

IN THE MATTER OF ARBITRATION

BETWEEN

OFFICE OF COLLECTIVE BARGAINING
DEPARTMENT OF LIQUOR CONTROL

AND

FRATERNAL ORDER OF POLICE
UNIT 2

ARBITRATION AWARD

CASE NUMBER: 21-06-920428-0156-05-02
ARBITRATOR: John E. Drotning

I. HEARING

The undersigned Arbitrator conducted a Hearing on October 13, 1992 at the Office of Collective Bargaining, 106 N. High St., Columbus, Ohio. Appearing for the Employer were: Ms. Sally P. Miller (Labor Relations Manager), Ms. Rachel Livengood, Ms. Jessie Baker, Mr. Charles Deskins, Mr. Bryant Fields, and Mr. Brent T. Devery. Appearing for the Union were: Paul Cox, Esq., Mr. Jack Holycross, Mr. David Simpson, Mr. Terry Wray Williams, and the grievant, Mr. Harold Torrens.

The parties were given full opportunity to examine and cross examine witnesses and to submit written documents and evidence supporting their respective positions. Post hearing briefs were filed on or about October 27, 1992 and the case was closed. The discussion and Award are based solely on the record described above.

II. ISSUE

The parties jointly asked:

Was the thirty day suspension of Mr. Harold Torrens for just cause?

III. STIPULATIONS

The parties jointly submitted the exhibits marked Joint Exhibit #1 (Collective Bargaining Agreement), Joint Exhibit #2 (Grievance Report Form), and Joint Exhibit #3 (Disciplinary Trail).

IV. TESTIMONY, EVIDENCE, AND ARGUMENT

A. EMPLOYER

1. TESTIMONY AND EVIDENCE

Jessie T. Baker, Chief of Enforcement for the Ohio Department of Liquor Control, testified she oversees the Enforcement Division, implements policies and procedures, reviews investigations, and cooperates with other law enforcement agencies.

Baker testified that she had been a special agent with the Federal Bureau of Investigation for four years and had been a police officer in Lawrence, Kansas for twelve years.

Baker said her law enforcement officers carry weapons and they focus on premises involving illegal sales of alcohol.

Baker testified that she approved a 61-B investigation involving Harold Torrens, but the investigation was scrapped because of procedural flaws. The West Carrollton Police Department also pulled out of that problem, said Baker.

Baker testified that she had ordered a drug test for Harold Torrens and the results were negative. She disciplined Torrens and argued for a thirty day suspension and her decision was based on the seriousness of the charges.

Torrens, indicated Baker, had a bachelors and a masters degree.

Baker cited Management guidelines for employee behavior and she noted that Articles 13, 15, 23, and 24 were aspects of Torrens's problem (see Management Exhibit #1). Baker went on to

say that Management Exhibit #2 talks about insubordination and she cited the interoffice communication.

Baker testified that Torrens' "work" as a doorman at Teezers Lounge was appropriate but allowing minors in could cause a problem. Moreover, she pointed out that investigators cannot take a secondary job in a bar.

Baker noted that the Department of Liquor Control depended on the West Carrollton Police Department for money and help and a West Carrollton Police officer had to pull Torrens out of Teezers and that is a serious violation. She went on to say that departmental personnel must leave at a certain point and Torrens should have left because the situation was dangerous and "druggies" can be armed.

Baker cited Joint Exhibit #3, the letter to Harold Torrens from Director John R. Hall. Baker testified that item 3 of Hall's letter indicated that Torrens had "taste-tested" cocaine and that violated Article 15 and she went on to say that if Torrens lied about taste-testing, his problem is even more serious.

Baker claimed that Torrens said he sniffed cocaine and he also threatened Brent Devery and Baker cited article 13 of the Management guidelines (See Management Exhibit #1).

Baker said that Torrens said that he was going to "fuck him" (that is Devery) and that is a serious charge. She went on to say that it made no sense for Torrens to threaten another investigator.

She said that a majority of 61-B cases are usually carried out in conjunction with the local police department and in this case, to have the West Carrollton Police Department pull out of the local investigation created a serious problem.

