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Arbitration Decision and Award

In the Matter of Arbitration Involving:

STATE OF OHIO -  
DEPARTMENT OF REHABILITATION AND CORRECTION  
AND  
STATE COUNCIL OF PROFESSION EDUCATORS -  
OHIO EDUCATION ASSOCIATION

Case Number # 27-11 (11/29/91) - 139  
Lebanon Correctional Institution  
William Parizek - Grievant

MARCUS HART SANDVER  
Arbitrator

Hearing Date: September 4, 1992  
Decision Date: September 28, 1992

## I. BACKGROUND

This case involves a dispute over the discipline of Mr. William Parizek for bringing contraband material (a live .22 round) into the Lebanon Correctional Institution on October 17, 1991. An investigation into this matter was conducted on October 21, 1991 by Ms. Beverly Hayes Baker. A predisciplinary conference to discuss the findings of the investigation with the grievant was scheduled for October 31, 1991. On November 12, 1991 Warden William Dallman issued a notice of disciplinary action suspending Mr. Parizek without pay for 5 days (December 2 - 6, 1991). On December 20, 1991 the State Council of Professional Educators (SCOPE) requested a step 4 review of the Parizek incident by the Office of Collective Bargaining. On February 13, 1992 SCOPE requested that the case be submitted to arbitration. Pursuant to the provisions of the Collective Bargaining Agreement negotiated between the parties, Marcus Hart Sandver was chosen to arbitrate the matter. The hearing was originally scheduled for August 26, 1992 but was postponed to September 4, 1992 at the request of the representative of the employer.

## II. THE HEARING

The hearing was convened at 9:00 A.M. on September 4, 1992 in the Conference Room of the Lebanon Correctional Institution.

In attendance at the hearing for the State of Ohio were:

1. Roger Coe Management Advocate -  
State Department of Rehabilitation  
and Correction
2. Brian Eastman Assisting Management Representative  
Office of Collective Bargaining
3. Beverly Hayes Baker Assistant School Administrator -  
Lebanon Correctional Institution

In attendance at the hearing for the State Council of Professional Educators were:

1. Henry Stevens SCOPE Representative -  
Ohio Education Association
2. Betsy Ward Assisting SCOPE Representative -  
Ohio Education Association
3. William Parizek Grievant  
Teacher - Building Maintenance  
Lebanon Correctional Institution

The parties were first briefed by the Arbitrator about the rules of procedure to be followed in the hearing. The parties were next asked to produce any documents that they wished to be made an official exhibit of the hearing. The following documents were introduced as joint exhibits:

Joint Exhibit # 1 - Collective Bargaining Agreement between  
State Council of Professional Educators -  
Ohio Education Association and the State of  
Ohio 1989-1992

Joint Exhibit # 2 - The grievance trail including:

- a. Statement from Gregg Myers dated October 17, 1991
- b. Pre-disciplinary Conference Document List dated October 23, 1991
- c. Repair Request - Vocational Automotive School dated October 1, 1991
- d. Internal Affairs Incident Report submitted by Beverly Hayes Baker dated October 22, 1991
- e. Notice of Pre-disciplinary Conference dated October 24, 1991
- f. Notice of Disciplinary Action dated November 12, 1991
- g. Employee grievance dated November 21, 1991
- h. Request for 4th step review dated December 20, 1991
- i. Request for Arbitration dated February 13, 1992
- j. Step 4 1/2 Status Report dated August 13, 1992
- k. Request to reschedule hearing dated August 18, 1992

Joint Exhibit # 3 - Ohio Department of Rehabilitation and Correction Standards of Employee Conduct Effective: June 17, 1990

Submitted into the record during the hearing as employer exhibits were:

Employer Exhibit # 1 - Repair Request Vocational Automotive School dated October 1, 1991 (original document)

