

# OPINION AND AWARD

In the Matter of Arbitration

Between

Fraternal Order of Police, Ohio Labor Council, Inc.

And

The Ohio Department of Natural Resources  
& The Office of Collective Bargaining

Regarding

Grievance Number 25-12 (12-21-05) 21-05-02  
(Dan Shroyer)

Date of Hearing: September 18, 2006

Date of Award: September 25, 2006

## APPEARANCES:

### FOR THE STATE:

Brad Nielsen, Labor Relations Officer  
Buffy Andrews, Labor Relations Spec.  
Patricia A. Mayes, H.R. Administrator  
Steve Swayne, Witness & Staff Officer

### FOR THE FOP/OLC:

Paul Cox, Chief Counsel  
Dan Shroyer, Grievant  
Joel Barden, Staff Representative  
Renee Engelbach, Paralegal

An arbitration hearing was conducted on September 18, 2006, at the offices of the Fraternal Order of Police, Columbus, Ohio.

The parties stipulated the issue in this case to be: ***“Is the Grievant, Wildlife Officer Dan Shroyer, disciplined for just cause? If not, what shall the remedy be?”***

#### **BACKGROUND:**

The material facts in this matter are not in dispute. On Friday, September 16 and Saturday, September 17, 2005, Wildlife Officer Dan Shroyer conducted basic firearms training for the National Wild Turkey Federation Program titled, *“Women in the Outdoors.”*

This program took place at Camp Muskingum in Carroll County, Ohio. As a part of this training, Wildlife Officer Shroyer signed out eleven (11) 22 caliber handguns to use as training tools.

At the end of the training on Saturday, Officer Shroyer, with the assistance of Officer Mark Battles, placed the training firearms in Mr. Shroyer's state vehicle. Officer Shroyer drove his state vehicle to the cafeteria and shared dinner with the participants. He locked his vehicle during this time.

Once Officer Shroyer arrived home he secured the training firearms.<sup>1</sup> On Sunday, Officer Shroyer returned the training firearms to his state vehicle and discovered that he only had ten (10) weapons instead of the eleven (11) he had originally signed out.

---

<sup>1</sup> Officer Shroyer testified that he secured the firearms in his home. The investigative report prepared by Jeff Herrick, Dist. 3 manager, indicated they were secured in Officer Shroyer's private vehicle.

He reported the missing firearm to his supervisor and commenced a search. After the weapon could not be found at the camp site, or in Officer Battles's vehicle, the District Manager advised Officer Shroyer to file a missing gun report with the Carroll County Sheriff's Office, which he did.

**POSITION OF THE EMPLOYER:**

Both parties agree that Officer Shroyer is a good officer and employee. The Employer concludes that Officer Shroyer was responsible for the guns for the weekend and therefore he must receive some discipline.

He was charged with a violation of ODNR Disciplinary Policy, "*Loss of Firearm through Negligence.*"

The Employer notes that its disciplinary policy calls for a suspension or removal on the first offense. Because of the lack of previous discipline and the good work record of the grievant, the decision was made to issue a five (5) day working suspension so that the Grievant did not experience any loss of pay.

The Employer argues that this is a very serious offense in that someone could find the gun and commit a crime with it or cause injury to themselves or others.

The Employer argues the offense is made more serious by the fact the gun has still not been recovered.

The Employer has consistently imposed discipline for similar cases and believes it must do so in this case as well.

To support this claim, the Employer provided documentation of two previous cases:

The first case involved a Watercraft Area Supervisor who left her second weapon unsecured in the ladies' restroom of the office after qualifying with that weapon. The supervisor did not report the loss for six (6) days. The weapon was found by another employee and turned in. The supervisor was given a three (3) day working suspension.

In the second case an Assistant Park Manager left a loaded shotgun unsecured and sitting against the gun locker in the state park office. The shotgun was found by another employee. The Assistant Park Manager was given a one (1) day working suspension.

At the hearing the Employer requested that the case be heard through a form of expedited or non-traditional arbitration and that the Arbitrator issue a bench decision at the end of the day.

The FOP indicated that it could accept such a process, but it viewed it as a "quasi" expedited or non-traditional arbitration and not specifically covered by either of the two relevant provisions of the collective bargaining agreement.

Both parties agreed that the Arbitrator would make the decision about the issuance of a bench ruling after hearing the evidence.

