employment Record and
Motive for Falsifying Permit

ARTICLES:
Article 24 - Discipline
§24.01-Standard

FACTS:

The grievant had been employed by the Department of Highway Safety, Bureau of Highway Safety for 15 years. His present position was that of Drivers License Examiner 1. During a routine check of employees' drivers' licenses the bureau discovered that the grievant had a "bus endorsement." Upon investigation it was found that the grievant had given himself the eye and written tests for the endorsement. The grievant did not perform the driving test although he indicated that he had. The grievant contacted the drivers license manager and, upon being informed that an examiner cannot administer an exam to himself, admitted that he

had done so. The grievant was found guilty of criminal charges stemming from the incident and also removed from state employment.

EMPLOYER'S POSITION:

There was just cause for the grievant's removal. The grievant committed a willful act of falsification by administering the written and eye tests for a bus endorsement to himself. Further, he indicated that he had performed the driving test which he had not done. The grievant was aware that he could not grant himself a bus permit. The permit has value as it provides access to a job driving a bus. Additionally, the grievant was found guilty in court of falsifying a driving permit, a criminal offense. The grievant was not subjected to disparate treatment. Other employees who have falsified drivers permits have also been removed.

UNION'S POSITION:

There was no just cause for removal. The grievant was not aware that Driving Permit Examiners could not grant permits to themselves. He administered the written and eye test to himself as others had done. He had driven a bus to comply with the driving test requirement, therefore that part of the application had not been falsified. Other employees have granted themselves permits and have not been subjected to discipline. He was also not informed of the prohibition through the employer's manual. When the grievant was told by the employer that he could not grant himself a permit he admitted that he had done so. Mitigating factors warrant a reduced penalty in this case. The grievant had a good employment prior to this incident. He granted himself a bus permit to obtain a new photograph on his license, not to obtain financial benefit for himself. Lastly, the grievant cooperated with the employer's investigation showing his lack of a bad motive for committing the act for which he was accused.

ARBITRATOR'S OPINION:

The grievant did commit a serious violation of the employer's rules. He did administer to himself the written and eye examination for a bus permit. The union failed to prove that he had administered the driving examination as the grievant indicated on his permit. Thus, he falsified the application as well. Additionally, the grievant's criminal conviction for falsifying a driving permit is evidence that he had done so. That the grievant did not have specific instruction that he could not administer the driving permit tests does not mean that he had no notice. Examiners are not exempt from the requirements expected from other applicants. In light of the valuable benefit which can be obtained with a bus permit, the grievant was on notice from statutory control of the process that he could not administer the tests to himself. The union failed to prove that other employees had administered examinations and granted permits to themselves. Therefore, he had not been subjected to disparate treatment. However, mitigating factors were present which warrant a lesser penalty. The grievant had been a good employee for 15 years. The purpose for which he obtained the permit also is relevant. He obtained the permit solely to have a license with a current photograph of himself, not to obtain financial benefit.

AWARD:

The grievant was reinstated to his position of Drivers License Examiner. No back pay and no seniority for the period from removal to reinstatement was granted.

TEXT OF THE OPINION:

VOLUNTARY LABOR ARBITRATION

In the Matter of the Arbitration

-between-

STATE OF OHIO, STATE HIGHWAY PATROL, DEPARTMENT OF HIGHWAY

SAFETY

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME, AFL-CIO

ARBITRATOR'S OPINION

Grievant:
William C. Ollom

Case No.:
15-03-(91-01-15)-0001-01-07

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DATE OF THE HEARING:
June 3, 1991

PLACE OF THE HEARING:
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ARBITRATOR:
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Impartial Arbitrator
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*** * * ***

The hearing was held on June 3, 1991 at OCSEA, 1680 Watermark Drive, Columbus, Ohio before HYMAN COHEN, Esq., the Impartial Arbitrator selected by the parties.

The hearing began at 9:10 a.m. and was concluded at 5:10 p.m.

*** * * * ***

WILLIAM C. OLLOM was removed from his position of Drivers License Examiner 1, “effective at the close of business, January 7, 1991" by the Department by the **OHIO DEPARTMENT OF HIGHWAY SAFETY, DIVISION OF THE STATE HIGHWAY PATROL, BUREAU OF MOTOR VEHICLES,** the **"State"** for the following reasons:

“This removal is for violations of Section 124.34 O.R.C. in that you have been guilty of Dishonesty and Inefficiency to wit: On or about September 1, 1988, you did knowingly and falsely originate a State of Ohio Examiner’s Driving Permit #915608DX to fraudulently obtain a school bus operator's endorsement on your drivers license. You did affix your signature, unit number, and written and driving test scores to this examiner's driving permit, attesting to its authenticity, while knowing that you did not meet the requirements to possess said license."