Baker said that she was aware of Grievant Torrens's background. She testified about the various courses that Torrens took as noted on Management Exhibit #4. Baker went on to testify about the chain of command and she noted that Deputy Chief Collier was in charge of the southern zone which includes Columbus and Cincinnati.

Management called Charles Deskins, the Agent in charge of a fourteen county area who lived in Cincinnati and has been a supervisor since 1977. Deskins testified that he enforces liquor laws in the fourteen counties and focuses on illegal liquor activity. He testified that he recommends discipline but does not make the final decision.

Deskins went on to say that he received an interoffice communication from Mr. Gary Sullivan about infractions by Torrens.

Deskins testified that Torrens along with others were concerned about drug problems and they had targeted Teezers Lounge in West Carrollton and he noted that Torrens was a primary player and was assigned by Deskins to the Teezers Lounge case.

Deskins said that he knew that Torrens was aware of a illegal person involved in Teezers Lounge.

Deskins went on to say that a Herbert Pugh of the Liquor Control office was an excellent employee and he ran the investigation and all problems were submitted to Mr. Pugh.

Deskins testified that he borrowed Lori Newman from Columbus and she was a first-class officer. Deskins said he was constantly involved with Mr. Pugh and he was in contact with Torrens on a daily basis.

Deskins said that Torrens was a well built individual and he felt that Torrens could be a good bouncer and although he did not like that idea, Torrens wanted to do that work but it made no sense for Torrens to pretend to be an employee of Teezers Lounge. Deskins said he cannot allow an employee to act as a bouncer and he reiterated that point to Torrens and went on to say that if Torrens checked someone's ID at the door, that would make no sense. In any event, Torrens did act as a bouncer and that was the reason for his discipline, said Deskins.

Deskins said that he was told by Mr. Sullivan that Torrens violated several rules on February 7th and he investigated the question and received arguments from Torrens.

Deskins said that prior to February 7th, he investigated another allegation involving Torrens which occurred somewhere around February 4th or 5th and he said that Torrens was given some cocaine and when Torrens was questioned by an officer, he took his finger and touched the palm of his hand and then put his finger in his mouth. Deskins also said that Lori Newman asserted that Torrens put cocaine in his mouth. Deskins said he met with

two assistants as well as with Torrens and the latter denied using cocaine.

Deskins indicated that he held another investigation that same afternoon and Lori Newman said that Torrens said he was only kidding and he thought Torrens was telling the truth and he figured Torrens was okay. At that time both Pugh and Devery were present and he changed his view and he wrote up the four charges with the recommendation; namely that he would issue a written reprimand to Harold Torrens.

Deskins went on to say that he received a call from Brent Devery who said that there was a problem with Torrens and Devery said he was scared about Torrens' situation and he observed Torrens in a car with a druggie and Deskins said that Torrens may have tasted cocaine. Deskins went on to say that Torrens told Devery, "Don't rap me out". Deskins said there was a waxy paper in the vehicle.

Mr. Bryant Fields testified that he is a Detective with the West Carrollton Police Department and has been in that capacity since 1969 and has been a detective since 1981. He said he worked with the Liquor Department and coordinated the investigation at Teezers Bar with the Department of Liquor Control. Fields went on to say that he supplied money, electronic equipment, and some personnel and they paid about \$100 a month which is about one-fourth of the \$400 a month for a safe house.

Fields said he was an undercover officer. He testified he was told never to simulate the use of cocaine except in a remote situation.

Fields said that he worked with Harold Torrens and Brent Devery and presumably Torrens was to make contact with bar employees and purchase narcotics.

On February 7, 1992, Fields said he told Torrens that the latter had a body electronic unit and he was with a supplier by the name of Guy Coburn. He said that if nothing happened, they would leave. He went on to say that Lori Newman was introduced by Torrens as his sister.

Fields said he wanted them to leave the bar at around 11:00 because they were concerned about the safety of officers. He said he talked to Devery on a pager and they granted time to 11:30 and Lori Newman came out of the bar and talked to him and then she went back into the bar and she said Torrens was checking an ID and he was not supposed to do that.

