

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 648

OCB GRIEVANCE NUMBER: 28-06-901106-0020-02-12
28-06-901029-0019-02-12

GRIEVANT NAME: DECK, JOHN and HOPKINS, ED

UNION: 1199

DEPARTMENT: REHABILITATION & CORRECTION (APA)

ARBITRATOR: KATZ, JONAS

MANAGEMENT ADVOCATE: SHAVER, JOSEPH

2ND CHAIR: KITCHEN, LOU

UNION ADVOCATE: HETRICK, LISA

ARBITRATION DATE: APRIL 23, 1991

DECISION DATE: AUGUST 2, 1991

DECISION: DENIED

CONTRACT SECTIONS

AND/OR ISSUES: TEN DAY SUSPENSION FOR JOHN DECK AND 5 DAY
SUSPENSION FOR ED HOPKINS FOR UNAUTHORIZED USE OF A
PELLET GUN; CANCELLATION OF DECK'S AUTHORIZATION TO
CARRY A FIREARM.

HOLDING: 1) ARBITRATOR RETAINS JURISDICTION OVER THE FIREARM
AUTHORIZATION AND DIRECTS THAT THE CHIEF REVIEW HIS DECISION
ON THIS MATTER IN SIX MONTHS FROM THE DATE OF THIS AWARD. 2)
EVEN THOUGH THE UNION CONTENDED "HORSEPLAY", A PELLET GUN
COULD INFLICT INJURY AND ALSO HAS A LIKENESS TO A .357 MAGNUM.
WHEN POINTED AT ANOTHER INDIVIDUAL IT COULD CAUSE THEM TO
REACT WITH A "REAL" WEAPON. AS FIREARMS EXPERTS, THE
GRIEVANTS ABOVE ALL PEOPLE SHOULD BE AWARE OF THE FACT THAT
ONE DOES NOT PLAY WITH GUNS, EVEN PELLET GUNS.

COST: \$766.27

BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO

OHIO DEPARTMENT OF
REHABILITATION AND
CORRECTION (TOLEDO OFFICE)

and

DISTRICT 1199/SEIU

No. 28-06-20-02-12
(11/6/90) and
No. 28-06-19-02-12
(10/29/90)

SUSPENSIONS OF JOHN DECK
AND ED HOPKINS

DECISION AND AWARD

This arbitration arises as a result of the suspension of Parole Officer John Deck for ten days and Parole Officer Ed Hopkins for five days for the unauthorized use of a pellet gun.

FACTS

The facts of this case are largely undisputed, except as to Deck's actual firing of the pellet gun. Deck, Hopkins, Parole Officers Patti Filipski and Steve Phillips are employed by and work out of the Toledo District Office of the Department of Rehabilitation and Correction.

On July 31, 1990 at approximately 5:15 to 5:30 P.M., Phillips was looking for a coffee filter. Hopkins believed he had seen some filters in the supply room and while looking for same, came across a compressed gas pellet gun, which in the Arbitrator's opinion, after viewing same, looked like a lifelike .45 Luger or a .357 Magnum. Hopkins took the pellet gun from the supply room so that he could show Phillips how real-looking the pellet gun actually was. At that time, Deck was present.

Hopkins asked Phillips if he knew how to operate the gun. Hopkins also asked Deck, who responded by putting a gas cylinder in the gun.

After the cylinder had been loaded into the gun, Deck, according to Hopkins, said, "Watch this," whereupon he walked down the hall to Hopkins' office where Filipski was sitting behind the desk. Hopkins testified he heard Deck say to Filipski, "We don't need a parole officer like you," and then fired the pellet gun. According to Filipski, Deck approached within five feet of her while she was sitting at the desk, and said, "We don't need parole officers like you," and proceeded to draw out a "large gun," point it directly at her head, and fired, creating a red flash. Filipski immediately leaned down and placed her hand on her forehead, being sure that she had been shot. She then observed Deck and Hopkins standing behind Deck laughing. There is no doubt that Filipski was put in great fear at the time of the incident and was considerably upset thereafter. Shortly thereafter Deck approached Filipski and asked her to keep the incident "between them." Filipski responded sarcastically, "Sure."

Deck testified he did not point the gun at Filipski, that he was taking it back from Hopkins when it accidentally discharged into the "wall right behind her [Filipski]," and he said "Oops, sorry." When Hopkins asked Deck what happened he was told the sequence of events and both started to laugh.

