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In the Matter of Arbitration

Between

Fraternal Order of Police-  
Ohio Labor Council

and

The State of Ohio, Department  
of Natural Resources, Division  
of Wildlife

Before: Harry Graham

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Appearances: For Fraternal Order of Police-Ohio Labor  
Council:

Paul Cox  
General Counsel  
Fraternal Order of Police-Ohio Labor Council  
3360 East Livingston Ave.  
Columbus, OH. 43227

For Department of Natural Resources:

Jon E. Weiser  
Labor Relations Administrator  
Department of Natural Resources  
Fountain Square  
Columbus, OH. 43224

Introduction: Pursuant to the procedures of the parties this  
dispute came to be heard on January 8, 1990 before Harry  
Graham. At the hearing both parties were provided complete  
opportunity to present testimony and evidence. No post  
hearing briefs were filed in this dispute and the record was  
closed at the conclusion of oral argument.

Issue: The parties agree upon the issue in dispute between  
them. That issue is:

Was the thirty (30) day suspension imposed on Francis (Rich) Gura for just cause? If not, what should the remedy be?

Facts: The essential facts that give rise to the 30 day suspension at issue in this proceeding are not at issue, though the weight to be given them and the light they are to be viewed in are hotly disputed.

The Grievant, Rich Gura, is a Game Protector employed by the Ohio Department of Resources, Division of Wildlife. He has approximately 14 years of service and at the time of the incidents which give rise to this proceeding was the Game Protector in Muskingum County, OH.

On December 1, 1988 while on duty as the Game Protector, Mr. Gura issued a summons to Jeffrey Bloom for hunting deer at an improper time. Specifically Officer Gura cited Mr. Bloom for hunting at a time other than between one-half hour before sunrise and sunset. According to Mr. Gura, Mr. Bloom was hunting at 5:45PM. Sunset had occurred very shortly after 5:00PM on December 1, 1988. Thus, in Mr. Gura's opinion, Bloom was in violation of state statutes. As is set forth more fully below the State is of the view that the summons was improperly issued under the circumstances.

On December 1, 1988 Officer Gura did not respond to a complaint received by him from the Muskingum County Sheriff's Department. That complaint was received from one Bruce Smith. On that date as well he failed to respond to a complaint from

Louis Kolb. On December 3, 1988 Officer Gura failed to respond to a complaint from Richard Davis. As was the case with the Smith complaint, the complaint from Louis Kolb was relayed to Mr. Gura from the Sheriff's Department. The Employer viewed Mr. Gura's failure to respond to the complaints received from the public as constituting neglect of duty.

In addition to these incidents on December 3, 1988 Mr. Gura carried a 41mm magnum handgun. This is not the standard issue 38mm which is the standard issue weapon. Such an action is improper according to the State.

Finally, Mr. Gura made a statement in February, 1989 to the effect he "should have shot them." The "them" in that statement referred to some of his Departmental co-workers. Given the these events during the end of 1988 and the beginning of 1989 the State imposed a 30 day suspension. That suspension was promptly grieved and the parties agree that it is properly before the arbitrator for determination on its merits.

Position of the Employer: In the opinion of the State Mr. Gura acted improperly when he issued a citation to Jeffrey Bloom on December 1, 1988. On that date which was during the 1988 deer hunting season Mr. Bloom was hunting in a field in Muskingum County. At sunset by his reckoning he ceased to hunt and began to walk out of the field to his truck. Upon

reaching his vehicle he unloaded his gun and locked it in the truck. At about that time Mr. Gura appeared and indicated his view that Mr. Bloom had been hunting after sunset, a violation. In the course of their discussion Mr. Gura did not issue a hand receipt for Mr. Bloom's weapon. He issued a citation for hunting after hours. In the State's opinion two infractions occurred in this situation. One, Mr. Gura failed to issue a receipt for Mr. Bloom's weapon. Two, he failed to secure the approval of an appropriate law enforcement officer before issuing the citation to Mr. Bloom.