Fields said that he wanted the personnel out of the bar and he told a West Carrollton patrol officer to get the people out and then he said he heard a fight and the officer went back in and apparently Torrens told whoever was involved in the fight at the bar to break it up and that was enough.

Fields went on to say that following that situation, Torrens got into the cruiser with the West Carrollton patrol officer at the request of the officer at about 11:30 p.m..

Between about 11:15 and 11:30 p.m., he was monitoring the situation and a lot of things were going on.

Fields said that Torrens went back into the bar at about 11:45 p.m. and he told a West Carrollton patrol officer to tell Torrens to get out of the bar, but Torrens did not respond but re-entered the bar after getting out of his car. Eventually Torrens did leave the bar, said Fields.

Fields said that he wanted to pull out of the problem at Teezers Lounge and Fields cited Management Exhibit #8 in which he noted there were ten items which claimed involvement by Torrens.

Fields said that the West Carrollton Police Department lost a good deal of time from the investigation and, in fact, lost about \$8000. He went on to say that he began the investigation of Teezers Lounge in February and continued on through June.

On redirect, Fields said he did not hear anything in the bar which led him to believe Torrens's situation could be in jeopardy and that is why he stayed in the bar.

Mr. Brent T. Devery who worked in the Department of Liquor Control in Cincinnati testified he knew Harold Torrens and was his co-worker for at least a year and one-half and they became partners.

Devery said he reported to Mr. Herbert Pugh and to Mr. Gary Sullivan and to Chief Deskins and he took directions from Pugh who was his boss.

Devery said that Torrens threatened him either on 2/6 or 2/7. He and Torrens were in separate cars on February 7th and they were side by side, window to window and he said that Torrens was very upset over Lori Newman's statement and Torrens said he had tasted cocaine and Devery said he was told not to mention that to Mr. Pugh.

Devery went on to say that Torrens said he could not trust anyone and he said he thought the matter was closed and he reiterated that Torrens got agitated and felt he could not trust anyone and Devery said that Torrens said to him, "If you hang me out, I'll fuck you. I'll fuck you."

Devery said that he did not think that Torrens was joking with him and they departed.

On February 14, 1992, Devery brought that situation to Deskins' attention.

On January 22, 1992, Devery said he was present when Torrens told Investigator Lori Newman that he had "taste tested cocaine on January 17, 1992" and he stated what he did by sort of putting his fingers to his mouth. Devery reiterated that Torrens said "Don't rap me out. Don't rap me out."

Management cross examined Union witnesses. Mr. Terry Williams testified he was initially supervised by Robert Collier. He was asked whether he was a supervisor in a 61-B case and he said not really but obviously he had to get out of a problem area sooner rather than later.

Mr. Harold R. Torrens on cross examination testified that he wrote up Management Exhibit #6 on 2/8/92. He said he went to the bar at about 10:00 p.m. on 2/7/92 and he thought he asked the people at the bar, presumably if he could stay past 11:00 and he said that he thought that Devery knew that certain events were going on.

Torrens said he went to the restroom with an employee named R.B. and they talked to each other and R.B. was talking about a drug which was apparently cocaine.

Torrens said that he worked the door at the bar for about ten minutes and that might have been at about 11:50 p.m.. He said that he and a police officer did go to the the cruiser and the police officer told him to make a statement and he returned to the bar and got his partner.

Torrens said he did not pursue a weapons buy.

Torrens said that he probably could have asked his pretended sister to leave but too many things were going on at the time. He said his false sister, Lori Newman, came to the door and asked him to leave but he refused because he thought that things were still going on and he might learn something.

Torrens was asked why he did not ask for another extension at about 11:30 p.m. and he didn't respond. He also testified that he did not think Newman was doing a very good job.

Torrens testified that he probably acted in an unprofessional manner.

On January 17, 1992, Guy Coburn put cocaine in his hand and he did run into Brent Devery in the restroom and he did make a sniffing sound.

Torrens said he did not recall saying to Devery "Don't rat on me."

Torrens wrote a report about simulating cocaine.

2. ARGUMENT

Management argues that Grievant Torrens knew all of the Management guidelines and that in fact he was insubordinate because he refused a direct order from Mr. Deskins. In addition, Management argues that Torrens, by checking out an individual's ID put the Department in a very tenuous situation.

