

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Ted :
Bundschuh, Notice of :
Apparent Violation and : Case No. 15-1336-TR-CVF
Attempt to Resist :
Forfeiture. :

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PROCEEDINGS

before Nicholas Walstra, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:00
a.m. on Thursday, October 29, 2015.

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APPEARANCES:

Mike DeWine, Ohio Attorney General
By Werner L. Margard III
Assistant Attorney General
180 East Broad Street
Columbus, Ohio 43215

On behalf of the Staff of the Public
Utilities Commission of Ohio.

Ted Bundschuh
2121 County Road 210
Fremont, Ohio 43420

Pro se.

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Staff Exhibit	Identified	Admitted
1 Driver Vehicle Examination		
Report No. OH1239001658	8	16

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1 Thursday Morning Session,
2 October 29, 2015.

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4 THE EXAMINER: The Public Utilities
5 Commission of Ohio has called for hearing at this
6 time and place Case No. 15-1336-TR-CVF, being In the
7 Matter of Ted Bundschuh, Notice of Apparent Violation
8 and Attempt to Resist Forfeiture.

9 My name is Nick Walstra. I'm the
10 Attorney Examiner assigned by the Commission to hear
11 this case. I'll begin by taking appearances of the
12 parties.

13 On behalf of Staff?

14 MR. MARGARD: Thank you, your Honor. On
15 the behalf of the Transportation Staff of the Public
16 Utilities Commission of Ohio, Mike DeWine, Attorney
17 General, William Wright, Section Chief, Public
18 Utilities Section, by Assistant Attorney General
19 Werner L. Margard, 180 East Broad Street, Columbus,
20 Ohio.

21 THE EXAMINER: Thank you.

22 On behalf of Mr. Bundschuh?

23 MR. BUNDSCHUH: Yes, sir.

24 THE EXAMINER: You can go ahead and take
25 a seat at the table. If you could just state your

1 name and address for the record.

2 MR. BUNDSCHUH: Yeah, Ted Bundschuh. I
3 live at 2121 County Road 210, Fremont, Ohio, 43420.

4 THE EXAMINER: Okay. Before we get
5 started, are there any procedural matters or any
6 questions?

7 MR. MARGARD: None, your Honor.

8 THE EXAMINER: Okay. Mr. Bundschuh, the
9 Staff have to make their case, put on witnesses.
10 You'll have a chance to ask the witnesses questions
11 if you want. And then when it's your turn, you can
12 take the stand and basically state your case. Sound
13 good?

14 MR. BUNDSCHUH: Yep.

15 THE EXAMINER: Okay. Mr. Margard, you
16 can go ahead.

17 MR. MARGARD: Thank you, your Honor. I
18 call Mr. Mike Schneider.

19 THE EXAMINER: Raise your right hand.
20 (Witness placed under oath.)

21 THE EXAMINER: Thank you. You may be
22 seated.

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MICHAEL SCHNEIDER

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Margard:

Q. State your name, please.

A. Michael Schneider, S-C-H-N-E-I-D-E-R.

Q. And by whom are you employed,
Mr. Schneider?

A. By the Ohio State Highway Patrol.

Q. And in what capacity? What's your title?

A. I am a Motor Carrier Supervisor.

Q. And what's the business address?

A. It's -- our address up there is 3424 U.S.
422, Southington, Ohio, and the zip code is 44470.

Q. And what are your duties as a supervisor?

A. My job is a Supervisor, Motor Carrier
Section, in northeastern Ohio and also conduct motor
carrier inspections alongside the roadway.

Q. How long have you been performing that
job?

A. I've been in this job since 19 -- well,
I've been inspecting trucks since 1992. I've been in
this status since about 2010.

Q. About how many inspections a year do you

1 personally perform?

2 A. Me personally, about 300 a year.

3 Q. Do you have any special certifications or
4 trainings to perform your job?

5 A. I am certified in North American
6 Standards level 1, 2, 3 and 5 inspection levels.
7 I've been through -- I maintain my 32 level 1
8 certification every year and my hazardous material
9 certifications each year.

10 Q. And in fact, you're responsible, are you
11 not, for performing training for other officers?

12 A. Right, I am a level 3 instructor for the
13 National Training Association which is the federally
14 based program which gives the Part A and Part B
15 instruction to the new inspectors.