During the 1988 deer hunting season Mr. Gura failed to respond to a number of complaints received by the Muskingum County Sheriff's Department and forwarded to him. These complaints involved allegations that people were improperly hunting. They are serious matters. By failing to respond to those complaints Mr. Gura was derelict in meeting one of the fundamental responsibilities of his job. He has to respond to complaints received from the public. His failure to do so is a serious breach of his responsibilities as a law enforcement officer according to the Department.

On December 3, 1988 Mr. Gura in the company of two friends was at the property of a Mrs. Foster. He was wearing hunter orange, not the standard departmental garb. By his own admission he was not carrying the prescribed weapon, a 38 caliber handgun. Rather, he was carrying his own 41 caliber

gun. This is not the sort of activity which should be countenanced in the State's opinion.

Subsequent to the events during deer season, 1988 Mr. Gura had a conversation with one of his colleagues, Alan Hamilton, regarding his status with the Department. Gura told Hamilton that he was under investigation. In the course of the conversation Gura expressed the thought that he had tried to work independently and it had been unsuccessful. He continued to tell Mr. Hamilton that he had tried to work as prescribed by the Department but had been unsuccessful at that as well. He concluded that "he should have shot them last time." Mr. Hamilton viewed this statement with the utmost seriousness as did his superior, William Williams. The concern they had over this statement was occasioned by the fact that an officer in the Department had lost control of himself and shot three people and then had shot himself. With that as background, the Department viewed Mr. Gura's comment to be a threat against members of the Department. It had no other way to interpret that statement in light of Departmental history. A threat of this sort cannot be countenanced according to the State. Discipline must be taken against those who make such threats in order that they do not reoccur. Given the number of instances of behavior that was out of order, the 30 day suspension at issue in this proceeding was justified in the State's opinion.

Consequently it urges that the grievance be denied.

Position of the Union: The Union is of the view that nothing in the incidents cited by the State warrants the 30 day suspension under review in this proceeding. It points out that the State's hearing officer recommended that a 20 day suspension occur in this situation. The Director of the Department increased the discipline to the 30 days at issue here. Consequently, in the opinion of the Union the 30 days are excessive on their face.

Turning to the substance of the charges against Mr. Gura the Union asserts there is nothing in them to justify any time off whatsoever. Mr. Bloom was observed on December 1, 1988 leaving the field where he was hunting well after the prescribed time. There was no reason for Mr. Gura to give Mr. Bloom a receipt for his gun. Mr. Gura never touched the gun. He never looked at the gun after Mr. Bloom locked it in the trunk of his vehicle. No receipt would be offered to a hunter under such circumstances. In fact, Mr. Bloom admitted his gun was loaded when he left the field, some minutes after the close of hunting on December 1, 1988. For that reason Mr. Gura had every reason to issue the citation he did in that instance. That Officer Gura was correct in his evaluation of the situation is shown by the fact that Mr. Bloom paid the \$60.00 fine associated with his citation. He did not contest the matter in any way. He did not even appear in court.

Rather, he mailed his money to the appropriate authority. Nothing in the December 1, 1988 incident with Mr. Bloom may be held against the Grievant the Union insists.

The Union readily acknowledges that Officer Gura erred in not responding to the various calls referred to him by the Muskingum County Sheriff's Department. The circumstances of those calls must be examined before using them against the Grievant according to the Union. The deer herd in Muskingum County was large in 1988. In fact, it was so large that for the first time in Ohio authorization was given to hunters to kill two deer during the hunting season. The two deer limit placed a heavy burden on Officer Gura as he had to secure extra tags and reporting forms. He had to keep the reporting stations stocked with supplies. Due to the two deer limit in Muskingum County in 1988 this required more effort than unusual. In fact, on occasion Mr. Gura had to drive to neighboring Guernsey County to secure the extra supplies. In an effort to prioritize his work he placed greater emphasis on ensuring hunters could register their kills than in responding to complaints.

