

VOLUNTARY LABOR ARBITRATION

In the Matter of the
Arbitration Between:

Union,

and-

SHERIFF'S DEPARTMENT,

Employer.

Gr: Dan George/Termination

OPINION AND AWARD

BACKGROUND/FACTS

The hearing in the above-referenced termination case occurred on February 12, 1992 at the offices of the Employer. The issue presented is whether the termination of the Grievant, Dan George, a sworn County Sheriff's deputy was "unreasonable under all the circumstances". The standard of review in this case is one of just cause. The case comes to arbitration based on the provisions of Article 9, Disciplinary Procedure, Part C, Section 4, which states:

In the event the Union concludes that an officer has been unjustly punished or dismissed as a result of the Commander's Hearing or the Trial Board, it may appeal the action to arbitration under Article 8.

A. Review of all disciplinary matters shall be instituted by filing a demand for arbitration under Article 8, Step 5. The arbitration costs shall be borne equally by the parties.

B. The arbitrator shall review the cause of action and the justness of the punishment imposed based upon the record made before the Commander's Hearing or the Trial Board. No new evidence shall be received by the arbitrator unless said evidence was unknown at the Commander's Hearing or the Trial Board. If the arbitrator decides that the new evidence should be received, the arbitration shall remand the case.

C. If the arbitrator decides that the discipline was unreasonable under all the circumstances, the arbitrator may modify the discipline accordingly and his/her decision shall be final and binding upon the officer and the parties.

The Grievant, classified as a corporal had been employed approximately twenty years. He is an admitted alcoholic. He was at the time of hearing, and for some time, and is currently in the process of recovery.

His previous disciplinary record is as follows:

10/03/89	3 day suspension (conduct, reporting to duty, courtesy)
07/11/90	3 day suspension (conduct, use of alcohol off-duty)
07/28/90	10 days reduced to 5 (one year probation) (conduct, use of alcohol off-duty)

The incident which gives rise to this case occurred on April 4, 1991. The Grievant, while off-duty, discharged an unregistered weapon into the door of his home. The Michigan State Police were called by his wife. Officers responded and pursued the Grievant after he drove off in his wife's car. He disregarded police orders to stop the vehicle, drove at speeds of up to 80-100 miles an hour, for approximately 15-20 miles, disregarded traffic signs and the like, and leveled his unregistered weapon in the direction of the police officers when finally confronted at Bemish Road. He

apparently ran into a swampy area, removed his clothes and was shouting from time to time to the officers that they should kill him. He was finally subdued following a foot race by a Michigan State Trooper who used chemical mace to assist him in his effecting the arrest.

The Grievant was charged criminally in Washtenaw County with felonious assault which was subsequently dropped. He pled guilty to three misdemeanors; fleeing police officers, operating a vehicle while under the influence of liquor, and possession of a firearm while under the influence of alcohol. He was sentenced in July, 1991 to 35 days in the Washtenaw County Jail, two years probation, and ordered to participate in an out-patient substance abuse therapy program. His driver's license was suspended for one year.

ISSUE

WHETHER THE GRIEVANT WAS TERMINATED
FOR JUST CAUSE?

DISCUSSION

Subsequently he was charged by the Department on August 23, 1991, for presentation at a Trial Board on October 1, 1991, with five violations of departmental rules and regulations. They are:

2.3 Conduct: Officers are accountable for unprofessional conduct both on and off duty. Unprofessional conduct is any action or inaction which discredits the officers in/or the department or which impairs the efficiency of the department by the officer.

2.5 Conformance to laws: Officers shall obey all laws of the United States, this state, and of local jurisdiction. An indictment, arrest, charge, complaint or warrant filed against an officer or a conviction of the violation of any law, may be cause for disciplinary action.

5.5 Use of Alcohol/Off Duty: Officers, while off duty, shall refrain from consuming intoxicating **beverages** to the extent that it results in impairment, intoxication, or obnoxious behavior which would discredit them or the department, or render the officer unfit to report for their next regular tour of duty.

9.2 Use of weapons: Officers shall not use or handle weapons in a careless, imprudent, or improper manner. Officers shall use weapons in accordance with the law in established departmental procedures.