16 Q. Thank you. Officer Schneider, were you
17 on duty on May 22nd of 2015?

18 A. Yes, sir.

19 Q. Do you recall what your job assignment or
20 what your duties, what your responsibilities were on
21 that date?

22 A. We were working on -- I was assigned to
23 work Interstate 76 in Portage County on that day.

24 Q. In the course of your duties on that day,
25 did you have an opportunity to inspect a vehicle that

1 was operated by the Respondent, Mr. Bundschuh?

2 A. Yes, sir, I did.

3 Q. As a result of that inspection, did you
4 generate a report?

5 A. Yes, sir.

6 MR. MARGARD: Your Honor, may I approach?

7 THE EXAMINER: You may.

8 MR. MARGARD: Your Honor, I'll let the
9 record reflect that I've marked for purposes of
10 identification as Staff Exhibit No. 1 a two-page
11 report labeled Driver Vehicle Examination Report,
12 Report No. OH1239001658.

13 THE EXAMINER: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Officer Schneider, do you have before you
16 what is marked as Staff Exhibit 1?

17 A. Yes, sir.

18 Q. Can you identify that document for me,
19 please?

20 A. It's a vehicle inspection report that I
21 generated on the driver of the vehicle. It's a level
22 3 inspection.

23 Q. And this is the report of the inspection
24 that we were talking about a moment ago?

25 A. Yes, sir.

1 Q. As you testify today, do you have any
2 independent recollection of that inspection? Do you
3 remember the inspection?

4 A. Yes, sir.

5 Q. And your findings and observations on
6 that date are accurately recorded in this report?

7 A. Yes, sir, it is.

8 Q. And have you reviewed this report prior
9 to your testimony today?

10 A. Yes, sir.

11 Q. Now, it says that you performed a level 3
12 inspection. Can you tell us what that entails,
13 please?

14 A. A level 3 inspection deals only with the
15 driver himself. What we look at is the driver's
16 license record, the logbook, the registration of the
17 truck, the trailer. We review the bills, look at the
18 carrier authority to conduct the inspection.

19 Q. What caused you to inspect Mr. Bundschuh?

20 A. I was sitting in a stationary patrol on
21 Interstate 76 just west of State Route 225. When I
22 observed the defendant driving westbound on
23 Interstate 76, as I observed him, I noticed that he
24 was not wearing a seatbelt at the time. Immediately
25 pulled out behind the suspect or the defendant and

1 pulled him over just short of the rest area there on
2 76 westbound at Mile Post 47.

3 Q. You observed he wasn't wearing a seatbelt
4 as he was driving past?

5 A. Right.

6 Q. How were you able to observe him?

7 A. Well, I sitting in stationary patrol
8 facing traffic so I could get a good observation of
9 the traffic as it was passing by, and I noticed the
10 driver drive by. He was wearing an orange shirt at
11 the time, and I did not observe any type of belt
12 crossing his shoulder when he went by.

13 Q. You had an opportunity when you stopped
14 the vehicle to approach it and to speak to
15 Mr. Bundschuh; is that correct?

16 A. Yes, sir, I did.

17 Q. Did you observe the seatbelt at that
18 time?

19 A. Yes, I did. He had it underneath his arm
20 at that time. He admitted to wearing it that way all
21 the time. And I instructed him at that time that the
22 proper way to wear the seatbelt was over the top of
23 the shoulder the way it was designed to be worn.

24 Q. He had a lap belt on; it wasn't just over
25 the shoulder?

1 A. Yes, sir.

2 Q. Now, as a result of your inspection, you
3 cited as a violation Section 392.16?

4 A. Right.

5 Q. And do you know what that violation is?

6 A. Yes, it's dealing with a driver required
7 to wear a safety belt at all times.

8 Q. To properly wear a safety belt?

9 A. And properly wear it and wear it the way
10 it was designed to be worn by the manufacturer.

11 Q. And in your opinion, this seatbelt was
12 designed to be worn across the shoulder?

13 A. Right. Any three point seatbelt harness,
14 yes, it must be worn across the shoulder and across
15 the lap at the time.

