

CASE: LYONS #3

In the Matter of the Arbitration
Between:

EMPLOYER and UNION

Gr: Spring/Termination

OPINION AND AWARD

BACKGROUND /FACTS

The Grievant, was employed as a police officer for approximately seven years, and was terminated January 19, 2005 for violation of several of the Employer's Standards of Conduct: 5.10 Conduct, 5.110 Unsatisfactory Performances, 5.25 Conformance to Laws and 6.25 Personal Involvement in an Incident.

The Grievant was involved in an altercation at Club Envy on November 23/24, 2003. The altercation culminated in criminal charges against the Grievant: assault with intent to commit great bodily harm less than the crime of murder, and aggravated assault. The Grievant was accused of cutting the face of another woman with either a glass or a bottle which resulted in a very severe cut to the victim's face (55 stitches) (Trial Tr. 11-21-04, p. 19). It is alleged that the Grievant fled the scene and did not report the incident in a timely manner as required by the Employer's rules. Under the standards of conduct, as a police officer, she is obligated, in the first instance, to avoid all circumstances and situations of the nature that resulted in the altercation. In addition

she was charged with a felony. However, after a bench trial, the Grievant was convicted of a high misdemeanor, aggravated assault, and placed on one year's probation.

The Grievant was suspended pending the outcome of the trial. Detective Michael G testified that he was at the time of the incident in Internal Affairs. He received the file for investigation and followed the criminal case closely. As is the practice of the Employer, when an employee is charged with a crime, the Department typically awaits the resolution of the criminal matter before proffering internal charges. Therefore, the detective collected the statements that were available including the police report, etc. He did not interview any of the witnesses directly because he was transferred to a new function.

Commander Kroger testified that based upon the investigation, the seriousness of the event, and the fact that the Grievant was convicted of smashing either a glass or a bottle into the face of a person which resulted in a very serious cut to her face, the Grievant was terminated. Commander Kroger further testified that it is a strict violation of the rules because the Grievant was originally charged with a felony which resulted in a high misdemeanor conviction which could, itself, be the basis for termination.

Undersheriff Carleton testified that there were a number of reasons the Grievant was terminated and that he made the final decision. For instance, she was convicted in court, based on the totality of circumstances, there was a severe cut to the victim, there was a weapon of some sort used, i.e., a glass or a bottle, the Defendant left the scene of the felony, and the mere fact of her getting involved in this off-duty altercation are clear violations of the rules and sufficient to sustain termination. He further testified that police officers have to be held to a higher standard especially under these

circumstances. The Grievant was involved in a barroom brawl and convicted of a high misdemeanor after being charged with a major felony.

The following exhibits were entered into evidence:

- J-1 Collective Bargaining Agreement
- J-2 Rules and Regulations
- J-3 Disciplinary Packet
- J-4 Employee Discipline Report, Notice of Termination and Administrative Review and Determination Hearing Findings
- J-5 Grievance
- J-6 Labor Relations response
- E-1a Trial transcript Monday, November 29, 2004
- E-1b Certified order of conviction and sentence and order of probation
- E-1c Sentence transcript

The Union filed a grievance (Joint Ex. 2) that could not be resolved. The testimony as indicated, in addition to the testimony of the Grievant (who has denied cutting the victim) as well as the exhibits, form the basis of the record in this case.

The standard of review is one of just cause.

ISSUE

DID THE EMPLOYER HAVE JUST CAUSE TO TERMINATE THE GRIEVANT?

DISCUSSION

The Grievant was charged with several rule violations as indicated in the Employee Discipline Report (Joint Ex. 4). Commander Kroger testified in detail as to the violations of each of these Standards of Conduct. The Employer obviously requests that the discharge be sustained based on the seriousness of these facts and the fact that the Grievant was convicted of a crime. On the other hand, the Union argues that the Grievant was acting in self defense and that she consistently has denied that she cut the victim. The Union also submitted three arbitration awards in support of their position: LH discharge, HE discipline and MB discipline

case. The Union advances these cases for the position that the Grievant should be returned to work with a penalty less than termination. After a close review of these awards, it is my decision that they do not support Grievant's position.