Employer Exhibit # 2 - Opening Statement of Mr. Roger Coe

- Employer Exhibit # 3 - Arbitration Decision of Ms. Rhonda Rivera dated October 5, 1990 (Jennings Grievance)
- Employer Exhibit # 4 - Arbitration Decision of Ms. Rhonda Rivera dated June 30, 1992 (Ludwick Grievance)
- Employer Exhibit # 5 - Statement of Receipt of Revised Standards of Employee Conduct for the Department of Rehabilitation and Correction Signed by Mr. William Parizek dated June 8, 1990 (this exhibit objected to by the union)

Submitted into evidence at the hearing as union exhibits were the following:

- Union Exhibit # 1 - Association Pre-Hearing Brief dated September 4, 1992
- Union Exhibit # 2 - Arbitration Decision of Mr. Jonathan Dworkin dated September 10, 1991
- Union Exhibit # 3 - Arbitration Decision of Mr. Jonathan Dworkin Dated March 8, 1992

The hearing began with a brief opening statement by Mr. Roger Coe. In his opening statement Mr. Coe outlined the basic facts of the incident that gave rise to the grievance. Mr. Coe emphasized to the Arbitrator the gravity of the incident from the point of view of the Institution and stated that he believed that the facts of the case would uphold the Warden's decision to discipline Mr. Parizek.

The State called as its first witness Ms. Beverly Hayes Baker, Assistant School Administrator at the Lebanon Correctional Institution. Upon taking the witness stand Ms. Baker was sworn-in by the Arbitrator. Ms. Baker testified about the investigation she conducted involving the Parizek incident. Ms.

Baker testified that she and Mr. Arshad interviewed Mr. Parizek on October 21, 1991 regarding the matter of the .22 bullet. Ms. Baker testified that Mr. Parizek was apprised of his rights to union representation at the hearing and that he waived this right. Ms. Baker testified that Mr. Parizek said during the investigative interview that he searched his car the night before it was brought on to the Institution grounds for repair. Ms. Baker testified that Mr. Parizek said during the interview that he was on the Institution Pistol team and that he sometimes kept ammunition in his car. Ms. Baker testified that Mr. Parizek said during the investigative hearing that the bullet could have been his.

Mr. Coe asked Ms. Baker if she attended the pre-disciplinary hearing conducted in Ron Hart's office; Ms. Baker testified that she attended this hearing. Mr. Coe asked Ms. Baker to summarize Mr. Parizek's testimony at the pre-disciplinary hearing. Ms. Baker testified that at the pre-disciplinary hearing Mr. Parizek, denied that the .22 bullet belonged to him.

On cross examination, Mr. Stevens asked Ms. Baker if she knew about Mr. Parizek's active involvement in the union. Ms. Baker testified that she knew that Mr. Parizek had once been active in the union but that she did not know he was the SCOPE Site Representative at the time the incident occurred.

Mr. Stevens next asked Ms. Baker if she was present when the bullet was found; Ms. Baker testified that she was not in the auto shop when the bullet was found. Mr. Stevens asked Ms. Baker

if she had ever seen the bullet and Ms. Baker testified that she saw the bullet in the safe in Major Jones' office. Finally, Mr. Stevens asked Ms. Baker if she had conducted the investigative interview on October 21, 1991 with Mr. Parizek and she testified that she did conduct this interview.

The next witness called by the State was inmate Tommy Love (R 135-754). The union representative objected to the use of inmate testimony in a disciplinary matter relating to an employee of the Institution. The objection was noted in the record and then overruled by the Arbitrator. The Arbitrator administered the oath to Mr. Love.

Mr. Coe asked Mr. Love to briefly describe the events that transpired on the morning of October 17, 1991. Mr. Love testified that he opened the door to Mr. Parizek's car to take a mileage reading from the odometer. When Mr. Love opened the door he looked down at the floor and observed a .22 bullet lying between the door sill and the seat. Mr. Love then testified that he picked up the bullet and gave it to the Auto Shop Instructor Gregg Myers.

Mr. Coe asked Mr. Love if he knew Mr. Parizek and Mr. Love testified that he did not know Mr. Parizek. Mr. Coe asked the witness if he had even been supervised by Mr. Parizek and the witness answered "no". Finally, Mr. Coe asked Mr. Love if he placed the bullet in Parizek's car and the witness answered "no".