On or about January 15, 1991, the instant grievance was filed with the State protesting the removal of the Grievant. Pursuant to the Agreement between the State and **OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11,** the **"Union",** the instant grievance was carried to arbitration.

FACTUAL DISCUSSION

In February 1991 the Grievant would have been employed by the state for fifteen (15) years. When he first joined the State he was employed as a Maintenance Repairman after which he filled a Janitorial position. Since 1982, the Grievant has been employed by the State as a Drivers License Examiner 1 at a “post” located in Marietta, Ohio. As a Drivers License Examiner 1, the general nature of the Grievant's work was to conduct examinations of applicants seeking a vehicle operators license.

There is very little dispute between the parties over the facts giving rise to the instant grievance. In November 1990 while routinely checking the drivers licenses of examiners to determine if their licenses were still valid and had not expired. Sgt. M. C. May, the Commercial Drivers License Coordinator for Cambridge, Ohio, noticed a school bus endorsement on the Grievant's license. As he related, "it seemed odd" to him because he was curious about whether the Grievant had filed an “outside employment form". Sgt. May thought that perhaps there might be a conflict of interest between the Grievant's duties as a Drivers License Examiner and as a Bus Driver. He found no outside employment form (form 104G); nor did he find a medical certificate on file. Realizing "that something was wrong", with the approval of the District Commander, Sgt. May initiated an administrative investigation.

Sgt. May said that the first thing that he did in undertaking the administrative investigation was to obtain certified copies of the Grievant's examiners driving permit from the Bureau of Motor Vehicles located in Columbus, Ohio. Upon reviewing the Grievant's permit, Sgt. May said that it showed that the Grievant was the examiner who gave himself both a written and driving test for the school bus endorsement. He went on to state that there were irregularities on the permit. The Grievant signed the form as the applicant and he also signed the “validation”. The "validation” part of the permit calls for the applicant to check appropriate boxes in providing yes or no answers to such questions, for example, as whether the applicant has a current driver's license from this or any other state and whether driving privileges are currently suspended, revoked or canceled. According to the examiners drivers permit the Grievant administered an eye test, a written test and a road and maneuverability test to himself on September 1, 1988.

After concluding that the Grievant had deviated from his job duties as a Drivers License Examiner, Sgt. May consulted with his supervisor and referred the matter to the appropriate criminal authorities. As a result, both the criminal and administrative investigations were carried out at the same time. Meanwhile, the Grievant became aware that there was an investigation which concerned the school bus endorsement. He

indicated that the State contacted a friend and asked him whether he [the Grievant] ever worked for the school district. The Grievant went on to indicate that he said to his friend that he never worked for the school district and that he works 8:00 a.m. to 5:00 p.m. for the State which is the same "time frame" worked by school bus drivers. Upon learning of the State investigation, the Grievant called drivers licensing manager, Harold O. Shonk and asked him whether "there was anything in the manual" which prevents him from giving himself a driver's test. When Shonk told him that there was nothing in the manual to that effect, the Grievant said to Shonk that he administered a driver's test to himself. According to the Grievant, Shonk then replied that "he could not say anything to [him] about it".

In carrying out the investigation, Sgt. May contacted J. Duck, a school bus transportation coordinator, who works for the County in the Marietta, Ohio region. According to Sgt. May, Duck's name surfaced when the Grievant contacted Shonk. In any event, Sgt. May thought that perhaps Duck had administered the driver's test to the Grievant. According to Sgt. May, "one of the examiners had mentioned it". Sgt. May talked to Duck and found out that he did not participate in the driver's test of the Grievant and that he did not have any knowledge of any driver's test which took place on September 1, 1988. Sgt. May went on to state that Duck told him that he did not "in any way administer the driver's test". Since the applicant for a school bus endorsement must be tested on the operation of a school bus owned by the school district, Duck disclosed to Sgt. May that the bus referred to by the Grievant on the examiners driving permit form had been sold by the Washington County Board of Education School District in December 1987 which was roughly ten (10) months before September 1, 1988, which is the date set forth by the Grievant on the examiners driving permit form.