This is a difficult case for the Union. Evidence clearly has established a violation of the rules. The trial judge concluded and found as a matter of fact that: ". . . The evidence clearly shows in this case that it was the Defendant that cut the complainant while she was being held." (Trial Tr. 12-1-04, p. 45 Employer Ex. 1a). In finding Grievant guilty of aggravated assault, a high misdemeanor, the judge further stated: ". . . There's no doubt, whatsoever, about what happened." *Ibid*, p. 45.

The victim in this case incurred a serious injury, fifty-five stitches inside and outside of her face. (Trial Tr. 11-21-04, p. 19).

The Grievant has denied, at this hearing, that she assaulted the victim. The finding of fact in the criminal case was exactly the opposite. Interestingly, the Grievant testified in the arbitration case but did not testify in the criminal trial. In this case she attempted to lay the blame on another employee for cutting the victim. After a careful review of all the evidence of record and the trial transcript, the Arbitrator must come to the same conclusion as the judge. There is no question about what happened on the late evening of November 23 /early morning of November 24, 2003 during this altercation. The Grievant did not act in self defense as claimed. She assaulted the victim. Interestingly, the burden of proof in the criminal case is beyond a reasonable doubt. The court found that there was "no doubt whatsoever about what happened." There has been no evidence submitted in the instant case that would counter that finding. This finding constitutes a violation of the Employer's standards of conduct. According to the testimony of Commander Kroger and the Undersheriff the Grievant's conduct does violate the standards. There has been no evidence submitted

to counter a finding of guilty of the internal charges. Therefore, the Arbitrator agrees that the Grievant violated the standards of conduct set forth in the termination notice and the departmental charges: 5.10 Conduct, 5.110 Unsatisfactory Performances, 5.25 Conformance to Laws and 6.25 Personal Involvement in an Incident. Under 5.25 officers are required to obey all laws of the United States, State of Michigan and local jurisdiction. Indictment, arrest, charge, complaint or a conviction for a violation of any law can be the cause for disciplinary action up to and including termination. Employees and members are put on notice that termination of employment will be sought for a conviction of any misdemeanor which is a reduced charge when the warrant had originally been issued for a felony.

The Employer seeks termination in this case and based on a violation of all of the standards as set forth including 6.25 Personal Involvement in an Incident. Officers are required to refrain from taking or attempting to take police action on an incident and required to contact the appropriate police jurisdiction and notify an on duty departmental command officer. The Grievant did neither. The Police Department was called and took the complaint after the Grievant had left the bar. Regardless, the evidence supports the finding of guilt on the charges as proffered by the Employer.

Further, the disposition given by Mr. Obe in the Labor Relations response (Joint Ex. 6) puts the evidence in proper perspective:

The preponderance of the evidence of record established that Ms. Springs violently attacked and injured another person during a physical and verbal altercation at a nightclub. Ms. Springs's misconduct violated the laws of the State of Michigan, as evidenced by her arrest, the criminal charges, conviction and sentence. Consequently, Ms. Springs violated all of the Standards of Conduct enumerated above. Based on the totality of facts and circumstances of this matter including, the severity of the illegal misconduct perpetrated by Ms. Springs vis-a-vis her former job classification [i.e., police officer], the Sheriff issued a reasonable level of discipline on this occasion. Therefore, based on the appropriateness of the

Sheriff's determination and the absence of any contractual violation, the Union's grievance #2005-008 is appropriately denied, thereby sustaining the termination of Ms. Springs.

Commander Kroger and Undersheriff Carleton both testified that termination was an appropriate penalty based on a totality of the facts of this case. As stated, the Employer has squarely met its burden of proof. The Arbitrator must uphold the termination because of the seriousness of this assault and injury to the victim, and because there is no mitigating evidence in support of the grievance,.

AWARD

Based on the facts in this case, the grievance is denied.

Respectfully submitted,

John . Lyons, Arbitrator

Dated: July 19, 2005