On cross examination Mr. Stevens asked Mr. Love if he had ever been disciplined while at the Lebanon Institution and Mr.

Love testified that he had been disciplined on three occasions. Mr. Stevens next asked Mr. Love how long he had worked for Mr. Myers and he answered "three years". On further questioning regarding this matter the witness testified that he had worked for Mr. Sturgil for three years in the auto shop not Mr. Myers. Mr. Stevens asked the witness to describe Mr. Parizek's car and the witness was not able to recall the color or the make or the year of the car. The witness testified that he knew the car belonged to Parizek because he saw him drive it into the auto shop on the morning of October 17, 1991.

Mr. Stevens next asked the witness to describe how he discovered the bullet in the car. Mr. Love testified that when he opened the door of the car to look at the odometer he saw the bullet lying between the front seat and the door sill in plain view. When asked to describe the bullet the witness testified that it was a small caliber bullet, something like a .22 or a .25 and added that the bullet appeared to have mildew on it.

Mr. Stevens next asked Mr. Love when he found the bullet. After some hesitation the witness testified that he found the bullet sometime around eight or nine o'clock in the morning. Mr. Stevens asked Mr. Love at what time he gave the bullet to Mr. Myers and the witness was unable to recall an exact time. After some repeat questioning by Mr. Stevens, Mr. Love answered that he gave the bullet to Mr. Myers as soon as he filled out the service ticket. The witness refused to speculate on an approximate time of when he gave the bullet to Mr. Myers.



On redirect examination, Mr. Coe asked Mr. Love why he gave the bullet to Mr. Myers. Mr. Love testified that he gave the bullet to Mr. Myers because Mr. Myers trusted him and because he wanted to make sure that no one else got the bullet. Finally, Mr. Coe asked Mr. Love to describe what would happen to him if he kept the bullet. Mr. Love responded that if he had kept the bullet he would be disciplined and sent to "the hole" (solitary confinement). At this point the witness was excused.

The next witness called by the State was Mr. Gregg Myers, Vocational Auto Mechanics Instructor at the Lebanon Institution. The witness was sworn in by the Arbitrator. On direct examination, Mr. Myers testified that he saw Mr. Parizek drive his car into the auto shop on the morning of October 17, 1991. Mr. Coe asked Mr. Myers to explain briefly to the Arbitrator how the employee automobile repair program worked at the Lebanon facility and he did so. Mr. Coe asked Mr. Myers if he knew Mr. Love and Mr. Myers testified that he did know Mr. Love and that he considered him a very straight and narrow type of person. Mr. Myers testified that Mr. Love had worked for some time for Mr. Sturgil who was Mr. Myer's colleague in the auto shop.

Next, Mr. Coe asked Mr. Myers to describe how he became involved in the bullet incident. Mr. Myers testified that some time after lunch Mr. Love came into the tool room and gave him the bullet. Mr. Myers asked Mr. Love to show him where he found the bullet and Mr. Love took Mr. Myers to Mr. Parizek's car. Mr. Love indicated to Mr. Myers that he found the bullet between the

drivers seat and the door sill.

Mr. Coe asked Mr. Myers to describe what he did with the bullet after Mr. Love gave it to him. Mr. Myers testified that he placed the bullet in a secure place and then at the end of the work day took the bullet to Mr. Newton, the T.I.E. Deputy. When asked by Mr. Coe why he waited until the end of the work day to turn the bullet over to Mr. Newton, Mr. Myers testified that his duties as an instructor in the auto shop necessitated that he stay there until the work day for the inmates was over.

On cross examination, Mr. Stevens first asked Mr. Myers how long he had been employed at the Lebanon Correctional Institution. Mr. Myers testified that he had been employed at Lebanon since June of 1991. Mr. Stevens next asked Mr. Myers how many teachers were in the auto shop and Mr. Myers testified that he and Mr. Sturgil were the teachers in the auto shop.