After the discharge incident, it is uncontested that Hopkins

and Deck went to the back room at the end of the hall of the Toledo office, where they set up soft drink cans and proceeded to have target practice with the BB's inserted in the gun. Eventually, Phillips told both Hopkins and Deck to put the gun away.

Filipski at first did not intend to make a report on the incident, but a few days later, when she heard that Deck and Hopkins were still laughing over the incident, she decided to formally complain. The complaint led to an investigation, a ten-day suspension for Deck, a five-day suspension for Hopkins, and this arbitration. In addition, because of the use of the pellet gun, Deck's authorization to carry a firearm was revoked by the Director and thus he lost the five percent wage supplement that attends to hazardous duty.

The Position of the Union

The Union contends that the incident was merely horseplay, "two officers playing around inappropriately with a BB gun in the office," and that although some discipline is in order, these two officers, who have long periods of seniority with unblemished records, should not have received suspensions. The Union urges that the charge of Possession of Contraband cannot be sustained because the pellet gun was not logged in as contraband; therefore, there was no violation of Rule 29.

The Union further argues that the canceling of Deck's authorization to carry firearms was unjustified, that the revelation of Deck's private medical condition was an outrageous

violation of Deck's privacy, and the Arbitrator has authority to and should restore Deck's firearm authorization.

The Position of the Department

The Department argues that the disciplines were for just cause, and although the discipline was more than a reprimand, it was within the exception to the progressive discipline rules because of the serious nature of the offense. The Department takes the further position that the removal of the firearms authorization from Deck is exclusively within the authority of the Chief of the Adult Parole Authority and beyond the arbitrator's authority to restore.

DISCUSSION

The Arbitrator has reviewed the arguments of the Union and the Department and has studied the evidence presented. Insofar as there is a dispute between the version of the incident testified to by Deck and the version testified to by Filipski, the Arbitrator accepts the testimony of Filipski which is supported by the statement of Hopkins and does not credit the statement of Deck. Therefore, we have a situation in which a pellet gun, which in itself could inflict injury but which has an likeness to a .357 Magnum, being pointed by one parole officer at another and being discharged with the remark, "We don't need parole officers like you." The result of the incident was that Parole Officer Filipski was placed in fear for her life, even momentarily, and was considerably upset by the experience.

The Union has made a forceful argument that the incident was

only "horseplay" and merits no more than a reprimand. The Arbitrator disagrees. It must be apparent to all that in the context of the fact that all of the parties to this incident are parole officers with firearms authorization, that dealing with firearms or simulated firearms such as the one in question takes on a far more serious implication. As firearms experts, they above all people should be aware of the fact that one does not play with guns, even pellet guns. In the instant case, not only was Office Filipski frightened and upset, but Grievant Deck ran the risk of causing Filipski, who was armed, to respond with a real weapon, thereby causing very serious consequences. The trauma of the incident to Filipski is even more apparent because Deck and Filipski, while not enemies, are not close friends and have had differences between them.

In view of the foregoing, the Arbitrator cannot find that the Department's imposition of a ten-day suspension on the Grievant, notwithstanding his past record, was unreasonable. This finding is fortified by the Arbitrator's conclusion that Deck was not forthcoming in his testimony and was unwilling to admit what had actually transpired.

In regard to the Grievant Hopkins, it is commendable that he was forthright in admitting his part in this incident and in effect corroborating Filipski's version of the incident. He was not involved in the incident and was apparently unaware of what Deck intended to do. Therefore, his offense was horseplay and

use of contraband.¹ Given Hopkins' good record and forthrightness, I might have imposed a lesser suspension; however, I cannot say that the penalty imposed by the department was unreasonable, given all of the circumstances.

Revocation of Firearms Authority of Deck

The Union has urged that the revocation of Deck's authorization to carry firearms and the loss of the five percent additional compensation resulting therefrom was also unreasonable, particularly since it could be a permanent loss of the authorization and the five percent compensation. The Arbitrator had previously indicated at the hearing that he believed that the restoration of the firearms authority was not within his authority, since that determination was within the authority of the Chief of the Adult Parole Authority. The Union urges otherwise, since the policy regarding firearm authorization is a rule which by reason of the contract must be reasonable and reasonably applied. Indeed, Bulletin 450 provides

The Chief of the Parole Authority for good cause may cancel an employee's authorization to carry firearms, and that decision is final.