3.5 Unsatisfactory performance: ... In addition to other indications of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: poor evaluations or a written record of repeated infractions of the rules, regulations, directives or orders.

The following exhibits were entered into evidence:

- J-1 Collective Bargaining Agreement
- J-2 Rules and Regulations
- J-3 Trial Board packet (71 pages)
- J-4 Trial Board transcript (81 pages)
- J-5 A-F Letters of recommendation
- J-6 Notice of termination (10/4/91)

At the hearing, based on the evidentiary documents, and the admissions of the Grievant, it was established that he violated the laws of the State of Michigan, and that he violated the rules of the Department as alleged (he pled guilty at the Trial Board to all charges). Importantly, in addition to that conduct already just stated, it was established that he was in fact intoxicated. The breath test at the Washtenaw County Jail established a .19 percent blood alcohol content by weight. Under the law it is presumed that a person is under the influence at that level, see MCL Sec. 257.625(c).

Apparently only one test was administered because the Grievant became ill, and he then began slamming his fists into the wall at the jail. Obviously, his incarceration caused him to be unfit to report for duty on his next regular tour of duty.

In addition, regarding the use of weapons, it was established that the Grievant discharged a firearm into the side entrance door of his home, and into the air outside, he pointed the firearm in the direction of the Michigan State Troopers, and used at that time an unregistered 9 mm weapon.

The Union urges that a penalty short of discharge should be imposed because of the Grievant's long seniority, approximately 20 years, and the fact that he is in treatment. It argues that he is on his way to recovery and has completed the alcoholic rehabilitation program at Brighton, and that termination merely exacerbates the Grievant's situation. It suggests that any conditions imposed by the Arbitrator would be acceptable short of discharge.

On the other hand, the Employer urges that the discipline should be sustained and the grievance denied. Its position is based on the fact that the Grievant is an admitted alcoholic, has had discipline in the past, and that the circumstances of this case are so serious in themselves, and that the potential consequences of the acts so serious as to deserve the ultimate disciplinary penalty.

As the parties know, one part of just cause consideration is the establishment of an offense. In this case the charges were established by the plea of guilty by the Grievant. The second consideration in just cause is whether the penalty is proper, or using the contract terms "the arbitrator shall review the cause of action and the

justness of the punishment imposed", and decide whether the discipline "was unreasonable under all the circumstances."

The plea in this case, both by the Grievant and the Union is one that suggests leniency, or mercy. Long seniority has been held from time to time to mitigate termination circumstances. Off-duty misconduct is another factor that sometimes mitigates discipline. These considerations are appropriate in cases of a less seriousness nature than in the instant matter and generally speaking, off duty misconduct, in a non-public safety situation would be a consideration. Moreover, the Arbitrator's view would be different if the misconduct did not involve circumstances such as exist in this case; criminal offenses, involvement of at least two other police agencies, and the potential for the worst of consequences. But for the careful handling of this explosive situation by the Michigan State Police, very grave circumstances could have existed.

The argument is often made by employers that an arbitrator in this kind of case is asked to act as a board of leniency, and a decision other than sustaining the discharge, really is nothing more than a decision which replaces the judgment of management. Arbitrators do have authority to modify a penalty in a proper case.

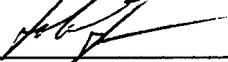
The Arbitrator acknowledges that this is a very sensitive case. It is extremely important that the Grievant get on the road to rehabilitation as a person, so that he may contribute to this family, friends, and most of all to himself. However, the Employer has a right to expect employees free from addiction, employees able to report for duty, and employees who do not engage in incidents such as those reported in this case. Although the Arbitrator is most sympathetic, he cannot say that the standard of just

cause has been violated. The test is whether the conduct of the discharged employee was defensible, and the disciplinary penalty just. After a complete review of this record, the cause of action, the Employer was not unjust in assessing the termination penalty and the termination was reasonable under all the circumstances.

AWARD

The grievance is denied.

Respectfully submitted,



John A. Lyons, Arbitrator

Dated: March 1992