

## Arbitration Award

In re City of Mount Vernon  
and  
Fraternal Order of Police,  
Ohio Labor Council, Inc.

126 LA (BNA) 1159  
FMCS Case No. 09/01714

July 15, 2009

Marvin J. Feldman, Arbitrator, selected by parties through procedures of the Federal Mediation and Conciliation Service

### Statement of Facts

At the time of the incident involved herein, the grievant was employed as a police officer, sergeant, in the Mount Vernon, Ohio police department. On November 25, 2008 the grievant was charged with an order of suspension for the following activity:

“Description of Violation: Unsatisfactory work or failure to maintain required standard of performance.

On 10/17/08 you issued two citations to R\_\_. On 10/21/08, R\_\_'s attorney appeared at the Mount Vernon Municipal Court and asked for information on the case. The report had barely been started (no narrative) and there were no notes were with the case. The citations were not turned in to the court until 10/23/08 (after you were advised to finish the work on the evening of 10/22/08). On 11/17/08, when you met with the Chief and Captain, the only excuse that you could give was “I missed it”.

Date of discussion (of the particulars) 11/17/08

Did employee have a representative present? [ ] Yes [x] No

Name of Employee's representative (if applicable)

Date(s) that suspension from duty without pay will occur: 12/17/2008”

On its face, the writer of that particular record of suspension notification stated that the predicate for the suspension was a Group I, number 21 violation. That nomenclature was taken from the work rules and disciplinary procedures for the city of Mount Vernon, Ohio in which the following was stated:

“21. Unsatisfactory work or failure to maintain required standard of performance.”

It might be known that the contract of collective bargaining at paragraph 10.5 stated the following:

“10.5 Within six (6) months after the ratification of this agreement, all bargaining unit members will have current versions of the Department “Policies, Procedures and Work Rules Manual.” All bargaining unit members shall receive a copy of this Agreement and the manual.”

Now it might be noted that none of the bargaining unit members received a copy of the contract of collective bargaining and the work rule manual. Evidence is not in conflict as to that lack of publication to the bargaining unit.

The contract of collective bargaining does direct the employer to apply corrective progressive discipline under Article 11.4 of the contract which reveals the following:

“11.4 Except in extreme instances wherein the employee is found guilty of gross misconduct, discipline will be applied in a corrective, progressive, and uniform manner in accordance with this Agreement. Progressive discipline shall take into account the nature of the violation, the employee's record of discipline and the employee's record of performance and conduct.”

However, the reader is reminded that the discipline involved in this particular matter was under the manual known as Work Rules and Disciplinary Procedures for the city of Mount Vernon, Ohio, not the contract of collective bargaining which is herein recited above.

It is also noted that the employer has a right to suspend, discipline, demote, etc. under language found at Article 7(E) of the contract which states the following:

“Article 7

Management Rights

(E) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;”

Again, the reader is reminded that the discipline in this matter occurred under a Manual, not the contract.

A timely and appropriate grievance was filed and the article and section number of a contract violation was stated to be 11.4, a contract clause which is cited hereinabove. The facts do reveal that the grievant was tardy in filing paperwork over an incident of arrest, the Clerk of Courts seeking the paperwork from the Police Chief and being reminded by the Police Chief of the tardiness of the grievant.

Under the circumstances of the case, the issue involved herein is not whether the grievant was inappropriate in his conduct, but whether the grievant was properly charged under a set of work rules that were unpublished at the time of the suspension. It might be noted that the grievant was suspended for a day of his employment without pay for his tardiness in the event of filing an

appropriate and timely police report concerning an arrest incident.

It was based upon these facts that this matter rose to arbitration for opinion and discussion.

### **Opinion and Discussion**

There is no question that the work rules under which the grievant was charged were not usable under the contractual clause that the parties entered into by way of collective bargaining agreement. The contract clause says in unequivocal and unambiguous language that all members of the bargaining unit shall receive a copy of the collective bargaining agreement and manual. The facts clearly show that the Manual under which the charge was made was never published to the bargaining unit.

It is a simple rule of arbitral law that rules under which the bargaining unit is employed must be published to the bargaining unit, must be reasonable and must be even-handedly applied. In this particular case there was no publication to the bargaining unit of the rule under which the grievant was suspended. Failure to publish nullifies the disposition under the rule. As I read the record of suspension notification, the type of violation is a Group I, number 21 violation involving a Manual duty. That rule protecting against that occurrence was never published to the bargaining unit and as such the discipline rendered must be held for naught.

Clauses of a contract demanding publication of the rules must be adhered to. Failure to do so will result in a nullification of any activity under the rules. This Opinion and Award does not question whether or not the grievant was tardy in his duties, it questions whether or not the discipline was appropriate under the circumstances involved. It is my holding that the suspension must be held for naught and the grievant paid for all lost time and benefits.

### **Award**

Grievance is granted. The grievant shall be paid for all lost time and benefits and any record concerning this particular incident shall be stricken from the personnel files of the grievant.