Moreover, Management said that Torrens said that he "taste-tested cocaine" and both Newman and Deskins did not think Torrens was joking about that issue. Management goes on to say that Torrens, in fact, did taste-test cocaine and then, as a result, Torrens told Devery that "If you hang me out, I'll fuck you. I'll fuck you." Management goes on to say that the final charge involves the claim that Torrens's actions were the cause of the West Carrollton Police Department's withdrawal from the joint investigation and it testified about Officer Fields.

Management asserts that while Mr. Cox alleged that all five charges lacked evidence and that there were only feelings and assumptions to back up the charges, the State offered undisputed

testimony on all five charges. Moreover, Management goes on to say that rules must be followed for the safety of employees. In this case, Management argues that Torrens clearly had other options and there were numerous opportunities to leave the premises and when he worked the door, it was only as a favor but that's the reason for the thirty day suspension.

Management goes on to testify about what Mr. Cox said and what Mr. Fields said and Management asserts that testimony of Mr. Terry Williams was totally non-essential.

Management goes on to argue that the testimony and evidence presented by Management supports the claim that errors involving Torrens actually occurred and therefore, the Arbitrator should not substitute his judgement for that of the Department of Liquor Control.

Chief Baker testified that she was involved in the discipline and she originally recommended removal but on the basis of the fact that Torrens's educational background and training were fairly extensive, she acknowledged that a thirty day suspension would be a compromise in order to salvage his career. Management argues that Torrens's actions were unprofessional and that they threatened the safety of the Department.

Moreover, Management goes on to say that two fellow investigators questioned the credibility and effectiveness of Torrens's actions in this case. There is also a question as to whether Torrens may have used or "tasted" cocaine and, therefore,

he plants the seed in their mind. Moreover, Torrens's statements and his threats to Devery were the "highest form of impropriety resulting in an erosing of trust" between partners. Moreover, Management argues that Torrens's threat to his partner, Brent Devery is totally inappropriate and Management argues that one does not threaten another without real provocation let alone a fellow investigator. Even Mr. Cox agreed with that claim.

The State argues that it must make a strong statement to Investigator Torrens and that such drug investigations are serious and dangerous and all orders must be followed. For all these reasons, Management argues that the thirty day suspension be upheld.

B. UNION

1. TESTIMONY AND EVIDENCE

Mr. Terry Wray Williams testified that he is an elected officer of the Union and Chief Labor Steward. He said his supervisor is Bernard Kuhn.

Williams indicated that he it is not unusual for him or for others to use four letter words such as "fuck" and such language is often included in almost every sentence.

Williams said he has been involved in several 61-B investigations.

Mr. Harold R. Torrens on direct testified that he had been with the Cincinnati Enforcement Division for about two years and attended several Ohio Peace Officer Training School classes.

Torrens said that at Teezers Lounge, he took no money and did not work as an employee of the Lounge. He went on to say that he and Lori Newman, his pretended sister, went in together. He said he knew the bouncer, R.B., at Teezers Lounge and as a result of knowing the bouncer, he was more comfortable with him. Torrens told the bouncer that he was a construction worker and the bouncer told Torrens he could work weekends as the bouncer.

Torrens said there was an altercation in the bar and he was asked to watch the door and he was told that there was an underage girl who apparently drank too much and there was a lot of talk going back and forth and he was at the door for about ten minutes.

Torrens was asked whether he violated Deskins's orders and he simply responded by saying that he just acted.

Torrens said that Teezers Lounge offered him work on weekends but he rejected that opportunity.

On February 7, 1992, he said he left the safe house at about 9:00 p.m. and he wanted to make a "buy" from Guy Coburn who was the bartender. He said he was to take Lori Newman in as his sister and Brent Devery was also at the bar. Torrens said that Lori Newman did go back out of the bar to her car to get her ID and then she came back in and sat with him at the bar and he introduced Lori Newman to Angie, a barmaid, who was a drug dealer. He went on to say that around 10:00 or 11:00, a person

named Bruce thought that Lori Newman was very attractive. He said that while he was at the door of Teezers Lounge, he did not know that Lori was trying to press charges against Bruce.