The Grievant acknowledged that he did not drive a school bus on September 1, 1988. He also acknowledged that he took the visual and written tests by himself to obtain the school bus endorsement.

As a result of knowingly and falsely originating a State of Ohio Examiners Driving Permit to fraudulently obtain a school bus operators endorsement on his driver's license, the Grievant was removed from his position of Drivers License Examiner 1 "effective at the close of business, January 7, 1991". The criminal investigation resulted in a criminal conviction after trial that the Grievant was guilty of falsifying a school bus endorsement. The judge agreed to suspend a jury sentence of three (3) days since the Grievant agreed to complete sixty (60) hours of community service.

DISCUSSION

The issue to be resolved by this arbitration is whether the Grievant was discharged for just cause; if not, what should the remedy be?

1. ABSENCE OF RULE PROHIBITING SELF EXAMINATION

The Union contends that there is no rule or regulation promulgated by the State which prohibits testing oneself. Accordingly, the inference to be drawn by the Union is that it was proper for the Grievant to test himself.

I disagree with the Union's contention. The State's job description for Drivers License Examiner in relevant part, sets forth the main function of the job that the Grievant performed since 1982, which was to conduct examinations of applicants seeking a vehicle operator's license. In performing this function, the Grievant was certainly aware that the applicant seeks to obtain a benefit from the State, namely a vehicle operator's license. Indeed, a license, such as a school bus endorsement is a means of earning a livelihood, and thus extremely valuable to the applicant.

Since a license is an official permit to engage in an activity, the legislature has placed restrictions upon what might otherwise be done simply as a matter of individual choice. Thus, under Section 4507.11 of the Ohio Driver's License Law the applicant is required to “give an actual demonstration of his ability to exercise ordinary and reasonable control in the operation of a motor vehicle by driving the same under the supervision of an examining officer". As a Drivers License Examiner, the Grievant is required to examine applicants by means of visual tests highway warning signs ** motor vehicle laws; and to determine their driving skills by means of road and maneuverability tests."

There is nothing in the applicable rules and regulations which states that Drivers License Examiners are exempt from being subject to the same restrictions as applicants for a motor vehicle license. The critical factor is not the failure of the applicable laws, rules and regulations to indicate that the Drivers License Examiner is prohibited from self examination. Rather, it is the failure of the applicable laws, rules and regulations to provide that the Drivers License Examiner is not required to be examined by another Drivers License Examiner when seeking a license. The common sense of the pertinent laws, rules and regulations, which the Grievant knew or should have known about is that in seeking a school bus endorsement, he, as a Driving License Examiner is treated like any other applicant. If he were not, there would be no need to go through the motions of taking a vision test, a written test and road and maneuverability tests. In light of the valuable benefit to be obtained and without the supervision of an examining officer, such personal honesty cannot be assumed; nor can it be expected.

These common sense considerations permeate the job description of the Drivers License Examiner as well as Section 4507.11, the Driver's License Law of the Ohio Revised Code. There is also the "Examiner's Code of Ethics" which incorporates these common sense considerations. Thus, in Paragraph IV of the Code, the following is stated:

"Examiners shall administer all phases of each examination in a just and impartial manner, affording the same reasonable treatment to all applicants. They shall recognize the limitations of their authority and at no time use their position for their own personal advantage."

There is **no** question but that the Grievant violated Paragraph IV of the Code of Ethics when he "examined" himself for a school bus endorsement. By doing so, he used his position as a Drivers License Examiner for his "own personal advantage".

The Grievant acknowledged that the procedure for obtaining a school bus endorsement "was probably in the manual". He acknowledged that he was "told how to do it" while being trained as a Drivers License Examiner. When shown the ten (10) steps which are to be followed, in order to obtain a school bus endorsement, he further acknowledged that "this was the procedure".

The Grievant admitted that as part of the procedure, the applicant is required to "present a bus driver's medical report which is dated and certified by the doctor within 12 months prior to the license test". He failed to submit such a medical report at the time that he examined himself. It is enough to state that the Grievant did not operate a school bus on September 1, 1988, even though the Examiners Driving Permit form indicated that he did so. Accordingly, he intentionally misrepresented a fact which did not occur. Thus, as a Drivers License Examiner, he committed an act of fraud in obtaining a school bus endorsement. In my judgment, the Grievant was well aware or should have been aware that he was committing improper conduct in falsely originating a State of Ohio Examiner's Driving Permit to fraudulently obtain a school bus endorsement on his drivers license. Even assuming that the Grievant was not familiar with the Examiners Code of Ethics and the applicable rules and regulations, I have concluded that measured by a minimum standard of reasonableness and fairness, the Grievant as a Drivers License Examiner was aware or should have been aware that his conduct was highly improper.

