

ARBITRATION AWARD SUMMARY

OCB Award Number: 130  
OCB Grievance Number: 87-1535  
Union: SCOPE/OEA/NEA  
Department: DYS  
Arbitrator: Drotning  
Management Advocate: Patterson  
Union Advocate: ~~Ba~~ STEVENS  
Arbitration Date: 10/15/87  
Decision Date: 12/12/87  
Decision: modified

IN THE MATTER OF ARBITRATION

BETWEEN

DEPARTMENT OF YOUTH SERVICES  
STATE OF OHIO

AND

PROFESSIONAL EDUCATORS/OEA/NEA

ARBITRATION AWARD

GRIEVANCE: Suspension- H. Shearer  
HEARING: October 15, 1987  
ARBITRATOR: John E. Drotning

## I. HEARING

The undersigned Arbitrator conducted a Hearing on October 15, 1987 at 5026 Pine Creek Dr., Westerville, Ohio. Appearing for the Union were: Mr. Henry L. Stevens, Ms. Carol Lesica, Mr. Michael Catheline, and the grievant, Mr. Hardin Shearer. Appearing for the State were: Mr. John Patterson, Ms. Deene Donough, Mr. Jerry Luse, and Mr. John Osterman.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. The Union filed a post hearing brief on or about 11/16/87 and the State did not file any post hearing brief and the case was closed. The discussion and award are based solely on the record described above.

## II. ISSUE

The parties did not agree totally on the issue before the Arbitrator but the parties agreed to the following:

Did the Cuyahoga Hills Boys School and/or its agents violate, misinterpret, or misapply the following articles of the 1986-89 Agreement between the State Council of Professional Educators and the State of Ohio when they suspended Mr. Hardin Shearer for seven days without pay:

Article 13 - Progressive Discipline

- 13.01 - Standard
- 13.03 - Pre-Suspension or Pre-Termination  
of Conference
- 13.04 - Progressive Discipline

The Union also added other articles which it felt were violated; namely, Articles 5.01, 5.08, 6.02, 7.01, 9.01, and 9.02.

### III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibits #1, #2, and #3.

The State acknowledged that the incident on 3/2/87 was unintentional and that some inmates escaped through a window and if the security measures had been taken with the window, the escape might not have occurred.

### IV. TESTIMONY, EVIDENCE, AND ARGUMENT

#### A. STATE

##### 1. TESTIMONY AND EVIDENCE

The State called Mr. Hardin Shearer, the grievant, who testified he had been in the Department of Youth Services for sixteen years and at the Cuyahoga Hills Boys Home. Shearer stated that he was a science teacher and has been in the same classroom for sixteen years. He went on to say that the classroom has a bathroom, three windows, and a door. On 3/24/87, Shearer said that two kids escaped. He stated that his sixth period started at 2:25 p.m. and that prior to the class, a youth leader by the name of Mr. Agee warned him he might be jumped during class. Agee, said Shearer, did not indicate which of the youths might attack him in order to get his keys.

Shearer testified that he took attendance on that date and that a David Lipps was in the class at the time. He noted that Lipps had just returned to the classroom after being put in isolation for some period of time as a result of his AWOL.

Shearer said that he took attendance at 2:25 and the class ended at 3:10 p.m..

Shearer went on to say that he checks to see that all the children are out of the room and that the door is locked at the end of class.

Shearer stated that he reported the attack threat at the end of the class after he locked his door and he went to notify the principal and assistant principal of the threatened attack. Shearer testified that he was sure that all of his students had left his room at the time he locked the door.

Shearer testified that at 3:10 p.m., he did not know if the bathroom door was open because he could not see it from the position where he was standing which was just outside the door to the classroom. Normally, students must ask permission to use the bathroom and that on 3/24/87, if Lipps did use the bathroom, it was without his permission.

Shearer testified that he was familiar with State Exhibit #1 and he noted his letter on 3/23/87 attached to that exhibit.

Shearer testified that the window involved has a security screen and he noted that there had been prior escapes through that window. The window, continued Shearer, was repaired improperly so inmates could get out and there was a previous escape through that window on 3/16/87. Between 3/16/87 and 3/24/87, the date of Lipps' escape, the window had not been repaired.

Mr. Jerry Luse, Superintendent, testified that Shearer had been given State Exhibit #1 and that the teacher is responsible for the kids and their offenses. He noted that each class had two to five individuals with felony 1's and 2's.

Luse said that a youth head count is critical and the procedure for counting the inmates is more important than bricks and mortar.

State Exhibit #4, noted Luse, are statements by various witnesses which were taken by the supervisors as soon as they returned.