Torrens testified that he left the bathroom and was at the door somewhere between 11:40 p.m. for about ten minutes. Torrens said a police officer from the West Carrollton Department called him into his car to sort of fake the incident and then he went back in to get his "sister", Lori Newman.

Torrens testified that "Bruce" showed him a 9 mm automatic pistol which was about a foot and one-half long and Bruce wanted him to buy the weapon and he had a wire on and he figured he might learn something about the weapon from Bruce. He said he also got information from Judy, the owner of Teezers Lounge, about drugs. Torrens said he exited the premises of Teezers Lounge at about 12:10 a.m. with Lori Newman.

Torrens testified about item 3 which is the letter to Torrens from Director Hall. He said that on January 17th, he had gotten some cocaine and on January 22nd, he went through a procedure in which he touched his hand and put his finger to his mouth and he testified that he probably should not have made that gesture on January 22nd, but it is also clear there was no cocaine in his hand at the time.

Torrens said he made no false or untrue statements.

Torrens then read item 4 of Joint Exhibit #3, the document from John Hall, and reiterated that he had been getting acquainted with a Guy Coburn and talked about partying and Coburn

said he had some cocaine and at the time, Brent Devery was still outside. He said he and Coburn went outside and the latter put an ampule upon his thumb and he faked snorting cocaine. Torrens testified that he did not ingest cocaine. He also testified that he did not know of any policy for simulating cocaine use.

Torrens said he really did not know how to deal with Coburn and he could have done a better job, but it was his first time out and perhaps he made a mistake. He also said that Guy Coburn had slipped him about a quarter grain of cocaine.

Torrens testified that he talked to Brent Devery in the bathroom but he had no recollection of saying to Brent, "Don't rat me out."

Torrens testified that he was present at a meeting with Charles Deskins and Lori Newman which included Pugh, Sullivan, Devery, and himself and that occurred on about February 6th. Torrens went on to say that the major concern was that he ingested cocaine with Coburn and that was false and he explained himself and he said that Deskins thought the matter was clear and he had explained what he had done.

Torrens said he was following that interaction with Deskins, etc. and he talked with Devery. Torrens said he was pretty upset over the allegations as well as the fact that he made a taste test gesture and he was very concerned that the Department thought he had used cocaine. He said if he had used cocaine, he would be terminated.

Torrens reiterated that he and Devery talked and he was upset and he did say to Devery, "I'll fuck you. I'll fuck you."

The Union cross examined Management witnesses. Chief Jessie T. Baker, on cross, testified that an agent probably should blow cover before a timeline, but not at all costs. She testified that it was the judgement of the Service investigators that Torrens should have left when asked.

On 2/7/92, Baker testified that neither Deskins, Sullivan, nor Norman Bellemy were present.

Baker testified she was not present at the bar although she received reports and made recommendations.

On recross, Ms. Baker testified that Ms. Lori Newman was not disciplined for any of the instances involved.

Mr. Charles Deskins on cross testified that Torrens knew the drug dealer at Teezers Lounge although he testified he was not present on January 17th or February 7th. He said he told Torrens not to work at Teezers and gave him reasons. He said he wrote out a written reprimand on February 10, 1992 for Torrens.

Following that, he said Brent Devery then contacted him about Torrens ingesting cocaine and that Torrens threatened Devery. As a consequence, Deskins said he changed his position and made a verbal communication to Chief Baker and/or Robert Collier.

Deskins testified that Torrens' drug test was negative and that occurred on maybe February 19, 1992.

Detective Bryant Fields on cross testified he has been involved in perhaps 200 drug investigations and has had a lot of training and he always works narcotics. He said that he does not

use drugs. He said that if it were a situation in which his wife was going to be shot if he didn't use drugs, he probably would have used drugs.

Fields testified on cross that he investigated Teezers Lounge in October and November of 1991 and that Agent Torrens was involved in the problem because he apparently knew the informant.

Fields talked about convictions that were involved and he reiterated that on 2/7/92, Torrens, Brent Devery, and Lori Newman were involved in the Teezers Lounge incident and that Torrens was the only one that was wired.