The Union argues that "[T]he unchanging nature of the exams coupled with the repetition of giving them and grading them virtually guarantee a passing and quite probably a maximum score on the part of the examiner". If this is the case, then the Grievant could have easily demonstrated his knowledge, skill and qualifications to another Drivers License Examiner. Moreover, that a Drivers License Examiner tests an applicant on his ability to exercise ordinary and reasonable control in the operation of a school bus does not necessarily mean that the Examiner can successfully demonstrate such ability. A person may not have the skill and ability to drive an automobile or to fly an airplane. However, that same person might very well be able to assess whether the operator of a motor vehicle and airplane is exercising ordinary and reasonable control in the operation of an motor vehicle and airplane.

Furthermore, it has been said that "a Company does not have to establish that it had or that it had communicated specific rules for certain well recognized proven offenses such as drunkenness, theft, or insubordination". See, e.g., *Philco Corp.,* 45 LA 437 (Keeler, 1965) at page 441. Similarly, I have concluded

that the State was not required to establish that it had, or communicated a specific rule for such a well-recognized proven offense of falsifying State documents in order to obtain a motor vehicle license.

As a final consideration on this aspect of the dispute between the parties, it is also of some weight that the Grievant was found guilty of falsifying a school bus under the Penal Code of the State of Ohio and sentenced to three (3) days jail and ordered to pay court costs. Based on the evidentiary record, I find no merit to the Union's contention that there is no rule or regulation promulgated by the State prohibiting an Examiner from testing himself in order to obtain a license, such as a school bus endorsement. In addition to the applicable law, rules and regulations on the procedure for obtaining a license, I have concluded that common sense dictates that self-examination is prohibited by such laws, rules and regulations, unless it is expressly provided in such laws, rules and regulations.

2. CLAIM THAT GRIEVANT DID NOT ACT SURREPTITIOUSLY

The Union contends that the Grievant "did not act surreptitiously and "[S]uch is not the act of an intentional violator". It is true that the Grievant signed his name and provided his I.D. number on the Examiners Driving Permit form. However, the actions of the Grievant do not lessen the offense committed by the Grievant, which involves dishonesty and falsification of State documents to obtain a school bus endorsement. The acts of dishonesty and falsification primarily involved the test of operating a school bus which, in fact, he did not operate on the day, which he indicated on the Examiners Driving Permit form. The truth is that he never took the road and maneuverability test. Moreover, the Grievant's offense of examining himself with regard to the other tests is also a serious violation of the law, rules and regulation applicable to Drivers License Examiners. In fraudulently procuring a school bus endorsement, I find it highly unlikely that the Grievant would have used a fictitious name and I.D. number on the Examiners Drivers Permit form.

The Union points out that the Grievant cooperated with the administrative investigation and admitted to giving himself the tests and grading the tests. After setting forth his name and I.D. number, I do not believe it would have been wise for him to do anything else but to cooperate in the administrative investigation and to admit that he gave himself the required tests.

It is undisputed that the Grievant telephoned Shonk to inquire whether there is anything in the manual which prevents him from giving himself the tests. It should be underscored that the Grievant's inquiry of Shock did not occur before September 1, 1988 when he set forth that he took the road and maneuverability test on the Examiners Driving Permit form. Indeed, the Grievant did not seek the opinion of a supervisor concerning his self-examination until slightly more than two (2) years later at which time a friend disclosed to him that "they [the State] contacted him and asked whether [the Grievant] had ever worked as a bus driver for the School District. Thus, it was only after the Grievant found out that the State was conducting an investigation, which he connected to the manner in which he procured a school bus endorsement did he contact Shonk about giving himself the required tests. The evidentiary record does not support the Union's claim that the Grievant "did not act surreptitiously" and "did not act intentionally". It is astonishing to believe that the Grievant was certain about the correctness of his actions in obtaining a school bus endorsement in light of his intentional misrepresentation of fact on the Examiners Driving Permit form. To attribute innocence to the Grievant in procuring the license is not supported by the record, or common sense. I have inferred that the Grievant's actions were surreptitious and that he acted intentionally.