In view of the foregoing, the Arbitrator is now of the opinion that he does have some authority in dealing with cancellation of Deck's firearm authority. The Arbitrator must

¹The argument that the weapon in question was not contraband because it was not logged does not, in the Arbitrator's opinion, have any substantial merit, it being a weapon of a type which certainly would be considered contraband. I do not find that the technicality of it not being logged changes that fact.

say, however, that given the nature of the authorization -- to carry firearms -- and the expertise that it requires to authorize or revoke firearms authorization, this Arbitrator would only challenge the Chief of the Adult Parole Authority's right if his determination was clearly unreasonable or arbitrary.

The Arbitrator has considered the issue of the cancellation of Deck's authorization. In the light of the incident in question and the Grievant's recent medical history, it is the Arbitrator's opinion that the cancellation of the firearm authority was for "good cause" within the meaning of Bulletin 450. The Arbitrator acknowledges that the Union has taken great offense at the divulging of Grievant's recent medical history. However unfortunate that may be, the Chief was placed in a position whereby he was required to justify his actions as not being clearly unreasonable. Therefore, it was appropriate for him to consider the Grievant's act in the instant case in connection with the Grievant's medical history. It cannot be disputed that the Chief has an obligation to be very cautious in the area of firearms given the tragic consequences that can result.

The foregoing decision, however, does not foreclose a contest of the Chief's continued revocation at a more distant time and under changed circumstances. I therefore believe that the Chief should review his decision within six months from the date of this award and periodically thereafter to ascertain if the circumstances allow the restoration of Deck's firearms

authority. The Arbitrator will retain jurisdiction for the purpose of the consideration of this issue.

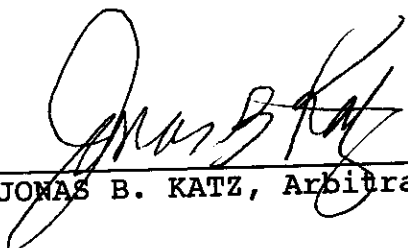
Career Ladder Issue

There is one issue remaining regarding Grievant Deck's career ladder promotion. Although the Arbitrator requested written statements on the application of the Career Ladder as it is affected by the instant suspension, the Arbitrator has concluded that this issue is not and should not be before him. If as a result of the decision in this case Grievant's Career Ladder promotions are adversely affected, that is an issue to be determined by separate grievance, interpreting the negotiated Career Ladder Promotion. It is not a matter to be determined in this disciplinary arbitration.

For all of the foregoing reasons, the Grievances of Deck and Hopkins are denied.

AWARD

The Grievances of Parole Officers John Deck and Ed Hopkins are denied.



JONAS B. KATZ, Arbitrator

Issued at Cincinnati, Ohio
this 2nd day of August, 1991

BEFORE THE ARBITRATOR

In the Matter of:

STATE OF OHIO

OHIO DEPARTMENT OF
REHABILITATION AND
CORRECTION (TOLEDO OFFICE)

and

DISTRICT 1199/SEIU

OCB AWARD NO. 648
CONTINUED

Attach to Award #648

REVOCATION OF FIREARMS
AUTHORITY OF JOHN DECK

The arbitrator finds that the refusal to renew the Firearms Authority of Grievant was without any basis of fact and arbitrary.

Grievant will make application for restoration of his Firearms Authority, he will be permitted to attend the firearms training session in July, 1992. The Adult Parole Authority will then make a reasonable determination as to the reinstatement of Grievant's Firearms Authority, all in accordance with all applicable regulations.

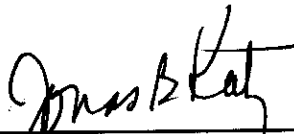
If objections are raised to Grievant's initial application, the arbitrator will conduct a hearing to determine the validity of those objections. If a hearing cannot be held before the commencement of the July training session, Grievant will nevertheless be permitted to conditionally participate in same, subject to the outcome of the aforementioned hearing.

If after completing the training session, Firearms Authority is not restored to Grievant, he may request a hearing before this arbitrator to determine if the refusal to grant Firearms Authority was arbitrary or capricious.

Should Grievant's firearms authority be restored, he will be

Should Grievant's firearms authority be restored, he will be granted firearms pay retroactive to February 12, 1992.

Issued at the City of Cincinnati
as of May 20, 1992



Jonas B. Katz, Arbitrator
June 7, 1992