Fields said they tried to limit the overtime work but he did not say that at 11:00 p.m. they all had to leave. He said he had some contact with Devery and Newman.

Fields testified that when Torrens was in the West Carrollton police officer's car, the other two individuals were in the bar without wires.

Fields said he did not hear Torrens and Newman ever discuss a weapons purchase.

Mr. Brent Devery on cross testified that Torrens simulated the use of cocaine and said to him, "Don't rat on me". He went on to say that on January 22nd, Torrens motioned with his finger that he had tasted cocaine.

Devery went on to say that on February 5th, he told Investigator Sullivan about the incident because Sullivan had called him about drug use by Harold Torrens. Devery said that Sullivan asked him about drug use by Torrens and he said he

related an incident of January 22nd which somehow referred to January 17th. He said he could not recall talking to Sullivan about the transaction on the 17th.

Devery said he and Torrens met on February 7th, 1992 and Torrens said to him, "If you hang me out, I'll fuck you." and he gave that statement to Deskins.

Devery said he was in Teezers Lounge on February 7, 1992 and he arrived there at about 10:05 p.m. and Torrens was present and they were not supposed to know one another. He said he was to observe and backup and he unsuccessfully tried to make a drug buy.

He said he did communicate with Torrens about Lori's comment about some kind of cocaine paper in the car.

Devery testified that he was not reprimanded for any reports he made about Torrens on January 17th and 22nd, although he did receive a verbal reprimand.

Devery said he told Torrens to write up an interoffice communication memo.

2. ARGUMENT

Management, notes the Union, failed to prove that Harold Torrens disobeyed rules and/or used cocaine. Torrens, while at Teezers Lounge, knew the bouncer and he helped check ID's at the door while the bouncer restored order to a fight which was going on. Torrens, notes the Union, was not paid for his work.

The Union goes on to say that the fact that Torrens did not leave Teezers Lounge exactly at 11:30 is not reason to support a thirty day suspension. In addition, that Torrens's involvement with a weapons dealer at Teezers Lounge is again not the basis to sustain a thirty day suspension. Torrens did not violate Article 15 and his rude comments, if you will, towards his co-worker Devery were totally inappropriate but the fact that he was rude is not the basis to issue him a thirty day suspension.

The Union argues that a thirty day suspension is for serious misconduct and Torrens's superior at one point only suggested a written reprimand. Torrens, notes the Union, is a relatively new employee and he may have used "poor judgement" at times but that does not warrant a thirty day suspension.

For all these reasons, the Union asked that he not be suspended and that he be made whole for any losses.

V. DISCUSSION AND AWARD

The parties agreed that the question is whether the thirty day suspension of Mr. Harold Torrens was for just cause?

The Department of Liquor Control issued Investigator Torrens a thirty day suspension on April 27th (see Joint Exhibit #3) following a pre-disciplinary hearing on March 10th. Eight charges were considered during that investigative hearing, five of which were found by the Hearing Officer to have merit. Briefly, the charges are: 1) Acted as doorman at Teezers on 2/7/92; 2) Did not leave Teezers Lounge at scheduled time; 3) Claimed to others that he taste-tested cocaine purchased 1/17 and then denied taste-testing; 4) Made inappropriate, rude threats to Devery on 2/7; and 5) Was the direct cause of West Carrollton Police Department's withdrawal from 61-B-01-92.

Do these five charges justify a thirty day suspension? Management claims that these charges are supported by the testimony and evidence and are serious, meriting a thirty day suspension. The Union claims that these charges involve explainable situations and are not sufficiently proven by the testimony or evidence nor of such a serious nature as to support a thirty day suspension.

The first two charges deal with Torrens' actions on the evening of 2/7/92 while part of an investigative team at Teezers Lounge. Torrens' activity as a doorman at Teezers Lounge was "not bad" as Ms. Baker pointed out in her testimony. If Torrens acted wrongly, it was that he checked the ID of a person entering the lounge. Whether he actually checked ID's is not clear, but

even if he had, that could not be the reason to issue a thirty day suspension.