3. "OTHER EPISODES"

The Union contends that "other examiners" have given themselves endorsements. The evidence in support of the Union's contention is neither reliable nor probative. For example, the Grievant said that he "never watched" employees test themselves except that "a clerk" told him that she did so. He then added that the clerk was "deceased". It is enough to state that the obvious deficiencies with respect to such evidence render it highly unreliable. Clearly, it is not entitled to be given any weight.

The Grievant also recalled that he saw his supervisor, Kenneth Diss give an applicant an endorsement without giving the applicant a driving test. He went on to state that the applicant's license had expired or that

he had a license from a state other than Ohio which had expired. The Grievant said that the applicant took the required tests under supervision which he passed. According to the Grievant, the applicant then “said something about a motorcycle endorsement". He testified that Diss "put the grade” on the appropriate form and "he (Diss) said go in and get your endorsement”. The Grievant said that Diss “sealed it”--in giving the applicant both an operator's and motorcycle endorsement.

The Grievant's testimony concerning Diss' involvement in giving a motorcycle endorsement to an applicant who did not take the appropriate test is different than the Grievant's actions in this case. Diss was not present at the hearing. However, if the facts as related by the Grievant are true, it is a matter to be addressed by the appropriate officials. The point is that the Union appears to be claiming that based upon the Grievant's story, since Diss improperly issued a motorcycle endorsement to an applicant, the Grievant believed that he was at liberty to examine himself and commit fraud in procuring a school bus endorsement. I find this claim unacceptable and without merit.

J. T. Kovalchik, a former examiner of chauffeurs drivers licenses, who had retired, testified that he had given himself a motorcycle endorsement after giving himself the required tests. He did so, with the approval of Supervisor Fisher who told him that "it was okay”. Kovalchik continued his testimony by stating that "other examiners gave themselves endorsements and no one ever said that it was wrong". He added that “no one paid attention to people who tested themselves".

On cross-examination, Kovalchik testified that "someone said that they were summer persons" who examined themselves. He indicated that a person named "Lewton", "a chiropractor", and a “minister" examined themselves to obtain a license. Kovalchik then said that "they told" him after which he stated that "someone said" that they examined themselves. He indicated that "someone said" that they worked during the summer months--one told me that he gave himself a chauffeur's license and another person said that another person took it". Kovalchik "presumed that the supervisor knew" that they examined themselves.

I found Kovalchik's testimony lacking in probative value and highly unreliable. It is vague, confusing and lacks the details of sound, reliable and probative evidence. I cannot credit Kovalchik's testimony on direct examination that “other examiners gave themselves endorsements and no one ever said that it was wrong”. Kovalchik's unreliable testimony that “other examiners” tested themselves to obtain licenses diminishes the weight to be given to his testimony that he tested himself to obtain a motorcycle endorsement. Moreover, in light of the evidentiary record, I have concluded that Kovalchik's testimony that he tested himself in obtaining the motorcycle endorsement warrants the conclusion that it was an isolated event and highly unusual. Furthermore, there is nothing in the evidentiary record to indicate that the Grievant was aware of this isolated event involving Kovalchik before September 1, 1988, when he fraudulently obtained the school bus endorsement. In other words, there is no evidence to warrant the conclusion that in examining himself, the Grievant was aware of a "practice” of examiners doing so, or even that Kovalchik had done so some thirteen (13) or fourteen (14) years before September 1, 1988. Thus, Kovalchik's testimony that he gave himself a test in order to obtain a motorcycle endorsement is not entitled to any weight.

Moreover, Kovalchik indicated that he was not familiar with the procedure for obtaining a school bus endorsement, including the tests for such an endorsement. During the last eight (8) years of his employment by the State, he was a "traveler" who filled in at various licensing stations. As Kovalchik related “all [he] did" was give road tests. Kovalchik also acknowledged that he was not familiar with the Examiners Code of Ethics. Evaluating the totality of Kovalchik's testimony leads me to conclude that it is not entitled to much, if any weight.

a. THE “AMICARELLI” CASE

In checking the licenses of Driving Examiners, in November or December, 1990, the State found that Alfred F. Amicarelli, who worked in the Fifth District, had fraudulently obtained a commercial driving license. An administrative investigation was conducted by the State in conjunction with a criminal investigation by the County which resulted in the charge of criminal falsification. After pleading "no contest", Amicarelli was given a jail sentence of seven (7) days which were suspended, a fine of $100 and he also incurred court costs. Captain J. M. Demaree of the State Highway Patrol, explained that Amicarelli retired before the State was

able to remove him from employment.