16 Q. In fact, Mr. Bundschuh was not wearing
17 the seatbelt in that fashion?

18 A. Right.

19 Q. Do you have any other recollection of
20 this inspection that you think is important for the
21 Commission to know and evaluate in this case?

22 A. Other than the driver admitted to not
23 wearing the seatbelt properly when I discussed it
24 with him, no.

25 Q. And you noted that as part of your

1 report, sir?

2 A. Right, it's in my note section of the
3 report.

4 MR. MARGARD: Thank you, your Honor. I
5 have no further questions for the officer.

6 THE EXAMINER: Thank you.

7 Mr. Bundschuh, do you have any questions?

8 MR. BUNDSCHUH: The only question I got
9 is I never told him I wasn't wearing it right. I
10 told him I was wearing it the way it was designed.

11 THE EXAMINER: You'll be able to take the
12 stand under oath and give your case, but do you have
13 any questions specifically for the inspector?

14 MR. BUNDSCHUH: No. No, I don't.

15 THE EXAMINER: Thank you.

16 Thank you. You may step-down.

17 Any other witnesses?

18 MR. MARGARD: I do, your Honor. I call
19 Mr. Tom Persinger to the stand, please.

20 THE EXAMINER: Raise your right hand.

21 (Witness placed under oath.)

22 THE EXAMINER: Thank you. You may be
23 seated.

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TOM PERSINGER

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Margard:

Q. State your name, please.

A. Name is Tom Persinger.

Q. And by whom are you employed,
Mr. Persinger?

A. I'm employed with the Public Utilities
Commission of Ohio.

Q. And in what capacity?

A. In the Transportation Department,
Compliance Division as a Compliance Officer.

Q. How long have you worked as a Compliance
Officer?

A. Just over four years.

Q. And the address of your employer is the
address of the location of the hearing today?

A. Correct.

Q. Tell me briefly what your duties and
responsibilities are as a Compliance Officer.

A. Some of my duties include assessing fines
on violations that were conducted at roadside by
members of the Ohio Patrol, as well as the PUCO field

1 staff, as well as answer technical calls on various
2 regulations and such.

3 Q. Are you the individual who was
4 responsible for determining what forfeiture should be
5 assessed in this case?

6 A. One of them.

7 Q. And have you had an opportunity prior to
8 your testimony today to review the Commission's file
9 with respect to this case?

10 A. Yes, sir.

11 Q. Can you briefly describe for us how a
12 civil forfeiture is determined, how it's calculated
13 for violations of this sort?

14 A. Among nonhazardous material violations,
15 they are determined by a forfeiture chart that has
16 been determined. And what the violation goes under
17 depends upon what group violation it is. And
18 depending upon what group it is in, that determines
19 any applicable fine amounts.

20 Q. And this procedure you described is
21 consistent with the recommended civil forfeiture
22 penalty procedure adopted by the Commercial Vehicle
23 Safety Alliance?

24 A. Yes, sir.

25 Q. Is this procedure the same for all

1 carriers and drivers?

2 A. Yes, sir.

3 Q. In your review of this case for purposes
4 of assessing the forfeiture and for purposes of your
5 testimony today, what did you ascertain the
6 appropriate forfeiture in this case should be?

7 A. Based on what the chart says, \$100.

8 Q. Was that \$100 properly determined in your
9 opinion?

10 A. Yes, sir.

11 Q. Did you also in reviewing the Commission
12 file in preparation for your testimony today have an
13 opportunity to review the various notices that were
14 provided to the Respondent?

15 A. Yes, sir.

16 Q. And in your opinion, did the Respondent
17 properly receive all of the notices that were
18 required to be served upon him?

19 A. Yes, sir.

20 MR. MARGARD: I have no further questions
21 of this witness. Thank you. Your Honor.

22 THE EXAMINER: Thank you.

23 Do you have any questions, Mr. Bundschuh?

24 MR. BUNDSCHUH: No, sir. Is there any
25 set -- Yeah, I do. I got one question.

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CROSS-EXAMINATION

By Mr. Bundschuh:

Q. Is there any set time that -- where your guys' rules -- do you -- No, I'll just state my case when it's my turn. I have no questions.

THE EXAMINER: Thank you.

You may step-down.

MR. MARGARD: Your Honor, I would respectfully request the Bench admit Staff Exhibit 1 into evidence.