The second allegation is that Torrens did not leave the Lounge at the time specified by Management which was disobeying a superior's directive and amounted to insubordination. But how could Torrens, acting as an Teezers employee, simply decide to walk out at the request of Management? The team had been given an extension of time from 11:00 p.m. to 11:30 p.m. and Torrens testified that he thought there was going to be some "action" and apparently remained at the scene too long. Thus, while Torrens should have followed orders from others when he was asked to leave, he overstayed the designated times. However, this was Torren's first case and he acknowledged that he may have acted in an unprofessional manner. But, there is no basis to think that Torrens was defying an order but rather there are reasons to believe that Torrens was, in his view at least, acting as a team member.

These two charges are related to the fifth charge that Torrens' involvement in 61-B-01-92 was the direct cause of the West Carrollton Police Department's withdrawal from the investigation. However, it is not possible to find that Torrens was the main cause of the West Carrollton Police Department's withdrawal from the Teezers Lounge investigation. There is no question but that the West Carrollton Police Department's withdrawal from the case was a serious matter, but it does not

make sense that one inexperienced investigator be the sole cause of the dissatisfaction of the West Carrollton Police Department.

Torrens was the least experienced person involved in the Department's team and he may have failed to perform professionally during the operations on the evening of February 7th by not following directives to leave, improperly acting as doorman, and not having continuous wire contact etc.. Although Torrens is guilty of certain misjudgments on 2/7/92 which contributed to the dissatisfaction, it cannot be concluded that Torrens's misjudgments were the primary and sole reason for the West Carrollton Police Department to discontinue its participation in the investigation.

This 61-B investigation involved joint efforts over a period of time. The Department's chain of command presumably made decisions and collaborated with the West Carrollton Police Department over the months of the investigation, reviewed any reports and record keeping for which Torrens may have been responsible, and had the primary responsibility to plan, assign, and review operations. There could have been a host of reasons why the West Carrollton Police Department was dissatisfied with the procedures and progress of the investigation besides Torrens' involvement.

The third charge deals with Torrens' alleged test-tasting of cocaine on 1/17/92 and the fourth charge relates to threats and remarks made to Devery because of Torrens' reaction to being questioned on this cocaine question. Deskins issued Torrens a

written reprimand because of his meeting with Guy Coburn, but there is no solid evidence to find that Torrens was tasting cocaine.

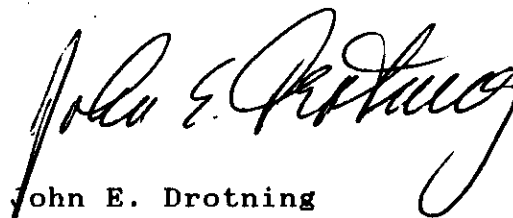
Torrens would obviously not tell others that he "liked to taste test cocaine". He might have made such a statement and it may have been somewhat stupid on Torrens part to pretend to use cocaine but there is no persuasive testimony to find that Torrens actually ingested cocaine.

But even if Torrens pretended to use cocaine, there is no evidence to actually find that Torrens, a man with a BA degree and a MA degree will use such a drug. The drug test he took in February showed no evidence of drug use.

It is true that Torrens threatened Devery, his co-worker, on the grounds that Devery observed Torrens pretending to use cocaine. It is not clear how threatened Devery was by Torrens' "I'll fuck you" comments or whether the situation primarily made him uneasy, but the Union agrees that the comments to Devery were inappropriate, rude, and unprofessional.

In summary, Torrens used poor judgment on 2/7, for example, in not following orders to leave Teezers Lounge at the appropriate time. Furthermore, he was unprofessional in how he handled allegations that he had improperly taste tested cocaine. In addition, Torrens was rude and potentially threatening toward co-worker Devery.

Torrens's actions justify discipline, but a thirty (30) day suspension is excessive and is akin to discharge. The best testimony is that the Torrens's charges are not as serious as Management purported. Moreover, that Torrens was totally responsible for the West Carrollton Police Department withdrawal is not persuasive. Therefore, what makes sense is to issue Mr. Torrens a one week suspension to insure that he understands how to act in a professional capacity from this day forward.

A handwritten signature in black ink, appearing to read "John E. Drotning". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

John E. Drotning
Arbitrator

November 30, 1992