

In the Matter of the Arbitration  
between:

DEPARTMENT of <sup>Mental</sup> HEALTH,  
STATE of OHIO,

Employer

Gr. No. 86-126

and

Gr:

OHIO HEALTH CARE EMPLOYEES UNION,  
District 1199 WV/KY/OH,  
AFL-CIO

Union

DECISION and AWARD of ARBITRATOR

This arbitration was held pursuant to the expedited procedure prescribed in Sec. 7.08 of the Collective Bargaining Agreement between the parties.

The hearing was held in Columbus, Ohio on December 8, 1986. The grievant, a Social Service Worker IV at the Oakwood Forensic Center, was given a ten day suspension in June, 1986 for having allegedly brought into that facility a canister of mace, in violation of hospital policy and rules. On July 28, 1986 she filed a grievance claiming that her suspension had been unjust and requesting that it be revoked and that she be made whole for her loss of pay and all of the benefits.

In denying the grievance at Step III the Employer stated that the grievant brought a "canister of mace" into the facility; that mace is a non-lethal weapon; that this was a serious violation of hospital policy and administrative rules and that it amounted to the "conveyance of a weapon". It was acknowledged by the Employer that the grievant's record covering over nine years, was unblemished. While characterizing her conduct as an "oversight", and over-ruling the grievant's supervisor and department head, both of whom had recommended a verbal reprimand, the Employer imposed a ten day suspension.

Upon review of the record I find that the grievance must be sustained for the following reasons:

1. The grievant had no intention to bring contraband into the hospital; indeed, she did not know that she had the lipstick-sized canister in her purse, having brought it home with her the night before for the purpose of disposing of it and having then forgotten to remove it and also forgotten that it was in her purse. These facts are undisputed.

2. The canister was over four years old; it was found to be inoperable by the Captain of Security, since it could expel no mace. It was not proved that there was, in fact, still mace in it. I am not satisfied that this inoperable canister could properly be called a "non-lethal weapon" or that it was contraband within the meaning of the hospital rules. The employer's reliance on Sec. 2925.01 (J) of the Ohio Revised Code seems misplaced. That section refers to any "harmful intoxicant, perfumes, or vapor which can induce" such things as giddiness, irrational behavior, depression, stupefaction or paralysis, among other things, and includes "any aerosol propellant". An inoperative mace canister which, lacking aerosol, cannot produce any of the effects described in that section and cannot propel anything does not meet the definition of an "aerosol propellant".

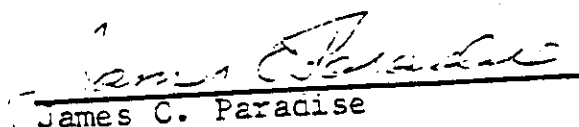
3. The imposition of a suspension was a clear violation of Article 8, Sec. 8.02 which calls for progressive discipline and requires that, except in special circumstances, a suspension must be preceded by a verbal reprimand and then a written reprimand. Since even the Employer characterized the grievant's possession of the canister as an oversight, his departure from the principle of progressive discipline cannot be justified.

4. In view of the fact that the grievant did not intend to bring the canister into the hospital and did not even realize it was in her purse until the Security Officer found it, and the further fact that the canister was completely inoperative, the Employer's conclusion that the violation was "serious" is unsupportable. Nor am I satisfied that the grievant's conduct

amounted to the unintended "conveyance of a weapon" as asserted by the Employer, anymore than the carrying of a pocketknife without blades would be the conveyance of a weapon. The grievant's long and unblemished record is sufficient evidence that she is not given to violating hospital policy or rules. Upon the entire record it is my conclusion that no disciplinary action of any kind was justified.

AWARD

The grievance is sustained. The grievant's suspension was not for just cause. The suspension is set aside. The grievant shall be made whole for the compensation and all other benefits which she lost by reason of such suspension.

  
James C. Paradise  
Arbitrator

Dated at Cincinnati, Ohio  
this 12th day of December, 1986