THE EXAMINER: Okay. It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. MARGARD: I have no further witnesses. Thank you, your Honor.

THE EXAMINER: Mr. Bundschuh, you can take the stand. Raise your right hand.

(Witness placed under oath.)

THE EXAMINER: Then you can state your case, and then Mr. Margard will have an opportunity to ask you questions as well, but go ahead whenever you're ready.

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TED BUNDSCHUH

being first duly sworn, as prescribed by law,
testified as follows:

DIRECT TESTIMONY

THE WITNESS: Well, I remember I was
going down 76 heading westbound. Got pulled over.
Officer come up, I told him the door was open. He
wouldn't -- He didn't want to open the door. So I
stretched over, flicked the handle and then he opened
the door.

I had my seatbelt on. Yeah, it was under
my arm once I got back over because I had to stretch
over and hit the door. But that truck's designed to
pull out a few inches and flip a thing up. And it
was laying over here (indicating), but that many
inches shouldn't make a difference, a couple inches.

He come up and said I had a loose belt
on. There's nothing in that green book that we got
to go by that says it can't be loose. I was wearing
it the way the truck was designed. If it wasn't
designed to pull that down and flip that thing up...
you know what I mean? It's loose. It was loose.

I never did admit to him that I was in
the wrong. I didn't want to argue with him when he
gave me the ticket, so I just told him, "If you say

1 it's wrong, you say it's wrong," you know. I never
2 knew that.

3 I've been driving trucks since 1998. I'm
4 getting close to 2 million safe miles. My driver's
5 record is clean. I've always wore a seatbelt. I
6 wore it the way the truck was designed to wear it or
7 you couldn't be -- or you couldn't pull it down and
8 flip it up to wear it loose so it don't rub on your
9 neck.

10 It might have been over here
11 (indicating), but that thing still went across here
12 (indicating) and it was latched. I had my seatbelt
13 on. I lost a job because of it and -- because they
14 just thought I just wasn't wearing my seatbelt.

15 I mean, if you look at my DAC report, I
16 got, like I say, close to 2 million safe miles, and I
17 know how to follow the rules. I had my belt on.
18 There's nothing in that book that says you can't wear
19 it loosely, and I wore it the way the truck was
20 designed. I don't think I should have to pay
21 anything or have anything on my record.

22 You know, if I didn't wear it, didn't
23 have it on, I would just have paid the \$100 and
24 wouldn't have went through all this trouble, but I
25 had it on, I was safe. I wore it the way the

1 manufacturer had it, just like he said, you know, and
2 that's about all I have to say about it.

3 THE EXAMINER: Thank you.

4 Mr. Margard, any questions?

5 MR. MARGARD: I have no questions, your
6 Honor, but I would like the record to reflect that as
7 the witness was indicating "across here," he was
8 indicating across his upper arm as opposed to across
9 his shoulder.

10 THE WITNESS: Two or three inches
11 shouldn't make a difference. From up here rubbing on
12 your neck to right here (indicating), that is why
13 that thing is put on there to pull down and flip so
14 it don't rub on your neck all day when you're in that
15 truck 10, 12 hours a day, you know. I was wearing it
16 the way it was designed.

17 Even on your campaign, it says "Click It
18 or Ticket." It was clicked and it was on and I was
19 secured, I wasn't going anywhere. I don't think I
20 should have to pay anything or have that on my
21 record.

22 THE EXAMINER: Okay. Anything else?

23 MR. BUNDSCHUH: No.

24 THE EXAMINER: Thank you. You may
25 step-down.

1 Anything further?

2 MR. MARGARD: Let me just have a moment,
3 your Honor.

4 Nothing further, your Honor. Thank you.

5 THE EXAMINER: Thank you.

6 The Commission will take this case under
7 advisement, and they will issue a ruling. And thank
8 you all for your time.

9 MR. BUNDSCHUH: Thank you.

10 MR. MARGARD: Thank you.

11 (The hearing was concluded at 10:20 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, October 29,
2015, and carefully compared with my original
stenographic notes.

Cynthia L. Cunningham

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 15-1336-TR-CVF

Summary: Transcript in the matter of the Ted Bundschuh hearing held on 10/29/15
electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Cunningham,
Cindy