Mr. Stevens asked Mr. Myers if Mr. Parizek's car was searched at the sallyport by the corrections officers on duty there prior to being brought into the auto shop. Mr. Myers testified that he presumed the car had been searched at the sallyport but could not be certain that it had been searched. Mr. Stevens asked Mr. Myers if he saw the bullet in Mr. Parizek's car. Mr. Myers testified that he did not see the bullet in the car. Mr. Stevens asked Mr. Myers if he saw the bullet come out of Mr. Parizek's car. Mr. Myers testified that he did not see the bullet come out of Mr. Parizek's car. Mr. Stevens asked Mr. Myers if Mr. Sturgil saw the bullet and he testified that Mr.

Sturgil did see the bullet when Mr. Love brought it into the tool room. Finally, Mr. Stevens asked Mr. Myers if anyone from the Institution questioned him about the incident after it occurred. Mr. Myers testified that he was not interviewed about the incident but added that he submitted a written account of the matter to Warden Dallman on October 17, 1991. At this point the witness was excused.

The next witness called by the State was Mr. Jimmie R. Newton Sr., Deputy Warden of Training and Education. Mr. Newton was sworn in by the Arbitrator. Mr. Coe began his direct examination of Mr. Newton by asking him to describe the duties of his position as Deputy Warden. Next, Mr. Coe asked Mr. Newton to describe the events of October 17, 1991 which relate to the bullet incident. Mr. Newton testified that Mr. Myers brought a .22 bullet to him at approximately 4:00 P.M. and told him that the bullet had been found by an inmate in Mr. Parizek's car. Mr. Newton testified that as soon as he was given the bullet he asked Ms. Baker to conduct an investigation into the matter. Mr. Newton testified that after reading Ms. Baker's investigative report he determined that the bullet had in fact come from Mr. Parizek's car. Mr. Newton testified that he then initiated disciplinary action against Mr. Parizek.

On cross examination, Mr. Stevens asked Mr. Newton if he was concerned that Mr. Myers held the bullet in the auto shop for three hours before turning it over to him. Mr. Newton testified that the time delay did not concern him because he had been

assured by Mr. Myers that the bullet was in a secure place during this time. Mr. Stevens asked Mr. Newton if he saw the bullet come out of Parizek's car and Mr. Newton testified that he did not. Mr. Stevens then asked Mr. Newton if he had directed Ms. Baker to investigate this matter and he testified that he had asked Ms. Baker to conduct the investigation. After a brief series of questions on recross and redirect, Mr. Newton was excused.

The next witness called by the State was Major Richard Keith Jones, Chief of Security at the Lebanon Correctional Institution. The witness was sworn in by the Arbitrator. In his direct examination of this witness, Mr. Coe began by asking Mr. Jones to describe to the Arbitrator the general duties and responsibilities of his position. Next, Mr. Coe asked Mr. Jones to describe for the Arbitrator the function and operation of the sallyport. In describing the vehicle searches at the sallyport, Mr. Jones testified that the Corrections Officers on duty at the gate look under the vehicle with a mirror, look in the trunk, the glove box, under the hood and in the ashtray. Mr. Jones estimated that a typical sallyport search of a vehicle would take one and one-half to two minutes. Mr. Jones testified that employees entering through the sallyport would not typically be searched by the Corrections Officers. In his testimony, Mr. Jones emphasized strongly that it is the responsibility of the employee to insure that his or her vehicle contains no contraband material when it enters the Institution premises. As evidence of

this burden of responsibility, Mr. Coe introduced into evidence employer exhibit # 1 (repair request signed by Mr. Parizek) which contains a pledge that the employee will remove all contents from the vehicle prior to entering the sallyport.

Next, Mr. Coe directed Mr. Jones's attention to joint exhibit # 3 and asked him to read rule # 29 on page 5. After reading the rule into the record, Mr. Jones was asked to comment on the importance of this rule. Mr. Jones stated emphatically that it was critical that contraband material such as ammunition be kept out of the Institution. Mr. Jones cited examples of cases where hostages had been taken by inmates at Ohio Correctional Institutions using weapons and ammunition supplied to them by teachers and guards. Mr. Jones went on to point out that even one bullet could be used to power a "zip gun" which could be used to kill or injure an inmate or an employee of the Institution.