Based upon the evidentiary record, I cannot conclude that the Grievant was treated differently than Amicarelli. As Capt. Demaree indicated, the State cannot prevent Amicarelli from retiring. Had he not chosen to retire from employment, the record indicates that Amicarelli, like the Grievant, would have been removed from employment. Since the Grievant and Amicarelli were not similarly situated, they were treated differently by the State. Accordingly, there is no basis for a finding of disparate treatment of the Grievant by the State.

RELIEF

The Grievant indicated that he drove a school bus sometime prior to September 1, 1988, during the lunch hour. He said that he drove the same route that he would have taken had he been tested. The Grievant went on to state that he "drove back" from lunch, "to make sure that [he] would be fair in [his] judgment". By this statement, the Grievant indicates that in driving "Duck's bus", prior to September 1, 1988, he had planned to obtain a school bus endorsement sometime after driving the school bus to and from lunch on a day which he was unable to recall. The Grievant's self -serving testimony on driving the school bus to and from lunch is not entitled to any weight. In no way does it mitigate the offenses he committed in testing and grading himself, and the falsification of the Examiners Driving Permit form.

The Grievant's offenses are extremely serious. His conduct is not only an infraction of the law, rules and regulation applicable to Examiners; his conduct also constitutes criminal conduct for which he has been found guilty.

However, pursuant to Article 24, Section 24.01 of the Agreement, the test for discipline, including discharge is “just cause”. In many situations, this standard may be satisfied where the conduct in question is not only a serious offense in the workplace but also results in a criminal conviction.

In my judgment, there are mitigating circumstances which are present in this case which do not warrant discharge. The Grievant's satisfactory record cannot be overlooked. He had been employed by the State since 1976 and his record is exemplary except for an oral reprimand for tardiness in 1990.

Another mitigating factor of great weight is the purpose for which the Grievant sought to obtain a school bus endorsement. The Grievant indicated that his license was to expire on September 4,1988. The school bus endorsement was the only endorsement which he had not obtained. Since he wanted to have a photo of himself on the license, with a beard which would have grown during the period of time that he was on vacation, he decided to obtain a school bus endorsement. Thus, the reason for obtaining the school bus endorsement was to have a photo of himself, with a beard on the license. It should be noted that the State telephoned the Grievant on September 6, while he was on vacation and informed him that his license had expired.

The Grievant's reason for procuring the school bus endorsement appears to be nothing less than astonishing. Indeed, it is incredulous, especially in light of the adverse consequences which the Grievant has suffered for attempting to achieve such an inconsequential and vain result. Nevertheless, I am persuaded that the Grievant's testimony on the purpose of obtaining the school bus endorsement is credible. Although the Grievant obtained a school bus endorsement in September 1, 1988, and the method by which he obtained the endorsement was not detected until slightly more than two (2) years later, there is nothing in the evidentiary record to indicate that he drove a school bus for hire; and that he sought to obtain such employment. To sustain the discharge of the Grievant, given his exemplary record of fourteen (14) years, and his reason for obtaining the school bus endorsement, would be to conclude the final chapter in a sad series of events.

The State, in effect, contends that to reinstate the Grievant would adversely affect the image of the Agency due to the publicity over the Grievant's conviction of a criminal offense which appeared in the local newspaper where he had been employed and resided. The Grievant was indeed the one (1) person of whom it might be said with some approach to certainty that would have strongly preferred not to have an article on his criminal conviction appear in a newspaper. In short, the Grievant has suffered enough, and has learned a costly and painful lesson.

The period of time that the Grievant has not been employed by the State (since the close of business on January 7, 1991) until his reinstatement without pay to his position as a Drivers License Examiner shall be considered a disciplinary suspension. During this period of time, the Grievant is not entitled to accumulate seniority.

AWARD

In light of the aforementioned considerations, the State failed to prove by clear and convincing evidence that the Grievant was discharged for "just cause" as required by Article 24, Section 24.01 of the Agreement.

Since "the close of business, January 7, 1991", when the Grievant was removed from employment until his reinstatement without pay to the position of Drivers License Examiner, the Grievant shall be considered to have served a disciplinary suspension, without having accumulated seniority during this period of time.

Thus, the Grievant is to be reinstated without pay to his former position of Drivers License Examiner and without having accumulated seniority since his removal from employment by the State.

Dated: July 11, 1991
Cuyahoga County
Cleveland, Ohio

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