Luse said that at about 3:19 p.m. on 3/24/87, he was talking to another person. He noted that his office is below Shearer's and he said that while he was in his office, he saw something go by his office window at about 3:12 p.m..

Luse said that he examined Shearer's classroom that day and learned the route of Lipps' escape. That incident justified a seven day suspension because, as a result, two felony offenders are on the street and one of them was incarcerated for aggravated burglaries. The other youth was a chronic escape artist. In addition, Luse noted that kids on the lam, so to speak, feel they have nothing to lose and therefore are dangerous. Moreover, successful escape attempts lead to similar efforts by other youths.

Luse said that he has imposed prior suspensions for similar incidents even up to discharge.

Luse said he considered Shearer's prior work record and it was clean.

Luse went on to say that the second youth involved in the escape was not in Shearer's class on the day in question but since the door could be opened from the inside, it was his conclusion that Lipps opened it for the second youth. He went on to say that he knew of Lipps who was an escape risk because he had departed the institution on other occasions.

Luse noted that he expected a high standard of care by employees for the youths, especially those who are security risks.

The State also cross examined Union witnesses. Mr. Shearer, on cross, testified that he locked the classroom door on 3/24/87 and that he had about fifteen youths in his classroom that day.

Shearer said the classroom door was in working condition on 3/25/87.

## 2. ARGUMENT

The State argues that Shearer was aware of the work rules prior to the incident and he violated them. The State notes that the work rules says that an escape is a result of neglect of duty and is subject to discipline. The Employer investigated the incident and found cause to suspend Shearer.

The youths escaped through Shearer's classroom window and there is no doubt about that, asserts the State. There was no damage to the classroom door because Shearer locked it and,

therefore, there must have been a youth in the room who was able to open the door from the inside.

Shearer neglected his duty as noted by his testimony in which he said that he was relatively sure all the youths were gone from his classroom. However, the State notes that he did not check the bathroom nor could he see it.

The State also cites a prior arbitration award in which the arbitrator testified that teachers are part of the security team.

The State notes that Lipps was a risk and Shearer was negligent and employees must be more careful and, therefore, the seven day suspension is justified.

## B. UNION

### 1. TESTIMONY AND EVIDENCE

Mr. Hardin Shearer testified that his record shows no reprimands except one instance of verbal counseling when he allegedly slapped a kid on 3/2/87 as noted on Joint Exhibit #2. That constituted the total discipline up to this case, said Shearer.

Shearer reiterated that on 3/24/87, he had been warned that he might be jumped for his keys and he was somewhat nervous because of that possibility.



The youths in his class, said Shearer, range from 12 to 18 years of age. He went on to say that he surveyed the room after the youths had left and he determined that they were all out on 3/24/87.

Shearer testified that reinforced plywood has been placed on the window to prohibit escape following the incident on 3/24/87.

Shearer testified that Lipps is a slender youth and noted that another youth by the name of Belcher came to his door on 3/24/87 at the end of the sixth period and he told him to leave and he did, but, continued Shearer, Belcher obviously came back. Shearer said that both Belcher and Lipps could escape through the window as noted on Association Exhibit #1 and specifically on Association Exhibit #2. Shearer noted that the window opening had no clasp and, at the time of this hearing, still had not been repaired.

Shearer said that he cannot open or close the window without a special key.

Shearer said that kids have put chewing gum or putty in rooms to stop the door from locking in the past and he noted that they are experts in jamming locks. Shearer testified that his door locks were in perfect condition at the time of the incident.

Ms. Carol Lesica testified that she has worked with Shearer and she believes he is one of the finest teachers in the institution. He is known throughout the school, said Lesica, as Mr. Teacher and he is a reliable and creditable person with excellent judgement.

Lesica testified that she had reviewed his personnel file and he has rave reviews.

Lesica said that Management has not given the support needed for teachers to teach and control the youths on a consistent basis. She noted that she has asked for and not received help in areas of discipline and control.

Lesica testified that Shearer had reason to suspect he would be jumped by youths on 3/24/87, although this is not a frequent occurrence at the school.

Mr. Michael Catheline was not called as a witness.

The Union also ran a Channel 3 news article on the Cuyahoga Hills Boys Schools and the program identified the problems and the fact that there were financial, architectural, and disciplinary problems in that institution.

The Union cross examined witnesses called by Management and Mr. Shearer, who had been called as the State's first witness, testified on cross that David Lipps had escaped on 3/16/87.

Shearer also said that he had asked the principal to repair the window in his room after the 3/16/87 but it was not repaired between 3/16/87 and 3/24/87. Shearer noted the Association Exhibits #1 and #2 show the condition of the window as of 3/24/87.

Mr. Luse, on cross, said that he had been at Cuyahoga Hills from 3/19/87 which was after Lipps' first escape and before his second on 3/24/87.