On cross examination, Mr. Stevens first asked Mr. Jones if he had been contacted by Mr. Newton regarding this matter. Mr. Jones testified that he had been contacted by Mr. Newton very early in his investigation of this matter.

Next, Mr. Stevens asked Mr. Jones if the sallyport officers had been trained in vehicle searches. Mr. Jones replied that the officers at the sallyport were trained extremely well in search procedures but that the sallyport search was not a "border search" in which the vehicle would be searched exhaustively. Mr. Stevens next asked Mr. Jones if he interviewed officers Hill or Nichols (the Corrections Officers who were on duty at the

sallyport on October 17, 1991) about this matter and he testified that he did not talk to these officers.

On redirect, Mr. Coe asked Mr. Jones who bore the burden of making sure vehicles were free of contraband before entering the Institution. Mr. Jones repeated his previous testimony that it is the employee's responsibility to make sure his or her vehicle is free of contraband before entering the Institution.

On recross, Mr. Stevens asked Mr. Jones if it were possible that someone else (other than Mr. Parizek) put the bullet in the car. Mr. Jones testified that, "anything is possible". At this point the witness was excused and the State rested its case.

The union began its presentation of the case with the introduction into the record of union exhibit # 1, the association pre-hearing brief. After a brief discussion of union exhibit # 1, Mr. Stevens called Mr. Parizek to the witness stand. The witness was sworn in by the Arbitrator.

In his direct examination of Mr. Parizek, Mr. Stevens began his questioning by asking a few general background questions. Next, Mr. Stevens asked Mr. Parizek about his leadership activities in the union at Lebanon and Mr. Parizek testified that he was the Site Representative for SCOPE when the bullet incident occurred and that now he serves on the SCOPE Executive Committee.

Mr. Stevens asked Mr. Parizek to discuss briefly his involvement with the Institution pistol team. Mr. Parizek testified that he is the Captain of the pistol team and that he had been for five years. Mr. Stevens asked Mr. Parizek what kind

of ammunition he used on the pistol team and Mr. Parizek testified that he only used .38 P+ caliber ammunition. Mr. Parizek testified that he never uses a .22 caliber firearm and that he owns no .22 caliber ammunition.

On cross examination, Mr. Coe asked Mr. Parizek if he searched his vehicle prior to bringing it into the Institution. Mr. Parizek testified that he searched his vehicle by flashlight the night before he brought it to the Institution. Mr. Coe asked Mr. Parizek if he knew inmate Love and Mr. Parizek said he did not. Mr. Coe asked Mr. Parizek if he could think of any reason why Mr. Love would want to put him at risk and Mr. Parizek testified that Mr. Love many have been trying to get back at him for disciplining a friend of his.

On redirect, Mr. Stevens asked Mr. Parizek to read into the record parts of joint exhibit # 3 found on page 1, page 9, page 10, page 14 page 15 and page 16. After a brief discussion with Mr. Parizek about the concepts of progressive discipline and commensurate discipline, Mr. Stevens dismissed the witness. At this point the union rested its case.

The representatives of the parties agreed to make closing statements in lieu of submitting briefs. In his closing statement, Mr. Stevens emphasized the fact that the evidence against Mr. Parizek was based largely on the testimony of Mr. Love, a convicted felon and former inmate of the Institution. Mr. Stevens brought out the point that no one other than Love actually saw the bullet in the car. Mr. Stevens questioned Mr.

Love's credibility and stated his opinion that Mr. Love seemed to him to be an unreliable witness.

Mr. Stevens then went through the seven tests of just cause and commented on whether or not these tests were met by the State in its presentation of the case. Mr. Stevens voiced the opinion that Mr. Parizek was not given adequate notice of the rules, that there was not a fair and complete investigation of the matter by the Institution, that there was no proof that Mr. Parizek actually brought the bullet on to the premises in his car. Finally, Mr. Stevens stated his view that the penalty was not commensurate with the rule infraction because there was no progressive discipline given.