According to Mr. Gura's testimony he checked out the complaint filed by Bruce Smith on December 1, 1988. He telephoned the Smith residence and was told that hunters were shooting in the area. He could not get further information and put the Smith complaint on the back burner while he

devoted his attention to the check stations where hunters were bringing their deer for registration. With respect to the Louis Kolb complaint on December 1, 1988, in fact it was not a complaint. Kolb wanted his vicinity checked for hunters. In Guara's view, it was more important for him to secure tagging and registration supplies from his colleague, Jack Whitehair in Guernsey County than it was to check out Kolb's neighborhood. According to the Union it is unrealistic to expect that Gura could be everywhere at once.

On December 3, 1988 when the Davis complaint was received Mr. Gura was at the southern end of the County. The Davis complaint came from the northern end of the County, some 25 miles away. Gura was on the property of a Mrs. Foster. He was indeed wearing hunter orange. His supervisor, Mike Budzik had given him permission to do so. Nothing was irregular or out of order with the wearing of hunter orange as Gura had asked and had been explicitly been given permission to wear it. In fact, while at the Foster acreage Mr. Gura made two arrests. He caught two miscreants, Messrs. Nicholson and Pierce committing multiple violations of the hunting rules. Nicholson was cited for hunting without permission on Mrs. Foster's land and for failure to wear his hunting license. Pierce was cited for hunting without permission and for failure to have both a hunting license and a permit. These represent serious violations of hunting law



and Gura's presence on Foster's land enabled him to make the arrests. That he was not responsive to the Davis complaint must be viewed in light of the fact that he issued a number of serious citations while on the Foster property.

On December 3, 1990 Gura was not carrying the 38 caliber weapon provided by the Department. He was carrying his own 41 caliber gun. Admittedly this was an error. However, it occurs with some regularity among Game Protectors. People do not always use the Departmental issue gun. Even when examined in connection with the other events involved in this proceeding use of his own weapon is not a big deal according to the Union. It certainly does not justify time off in its opinion.

At the hearing on January 8, 1990 Mr. Gura testified that he did not remember making the statement about shooting officials of the Department in February, 1990. Granting that he made the statement, nothing about it smacks of a threat according to the Union. Gura was under investigation for what he regarded to be minimal offenses at best. He was speaking with a colleague. Under such circumstances he might well make a remark of that nature. No particular persons were singled out to be shot. There was no specificity in Gura's conversation. Rather than being a threat, the reference to shooting members of the Department should have been regarded as akin to shop talk. The reaction of the Department to whatever Mr. Gura might have said represents an overreaction,

not justified by the events.

The Union admits that in the series of events which prompted Mr. Gura's suspension there were some errors committed by the Grievant. He did not follow up on all the complaints received by him from the Muskingum County Sheriff. He carried his own gun on December 3, 1988. These actions certainly do not justify a 30 day suspension. The Department itself was ambivalent about the amount of time that Mr. Gura should serve as a suspension; initially 20 days, then increased to 30 days. Under these circumstances the Union asserts that no time off whatsoever is proper and that the discipline be overturned in its entirety.

Discussion: On December 1, 1988 Officer Gura was doing precisely what he is employed to do when he cited Mr. Bloom. He was exercising his judgement that Mr. Bloom was in violation of the hunting laws of Ohio. Bloom came out of the field after sundown. By his own admission he was carrying a loaded weapon, a clear violation of law. Gura did not violate Department policy when he failed to issue a hand receipt to Mr. Bloom for the gun. Management Exhibit 8 sets forth the circumstances in which a hand receipt is to be issued. None of them apply in this case. Mr. Gura did not touch Mr. Bloom's gun which was locked in the trunk of his vehicle. The gun was not "seized" and "returned to the individual on the spot." It was not seized and held for

evidence. It was not seized for return after court disposition. It was not confiscated and forfeited by court action. None of the circumstances that would prompt issuance of a hand receipt are present in this case. Gura thought Bloom was a law violator. He cited him. Bloom did not contest the charge and paid his fine without a court appearance. As Gura, a law enforcement officer, was of the view that Mr. Bloom's activity represented a violation of law it was not necessary for him to seek approval of the local prosecutor authority prior to issuing the citation. Nothing was amiss with Gura's behavior with respect to Mr. Bloom on December 1, 1988.