Luse said that it is the teacher's responsibility to keep youths in the building.

Luse did not respond specifically to the question as to whether or not the escape route should have been fixed.

The two escapees, said Luse, do not have an extensive background in escape and Lipps was a minimum security person.

Luse acknowledged that the maintenance staff would repair the window. He noted that Cuyahoga Hills Boys School is overcrowded and that it has had seven to eight superintendents prior to his coming to that institution as of 3/19/87. Luse acknowledged that he inherited some very poor conditions.

## 2. ARGUMENT

The Union argues that Shearer was not adequately warned of the consequences of his conduct. The exhibits submitted by the State pre-date the collective bargaining Agreement. Moreover, the Union points out that on August 27, 1986, all educational staff received a memo which required them to stand at their door in order to monitor hallway movement and take attendance and even though Shearer feared for his own safety on 3/24/87, he precisely carried out the dictates of Shade's memo.

The Union argues that the discipline administered by the State in this case does not fit the seriousness of the offense and is excessive considering of Shearer's past work record. The

only conclusion, argues the Association, is that the seven day suspension constitutes malicious conduct on the part of the Employer.

The Association argues that the Employer violated Articles 7 and 9 because it failed to repair the damaged window in Shearer's classroom after he had asked that it be put in correct condition, specifically to prevent another escape. Management failed to respond to Shearer's request and, therefore, the escape cannot be attributed to Shearer.

The Union also considers that Management did not process this grievance in a expeditious manner and its lax attitude is also the basis for sustaining the grievance.

The seven day suspension, continues the Association, promotes poor labor relations rather than a cooperative relationship with the Employer. The extended duration between the incident and the arbitration does not support the concept of an orderly and efficient operation of State government.

For all these reasons, the Association asks that the grievance be sustained.

## V. DISCUSSION AND AWARD

The issue is whether the seven day suspension was for just cause and the answer is no. There are two reasons for this conclusion.

First is the fact that Shearer's record is unblemished with one exception; namely, an incident in the Spring of 1987 where he allegedly slapped a youth and received a verbal reprimand. In his sixteen years of tenure at the Cuyahoga Hills Boys School, that is the only discipline other than the one before this Arbitrator. Moreover, Ms. Lesica testified that he was viewed as "Mr. Teacher" and that he had glowing evaluations. Clearly, that sort of a work record does not justify a seven day suspension unless the incident is completely the fault of Shearer and that is not the case.

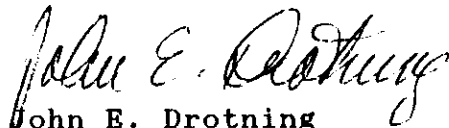
The testimony and evidence indicate that David Lipps had escaped one week earlier; namely, on 3/16/87 and while it is not clear whether he went out through the same window as he did on 3/24/87 after the door to Shearer's classroom was closed at about 3:10 p.m., it is clear that Shearer asked that the window situation noted on Association Exhibits #1 and #2 be repaired following Lipps' first escape. The testimony and evidence also indicate that the window was not repaired at the time of Lipps' second escape through Shearer's classroom window on 3/24/87.

Mr. Luse testified that the seven day suspension was justified and this is difficult to support given Shearer's past record. Moreover, it must be noted that Luse came on board on 3/19/87, about three days after Lipps' earlier escape on 3/16/87 and only five days before Lipps' second escape on 3/24/87. While Luse's testimony that it is the teacher's responsibility to keep the youths in the building, it is also the responsibility of the administration and maintenance to minimize escape routes in that facility.

Luse also testified that Lipps and the other youth who escaped did not have an extensive background in escape, although Luse noted that the institution is overcrowded and that he inherited some poor physical conditions upon his appointment to the superintendency to the Cuyahoga School Boys School.

That evidence indicates that there had been a request by Shearer to have the window in his classroom fixed and it was not done. The escape route existed and Lipps utilized it. The fault, if any, is that Shearer did not check the bathroom and apparently, Lipps was able to hide himself there and then open the door for his compatriot. However, the Association noted Shade's memo of 8/27/86 requiring all teachers to stand by their door and monitor hallway movement and from that position, Shearer could not see the bathroom. It was an error, but not one which justified a seven day suspension. It is true that a teacher must be responsible for monitoring attendance and in that case, one can conclude that Lipps was not accounted for and that is the

only fault of Shearer. Therefore, he shall and has been verbally warned, but given that, the seven day suspension shall be rescinded and he shall be made whole and that seven day suspension shall be cleansed from his record.

  
John E. Drotning  
Arbitrator

Cuyahoga County, Ohio  
December 12, 1987