In his closing statement, Mr. Coe disagreed with all of Mr. Stevens observations about whether or not the State met its obligations under the just cause standards. Mr. Coe stated his view that Mr. Parizek was well aware of the contraband rule, that a fair and complete investigation of the matter was conducted by Ms. Baker and Mr. Newton, that proof had been established linking Mr. Parizek to the bullet, and that the penalty was commensurate with the seriousness of the rule infraction. Mr. Coe asked that the Arbitrator consider the merits of the case and deny the grievance. At this point both sides rested their cases and the hearing was closed.



### III. DISCUSSION

The issue here involves a serious matter and one of grave concern to both the inmates and the employees of the Lebanon Correctional Institution. Contraband has no place inside the walls of a correctional facility, especially one with a population density and an offender profile like that of Lebanon. Recent past history of violence against inmates and employees at correctional facilities around the State of Ohio underscore and add gravity to this concern to keep the facilities free of contraband.

The case at hand involves a .22 bullet given to Mr. Myers by Mr. Love at 12:45 P.M. on October 17, 1991; a bullet allegedly found in Mr. Parizek's automobile by Mr. Love. To sustain the discipline given to Mr. Parizek, the state must prove that the bullet actually come from Mr. Parizek's car. I find that the State has failed to establish a clear and convincing link between Mr. Parizek and the .22 bullet turned in to Mr. Myers by Mr. Love on October 17, 1991.

The union in its presentation of this case cast considerable doubt on the presumption that the bullet was actually brought in to the Institution by Mr. Parizek. We have the testimony of Mr. Parizek that he searched his car the night before and that it was free of contraband when he brought it to the Institution on October 17. We have testimony that it is Institution's policy to search all vehicles at the sallyport by two Corrections Officers. Surely, if the bullet had been in plain sight, as Mr. Love

testified, one of the officers at the sallyport (or even Parizek himself) would have discovered it. It defies logic to believe that three men searching for contraband (Parizek, Nichols and Hall) in a car could overlook something so obvious that a fourth man (Love) who was merely checking the odometer would discover.

In support of its position, the State has the testimony of Mr. Love and the admission of Mr. Parizek to Ms. Baker (on October 22) that the bullet could have been his because he frequently has ammunition in his car due to his involvement with the pistol team. In considering the State's evidence I am not convinced, nor even persuaded, that the bullet belonged to Mr. Parizek. Mr. Love's testimony, while admissable and appropriate in a hearing such as this, was hardly convincing. The witness was evasive, vague on the facts of the matter and very defensive on cross examination. No other witness could corroborate Mr. Love's allegation that the bullet was in Mr. Parizek's car.

Mr. Parizek, contrastingly, was very convincing in pointing out that this particular type of ammunition (.22 caliber) was not the type of ammunition that he would ever use. In addition, Mr. Parizek pointed out that Mr. Love may have had a reason to implicate him in an act of wrongdoing even though Mr. Parizek and Mr. Love did not know each other. Such acts of retribution and "payback" are hardly unknown in the prison environment.

In short, I do not feel that the evidence presented at the hearing established a clear link between Mr. Parizek, and the bullet given to Mr. Myers by Mr. Love on October 17, 1991.


Because it was not proven that the bullet belonged to Mr. Parizek, or that the bullet was even found in his car, I feel the grievance should be sustained.

#### IV. AWARD

The discipline of a 5 day suspension for violation of rule # 29 by Mr. William Parizek given on November 12, 1991 shall be removed from his personnel record. Mr. Parizek shall be made whole for any loss he suffered from this discipline including back pay, seniority, and sick leave benefits.

#### V. CERTIFICATION

This decision and award was based on evidence and testimony presented before Arbitrator Marcus Hart Sandver at a hearing conducted at the Lebanon Correctional Institution in Lebanon, Ohio on September 4, 1992.

  
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Marcus Hart Sandver, Ph.D.  
Arbitrator  
Upper Arlington, Ohio 43221-3745

SS # 540-58-3553