Officer Gura was in error by not following up on all the complaints referred to him by the Muskingum County Sheriff's Department. As the Union correctly points out, there were extenuating circumstances that must be taken into consideration. These involve the two-deer hunting season occurring in the County. It is reasonable that Game Protectors must prioritize their daily activities. During the time in question in this proceeding Gura was heavily involved with getting supplies to the deer check stations and checking hunters for violations. This does not serve to excuse his lack of follow-up on the Smith and Kolb complaints but it does serve to place them in proper context. Had Gura taken time from other tasks to investigate the Smith and Kolb

complaints time would have been taken from other tasks. Those tasks were essential to operation of the deer hunt in Muskingum County. It is easy to conceive of a Catch-22 situation developing during the week of deer hunting in 1988. Either Gura checked hunters and ensured the check stations were properly supplied with tags and forms or he followed up on complaints. Failure to do either could lead to discipline. Given the amount of work to do and the time to do it in, prioritization was essential. Discipline may be in order for his ultimate failure to contact Kolb. Failure to contact Smith is denied by Gura. In any event, substantial time off for failure to contact either is not justified by the circumstances of these events.

On December 3, 1988 Gura was on Mrs. Foster's property when the Davis complaint was received. He was at the other end of the County from where Davis was situated. In fact, he made two arrests for significant law violations when the Department would have him on the road to Davis' property. This hardly seems reasonable. Two serious law breakers were apprehended by Gura's action.

Gura's wearing of his own side arm on December 3, 1988 is indeed a violation that warrants discipline. On the other hand, that he was in hunter orange on that day was approved by his supervisor. He cannot be disciplined in any manner whatsoever for that.

Departmental concern over the statement about shooting Department officials, made in February, 1989, is more difficult to evaluate. Certainly in the context of experience, which had seen an officer go berserk and kill himself and three other people, the Department had every reason not to take such statements lightly. On the other hand, the statement was not explicit. That is, Gura did not say he would shoot Jones, Brown, Green, Smith or any one specifically. There is nothing on his record as presented to the Arbitrator at the hearing that would indicate he was experiencing psychiatric problems in February, 1989. The Department did not have a psychiatric evaluation performed. Rather, it included the threat charge among those for which it imposed discipline.

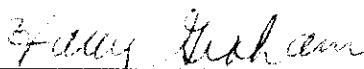
Mr. Gura has over 14 years of service with the Department. His relationships with co-workers may be rough and testy at times. That does not justify the imposition of a very lengthy suspension for the events under scrutiny in this proceeding.

Reduced to their essentials, Gura is at fault for not following up on all complaints relayed to him by the Muskingum County Sheriff's Department during the deer hunting season in 1988. This is not the serious offense made out to be by the Department given the circumstances of the two deer kill season and the need for his activities in the County to

supervise the hunt. That he ultimately failed to contact Kolb and Davis to follow up their complaints represents an error on his part. Less certainty attaches to the Smith complaint of December 1, 1988 as Gura testified he contacted the Smith residence on that day. Gura is also in violation of Departmental policy by carrying his own weapon on December 3, 1988. His intemperate language of February, 1989, standing alone, is insufficient to prompt a finding that a suspension is in order. Based upon this discussion it is clear that the 30 day suspension at issue in this proceeding is excessive.

Award: The grievance is SUSTAINED in part and DENIED in part. The 30 day suspension at issue in this proceeding is reduced to a five day suspension. The difference in compensation between the 30 and 5 day suspensions is to be restored to the Grievant.

Signed and dated this 18<sup>th</sup> day of January, 1990 at South Russell, OH.

  
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Harry Graham  
Arbitrator