#### **POSITION OF THE FRATERNAL ORDER OF POLICE:**

The FOP argued that the five (5) day working suspension can not be supported for five reasons:

1. The discipline imposed was not progressive in nature as the contract requires.

2. If Management determines to impose a greater level of discipline than that envisioned by progressive discipline, then the burden for justifying the higher level of discipline falls upon Management, and it failed to provide such justification in this case.
3. In a disciplinary matter the burden of proof falls upon Management to prove the charge and Management has failed to do so because in un-refuted testimony, it was noted that both Supervisor Pete Novotny and Officer Mark Battles also handled the guns. There is no evidence that Officer Shroyer was the negligent person.
4. Officer Shroyer immediately followed all required reporting protocols by informing his supervisor and the Carroll County Sheriff.
5. The FOP differentiates the two other cases, provided by the Employer to demonstrate consistent treatment of other employees for similar offenses, on three grounds.
  - a. Each of these two cases involved a supervisor outside the bargaining unit.
  - b. Neither loss was self discovered. Another employee found each of the missing weapons.
  - c. Neither loss was self reported.

In conclusion, the FOP argues just cause does not exist to support the charge against Officer Shroyer.

#### **DISCUSSION:**

The Arbitrator declined to issue a bench decision. The reasons for doing so are:

1. Expedited or non traditional arbitrations are envisioned by the collective bargaining agreement between the parties in two places. The first is Article 20.10 ***Minor Suspension Procedure***. The Second is Article 20.14 ***Alternative Dispute Resolution***. While the parties certainly tried to accommodate each other in this proceeding, the elements of either section were not fully met to the satisfaction of this Arbitrator.
2. The Arbitrator wished to have time to read and consider the joint exhibits presented and ponder the arguments of the parties.

Instead, based upon the limited number of witnesses called (one for each side) and the number of stipulations entered into by the parties, the Arbitrator agreed to expedite the issuance of the award and to limit its scope to a brief review and discussion of the issues.

There is no question that the Employer attempted to perform due diligence by taking action when a firearm was lost, but it appears to this Arbitrator there was a bit of an overreaction to the offense.

The Grievant did not lose his duty weapon. He (or someone) misplaced a training tool.

The Employer is to be commended for its efforts to make sure the grievant did not lose money as a result of this unfortunate incident but a five (5) day

suspension, even if it is a “paper suspension,” is still a serious mark on the unblemished record of a good officer.

The point of the FOP is well taken in that if the Employer wishes to justify discipline beyond the beginning level of progressive discipline, the burden falls to the Employer to justify that increased level of discipline.

One of the justifications for giving this officer such a significant suspension was because the weapon has not been found. Once the gun is out of the control of the officer, he or she loses the ability to remedy the situation. The gun is lost and the act of the loss can be judged, but the length of the loss cannot be a factor to justify increased discipline.

I also fail to see why this offense would rate a greater level of discipline than that given to a supervisor for leaving her service weapon, or an assistant director for leaving a loaded shotgun

There remains the problem that there is no evidence to prove it was Officer Shroyer who lost the weapon. In un-refuted testimony, it was established that both Supervisor Novotny and Officer Battles handled the firearms and either of them could arguably have been the person responsible for the loss.

The one thing that differentiates the grievant from these two employees is the fact that he signed out the firearms and therefore had a somewhat greater responsibility for their handling than did the other two employees.

In the opinion of this Arbitrator the Employer would have been well served to follow the advice of District 3 Manager, Jeff Herrick, when he stated in his investigatory report, *“I would suggest we treat this as a loss of state equipment*

*rather than the loss of his state issued sidearm or shotgun when considering the level of discipline.”<sup>2</sup>*

The more appropriate charge would have been *“misuse of and/or carelessness with state property.”<sup>3</sup>* The level of discipline recommended ranges from an oral reprimand to a suspension.

**DECISION AND AWARD:**

The grievance is granted in part and denied in part. The five (5) day working suspension shall be rescinded and all record removed from the employee’s personnel file. In its place the Grievant shall be issued a written reprimand for the incidents occurring on September 16 & 17 2005. The date of issuance of the reprimand shall be noted as December 1, 2005.

Issued at London, Ohio this 25<sup>th</sup> day of September, 2006.

  
N. Eugene Brundige, Arbitrator

---

<sup>2</sup> Joint Exhibit A, Page 8.

<sup>3</sup> Employer’s disciplinary policy, Joint Exhibit C, page 2.