

#1627

In the Matter of Arbitration

Between

FOP-OLC

and

The State of Ohio, Department of
Mental Health

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* Case Number:

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*23-17-20020624-0014-05-10

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* Before: Harry Graham

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APPEARANCES: For FOP-OLC:

Paul Cox
FOP-OLC
222 East Town St.
Columbus, OH. 43215

For Department of Mental Health:

Pat Mogen
Department of Mental Health
30 East Broad St., 11th Floor
Columbus, OH. 43215

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in Columbus, OH. before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this matter was closed at the conclusion of oral argument on November 27, 2002.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant discharged for just cause? If not, what shall the remedy be?

BACKGROUND: There is substantial agreement over the event that prompted the State of discharge the Grievant. The Grievant, Nicholas Booker, was employed as a Police Officer 2 at the Toledo Campus of the Northcoast Behavioral Hospital. (NBH) At the date of his discharge he had about two (2) years of service with the State. He had a live five day fine on his record when he was discharged.

On April 9, 2002 the Grievant and another Police Officer 2, Tim Jones, engaged in a heated conversation. The subject of that conversation was Jones' involvement in a self-initiated investigation into pornographic material he had found on a computer terminal at the Toledo NBH police station. They also discussed the fact that Officer Jones had questioned the manner in which the seniority roster was being kept at NBH. Jones felt his seniority was greater than Booker's. In fact, it was which enabled Jones to get an assignment to the first shift. Booker's shift assignment had changed to the second shift. The conversation became heated. Ultimately, Booker took off his badge and invited Jones outside to settle their disputes. They were calmed down by Lieutenant Debbie Tammarine. She reported the incident to her Chief who directed her to investigate it. She did so. In due course a pre-disciplinary hearing was held. Mr. Booker was discharged effective June 24, 2002. A grievance protesting

that discharge was filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE EMPLOYER: The State initially points to Mr. Booker's five day fine. It was for conduct unbecoming a police officer. As background to this dispute it shows the Grievant is unsuited for police work according to the State. Further, his discharge represents progressive discipline.

There is no dispute that the Grievant and his colleague, Officer Jones, had a dispute on April 9, 2002. The Grievant became angry and invited Jones outside to settle their dispute. This is not the sort of activity that an Employer can tolerate from a Police Officer. The subject of the conversation is really irrelevant to this matter. What is relevant is that the Grievant lost his temper and invited a fellow officer outside to settle their differences.

The State has a zero tolerance policy with respect to workplace violence. In this situation the Grievant initiated the confrontation with Officer Jones. He lost control of himself and escalated their dispute to a potential physical confrontation. That is not the sort of person who should be in State service the Employer contends.

Subsequent to being discharged the Grievant called a co-

worker, Daniel Parker. Mr. Parker is also a Police Officer at the Toledo facility. Mr. Booker was seeking a statement from Mr. Parker that Jones had thrown a chair. In fact, Parker declined to give such a statement. That the Grievant initiated post-discharge conduct with a witness should be held against him according to the State. It serves to support its contention that the grievance should be denied in its entirety according to the Employer. Based upon these arguments the State contends the grievance should be denied.

POSITION OF THE UNION: In the Union's opinion this matter has been blown out of all proportion. There is no dispute over the facts. Officers Booker and Jones had an argument at the worksite. That happens from time-to-time. In fact, the State did not regard this incident as significant until well after it occurred. On the scene as these events unfolded was Lieutenant Debbi Tammerine. She intervened and deescalated the event. After doing so, she contacted the Chief who happens to work in the Cleveland metropolitan area. (This is due to the decentralized operation of the Employer's facilities in the northern part of the State). Lieutenant Tammerine informed the Chief there had been a "verbal interaction." She was directed to investigate it. Only afterwards did the event assume the importance it did in the mind of the Employer. That the State did not take this event

seriously is shown by the fact that Lieutenant Tammerine was assigned to conduct the investigation. She was on the scene when the event occurred. To assign a participant in the event to investigate it is poor police procedure according to the Union. It shows the State did not take the matter seriously.

The Grievant had a live five day fine on his record when he was discharged. The Agreement at Article 19 calls for progressive discipline. To move to discharge from a five day fine for an event such as this scarcely meets the standard of progressive discipline according to the Union. It urges the grievance be sustained in full and Mr. Booker awarded a make-whole remedy.

DISCUSSION: Initially attention is given to the manner in which the State investigated the April 9, 2002 incident. Lieutenant Tammerine was assigned to conduct the investigation. She had participated in the incident. She had witnessed the confrontation between Officers Booker and Jones and overheard their conversation. She can scarcely be expected to be the detached investigator that should be utilized in situations of this nature. It is not doubted by this Arbitrator that Lieutenant Tammerine investigated to the best of her ability. The problem is that by assigning her to conduct an investigation of an event she was involved in her objectivity was compromised. In essence, there was a conflict

of interest, no matter how slight. Such a conflict must not arise when the continued employment of an employee is at stake.

Booker and Jones had an argument. If all employees who argue with co-workers were discharged the workforce would be much reduced. The record does not show violence was associated with the argument. No punches were thrown. No shoving occurred. Of concern is the fact that the Grievant thoroughly lost his temper. He invited Officer Jones outside to settle their dispute. The Grievant as a Police Officer was trained in deescalation techniques. When he invited Officer Jones outside he acted inappropriately. His action does not constitute sufficient just cause to justify discharge. It does provide cause for discipline short of discharge.

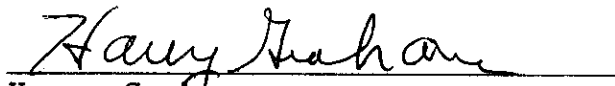
At the time of this incident Officer Booker had a live five day fine on his record. That cannot be ignored in determining what penalty, if any, is to be levied for this event. It weighs against the Grievant.

AWARD: The grievance is sustained in part and denied in part. The Grievant is to be restored to employment. He is to be paid all straight time wages he would have received but for this incident. The Grievant is to provide the Employer a record of all monies received from Unemployment Compensation and interim earnings, if any. The Employer may offset its

obligation to the Grievant by such amounts.

The discharge at issue in this proceeding is to be reduced to a five day suspension. Appropriate change is to be made in the personnel file of the Grievant. All seniority credit is to be restored to the Grievant. His pension account is to be adjusted. All health related expenditures made by the Grievant that would not otherwise have been made are to be reimbursed to him.

Signed and dated this 19th day of December, 2002 at Solon, OH.



Harry Graham
Arbitrator